Flexible working arrangements

The Employment Relations (Flexible Working Arrangements) Amendment Act 2007 was passed in Parliament in November last year. It comes into force on 1 July 2008.

Quick guide to the Act

- Employees have the right to request a variation to their hours of work, days of work, or place of work if they have the care of any person and have been employed by their employer for 6 months prior to making the request.
- When making the request, the employee must explain how the variation will help the employee provide better care for the person concerned. The request must include other information such as whether the variation sought is for a limited period of time or permanent, and the date it would take effect. The employee would also explain what if any, changes the employer may need to make to accommodate the request.
- Employers must consider the request for flexible working arrangements. The Act provides the only grounds upon which they can refuse a request such as: inability to reorganise work among existing staff or recruit additional staff; planned structural changes; burden of additional costs; detrimental impact of quality or performance.
- Requests will be refused if the employee is covered by a collective employment agreement (CEA) and by agreeing to the request, the employee's working arrangements would be inconsistent with the CEA.
- The Act also provides a process for how requests are to be made and responded to.
- Labour Inspectors will be able to offer assistance to employees and employers regarding requests for flexible working arrangements.
- The Act provides a dispute resolution process in the event a dispute arises. This process can only be started if an employee believes that their employer has either wrongly determined that they are not eligible to make a request, or has not followed the correct process set out in the Act.
- The first step is to refer the matter to a Labour Inspector. If the employee is still dissatisfied after receiving assistance from a Labour Inspector, the employee may refer the matter to mediation. If mediation does not resolve the matter, the employee may apply to the Employment Relations Authority (ERA) so the ERA can determine either whether or not the employee is eligible to make a request, or whether the employer has followed the correct process.
- ERA determinations under the Act cannot be challenged to the Employment Court, except by judicial review.
- A review of the operation and effects of the new legislation is required 2 years after commencement and will include recommendations on whether the provisions should be extended to all employees.

PSA
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