



FLEXIBLE WORK (PART ONE)

Sadly, the number of members contacting the PSA about difficulties accessing flexible working arrangements appears to be increasing.

Data gathered from the Member Service Centre (MSC) shows that difficulty accessing flexible work practices is one of the most common reasons members – particularly women and carers – contact the PSA. This is despite policies on flexible work being in place and evidence flexibility can reduce absenteeism and improve productivity.

WHAT IS FLEXIBLE WORK?

Part-time work and 'flex time' are the most common examples of flexible working arrangements and have almost become synonymous with the idea of 'flexibility'. However, there are many other arrangements that can be used to accommodate the different needs of individuals. Examples include compacted hours, such as working full-time hours over an eight-day fortnight instead of a nine-day fortnight; variation/expansion of bandwidth of hours;¹ job-sharing; working from home; career-break schemes; part-year employment and preferred rostering systems.

Some research shows the best outcomes for both employers and employees comes from tailoring 'bespoke' arrangements to meet different individual needs while considering the unique requirements of each job or workplace. An example could be a part-time work agreement, where one of the days is worked from home, enabling the employee to be at the office for tasks that require them to be present in person, or to use resources and complete other tasks, such as reports, at home.

You can find a more in-depth explanation of the flexible options that are available in the Flexible Work Practices – policy and guidelines [HERE](#).

(http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0017/19331/Flexible_Work_Practices_Policy.pdf)

This policy was developed some time ago in consultation with the PSA, to inform employees and employers about a range of flexible work

options available in the NSW public sector. The Public Service Commission's website also has excellent information available to explain flexible work practices and includes templates for employees and employers.

This policy encourages public sector agencies to develop management practices that facilitate flexibility in employment arrangements.

BENEFITS OF FLEXIBLE WORK

While there is time and work involved in negotiating a flexible work agreement for both employees and supervisors, research shows the long-term benefits to both parties is worth the effort.

Just some of the benefits identified by research, both in Australia and in other countries, include: reduced absenteeism; reduced staffing costs; improved morale, motivation and productivity; reduced staff turnover and savings in recruitment time and costs; attracting and retaining the best employees; more positive work environments; improved work-life balance, including further study, participation in volunteer work or cultural and civic activities in the community, which can bring valuable life skills to the workplace; extending employee's working lives through phased retirement;² and, of course, enabling employees to meet carer commitments and remain in the workforce.

In some circumstances, anti-discrimination legislation also requires employers to genuinely consider applications for flexible work arrangements before making a decision.³ Most people are aware it is unlawful to discriminate on the grounds of gender, disability, family or carer responsibilities or pregnancy. However, failure to make reasonable adjustment, which may include a flexible work arrangement, can be discrimination⁴ if the application has not been properly considered or the refusal cannot be justified in the circumstances.⁵

Discrimination in relation to flexible work and reasonable adjustment will be discussed in the next edition of Women@Work.

Flexible work is now a key feature of government employment policy.⁶ However, despite published

policies, difficulty accessing flexible work has recently been identified as one impediment to women's ability to progress in the public service.⁷ This comes as no surprise to the PSA.

REASONS PEOPLE NEED FLEXIBLE WORKING ARRANGEMENTS

Flexible working arrangements do not apply only to women following parental leave. Many employees may, at some point in their working life, require flexibility in the workplace due to issues such as: wishing to transition to retirement; illness or injury; caring responsibilities for children, aged relatives or dependants with disabilities;⁸ domestic violence; disability;⁹ transport difficulties; adverse weather conditions; study; or other reasons. A specific reason is not always essential in order to *apply* for a flexible working arrangement.¹⁰

Conditions and options may vary slightly for employees who are not covered by the Crown Employees (Public Service Conditions of Employment) Award 2009. Future articles on flexible work will cover provisions in the Fair Work Act, enterprise agreements and other instruments relating to flexible work.

CAN MY MANAGER REFUSE MY APPLICATION FOR A FLEXIBLE WORKING AGREEMENT?

An employer is able to refuse an application for flexible work arrangements on 'reasonable business grounds'.

Where an application for flexible work is refused and the member wishes to challenge this, the outcome will depend on the facts of each matter, and the reason for the application.

The PSA has recently dealt with a number of matters where flexible working applications have been declined and the reason stated is simply "business grounds" or "operational needs". If this is challenged however, the employer will need to explain the "business grounds" or "operational

needs" that prevent them entering into a flexible working arrangement. They may also find it difficult to establish that they have properly considered the application.

Arbitrary refusal to consider an application for a flexible working arrangement can be challenged. Where the application is due to issues such as a disability, carer responsibility or other relevant grounds, arbitrary refusal without proper consideration or genuine reasons may also be found to be discriminatory and other avenues of appeal may be open.

GENDER PAY GAP UPDATE

As of August 2015, the gender pay gap in Australia stands at 17.9 percent. The latest ABS statistics show that the average weekly ordinary earnings of women working full-time were \$1307.40 per week, compared \$1591.60 per week for men. This makes women's average earnings \$284.20 per week less than men.

The pay gap has varied between 15 percent and 19 percent over the past 20 years in Australia.

Domestic Violence Leave increases to seven days for the Transport for NSW Salaries and Conditions of Employment Award.

On 13 August, the Transport for NSW Salaries and Conditions of Employment Award 2015 was made by the Industrial Relations Commission.

The NSW Government Wages Policy Taskforce approved changes to the Domestic Violence Leave clause within this award.

Special Leave (Domestic Violence Leave) was increased from five days per year to seven days per year without compromise.

Following on from this win Acting General Secretary Steve Turner has written to the Industrial Registrar asking for an indication whether they are prepared to consent to an application to apply the same amendment to the Conditions and all other awards. Updates will be provided as they become available.

¹ Crown Employees (Public Service Conditions of Employment) Award 2009

² Flexible working arrangements. Australian Government Business. Business.gov.au

³ Huntley v State of NSW, Department of Police and Justice (Corrective Services NSW) [2015] FCCA 1827

⁴ Huntley v State of NSW, Department of Police and Justice (Corrective Services NSW) [2015] FCCA 1827

⁵ Mayer v Australian Nuclear Science and Technology Organisation [2003] FMCA 209

⁶ Flexible work practices – Policy and Guidelines – NSW Premier's Department Public employment Office. Part I - General policy and overview. Policy statement

⁷ Baird M, 'Advancing Women: Increasing the participations of women in senior roles in the NSW public sector', Prepared for the NSW Public Service Commission

⁸ NSW Carers (Recognition) Act 2010

⁹ Huntley v State of NSW, Department of Police and Justice (Corrective Services NSW) [2015] FCCA 1827

¹⁰ Crown Employees (Public Service Conditions of Employment) Award 2009, Cl 13

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