[Domestic Violence – Victims' Protection Act](http://www.legislation.govt.nz/bill/member/2016/0215/latest/DLM7054315.html%22%20%5Ct%20%22_blank) 2018

***This document is intended only as general guidance to members of the Home and Community Health Association. Members should seek their own legal advice in regard to individual cases as appropriate.***

The [Domestic Violence – Victims' Protection Act 2018](http://www.legislation.govt.nz/bill/member/2016/0215/latest/DLM7054315.html) comes into effect from **1 April 2019**.

“Domestic violence” is defined in the Domestic Violence Act 1995: “in relation to any person, means violence against that person by any other person with whom that person is, or has been, in a domestic relationship”.

“Violence” means: physical abuse, sexual abuse, psychological abuse (including intimidation, harassment, damage to property, threats of physical abuse, sexual abuse or psychological abuse, financial or economic abuse. In relation to a child, it includes causing or allowing the child to see or hear the physical, sexual or psychological abuse of a person with whom the child has a domestic relationship, or where it puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring.

**Entitlement**

The Act amends the Holidays Act 2003, the Employment Relations Act 2000 and the Human Rights Act 1993.  Employers will be required to provide employees "affected by domestic violence" with up to 10 days domestic violence leave per annum to assist them to deal with the effects of domestic violence; this entitlement is in addition to annual holidays and sick leave entitlements. Domestic violence includes physical, sexual and psychological abuse, including harassment, threats, intimidation and financial abuse.

The new entitlements are available to employees personally affected by domestic violence and also to employees caring for children who have been affected by domestic violence.  The entitlements apply even if the domestic violence occurred before the person became an employee (ie timing of the domestic violence is not relevant).

Entitlement to domestic violence leave arises after six months' current continuous employment with one employer, or if the employee has worked at least an average of 10 hours per week over the past six months and no less than one hour in each week in that period or at least 40 hours in each month.  An employer may require proof prior to agreeing to the request.  If an employee fails, without reasonable excuse, to provide proof, an employer will not be required to pay for any domestic violence leave.

**Flexible Working Arrangements**

The Act also provides for flexible working arrangements for employees affected by domestic violence.  It allows affected employees to request additional types of flexibility than otherwise available, including changes to:

* The location of their workplace
* Their duties at work
* The extent of contact details the employee must provide to their employer
* Any other term of employment that needs variation to enable the employee to deal with the effects of domestic violence.

In addition, ‘short term’ flexible working arrangements (two months or shorter) will be available for employees affected by domestic violence.  Employees affected by domestic violence will be able to make a request for short-term changes to their working arrangements (including hours of work, days of work, place of work, or any other additional employment terms).  Employers must deal with such a request within 10 working days. As with domestic violence leave, employers can require proof that the employee is a person affected by domestic violence.  However, they may only require such proof if they inform the employee of the requirement within three working days after receiving the request for flexible working arrangements. Where the employer requests such proof, the employee must produce it within the 10 day period following the request being made.

**Approving a Request**

Requests may be made by the employee or their representative. Employers who, after considering a request, agree with the new working arrangement, must notify the employee of their approval in writing. The agreed new working arrangement will be a permanent change to the employee’s terms and conditions of employment, unless agreed otherwise. Where a trial period or time limited period has been agreed this should also be detailed.

**Declining a Request**

Employers have an obligation to consider requests properly, in accordance with the set process, which includes answering employees’ requests in writing. They are also obliged to

* adhere to the time limits contained within the process.
* provide the employee with appropriate support and information during the course of the request.
* refuse a request only where there is a Recognised Business Ground and to explain to the employee in writing why it applies; or where proof of domestic violence was required to be produced and was not produced within 10 working days after the request was made.

There may be circumstances where, due to the needs of the business, the employer feels they are unable to accept a request under the Act. Employers are able to refuse a request on one or more of the following Recognised Business Grounds:

* inability to reorganise work among existing staff
* inability to recruit additional staff
* detrimental impact on quality
* detrimental impact on performance
* insufficiency of work during the periods the employee proposes to work
* planned structural changes
* burden of additional costs
* detrimental effect on ability to meet customer demand.

**Adverse Treatment in Employment**

Employees will have personal grievance or a claim under the Human Rights Act 1993 if they have been treated adversely in employment on the grounds that they are, or are suspected or assumed or believed to be, a person affected by domestic violence.

**Comment**

Employers do not necessarily need to introduce new policies or incorporate any of the legislative requirements into employment agreements.  However, organisations need to be aware of these changes, and consider how they will practically deal with requests for domestic violence leave or flexible working arrangements due to domestic violence.

Organisations will need to be particularly mindful of protecting and preserving the privacy, trust and confidence of their employees.

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