



30 Days Series 26 by Zhang Kaihui

ADDRESSING THE NATIONAL CRISIS: WHAT EMPLOYERS CAN DO TO COMBAT VIOLENCE AGAINST WOMEN

Content warning: please be advised that this alert contains content about violence against women and domestic violence

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INTRODUCTION

Like their workers, Australia's employers are grappling with the confronting reality of a national crisis of violence against women. While violence against women at home and in personal relationships is at the fore of the national discussion, such violence can (and has in multiple instances) occurred at or in connection with the workplace.

Enhanced parenting leave, childcare and surrogacy/IVF policies serve as clear examples that employers will invest in additional resources and benefits to support their employees, irrespective of a legal obligation to do so. Accordingly, market-leading employers now find themselves asking a similar question on violence against women and related issues – what can (and must) we do?

This article is designed to help employers identify, assess and address the risks of violence against women by outlining actions and their benefits in the following areas:

- **Financial**
- **Practical**
- **Addressing risks at work**
- **Workplace awareness and appropriate response training**
- **The benefits of taking a proactive, vocal stance**
- **Employer concerns**

We hope you find it a useful resource and please contact us if you would like to discuss.

FINANCIAL SUPPORT

Beyond the 10 days of paid family and domestic violence (FDV) leave to which all employees are entitled under the National Employment Standards, employers are considering how they can help employees use their entitlements and accruals to protect and support themselves and their families. Some proposals include:

- **Leave cash out** - a clear policy position to allow the cashing out of accrued annual leave, to the extent permitted by law, for the costs associated with dealing with family and domestic violence;
- **Leave in advance** - approvals to use or cash-out annual leave and/or long service leave in advance where current leave balances are insufficient;
- **Leave approvals** - a clear policy position to approve short-notice or retrospective annual leave requests where the leave is required for the purpose of dealing with, avoiding, or escaping family and domestic violence and FDV entitlements are exhausted;
- **Salary in advance** - payments of salary in advance to assist with the costs of dealing with family and domestic violence; and
- **Enhanced leave benefits** - enhancements to paid FDV leave beyond the statutory minimum.

It is important to note that employment legislation and instruments (such as Modern Awards and the *Fair Work Act 2009*) do not expressly contemplate these supports and there is scope for inadvertent breaches where these initiatives are not implemented carefully.

PRACTICAL SUPPORT

In addition to financial and leave-related supports, employers can consider leveraging benefits and resources that are otherwise already available to employees in other contexts. For example:

- Temporary, emergency communication support such as temporary mobile phones, new phone numbers, and other portable devices;
- Temporary accommodations to work in another location;
- Emergency childcare support;
- Prompt and efficient changes to salary and benefit payment details;
- Ensure employees have clear access to information about third-party support services, including Employee Assistance Programs, community support groups, and government agencies; and
- If not already provided, offer employees the use of an anonymous Employee Assistance Program.

CONFIDENTIALITY, TRAINING AND CLEAR IDENTIFICATION OF SUPPORTS

Confidentiality remains a critical concern for employers and employees dealing with family and domestic violence. This consideration must be applied on all fronts, including:

- Training for frontline staff to maintain a strict position against disclosing the location, timings and details of an employees' work in response to external enquiries. For example, declining requests about an employee's office attendance or departure times from an external caller.
- Internal confidentiality for employees utilising family and domestic violence supports. For example, ensuring, as required by the *Fair Work Regulations 2009*, that FDV leave and benefits are not specified on payslips.
- Policies that assure confidentiality for employees who disclose family and domestic violence scenarios to their colleagues (while still managing employer obligations to meet their own duty of care).
- Training staff and raising awareness in relation to the prevalence of violence against women, including bystander training and clear identification of supports that colleagues can be referred to.

ADDRESSING THE RISK AT WORK

Any meaningful effort by an employer to prevent violence against women must include a robust assessment of risks and controls related to such violence in the workplace. This may, in conjunction with substantive employee consultation, consider:

- **Isolation and vulnerability** – Do employee roles require women to work at times or in locations where they are isolated, vulnerable, or alone with another individual? Examples may include remote working locations, facility openings/closings, travel and on-site accommodation, and even operational arrangements that require 1:1 meetings between women and other employees in private or unsupervised circumstances.
- **Team events and alcohol** – What policies, training and communications exist to minimise risk in connection with events and alcohol consumption? E.g. Who must attend or authorise such events, what food and non-alcoholic beverage options are available during the event, what is and isn't a 'work event', how far do the employer's standards reach?
- **Public access** - Ensure there is no unrestricted, public access to the premises when people work alone or at night and, where possible, implement alarms and security measures to control access. Where the workplace includes a carpark, ensure the carpark is secure from public access.
- **Relationship disclosures** – Many employers are mindful to require disclosure of the commencement of a workplace relationship, however do not consider the conclusion of the same. What happens when a workplace relationship ends, and are controls required to maintain a safe and positive workplace?
- **Support identification and preparedness** – If an employee is concerned about or experiencing violence/abuse, who can they contact to confidentially discuss? How is this information made available and kept up to date?
- **Training for key contacts** – Are employees identified as support contacts properly trained to deal with and respond to concerns of violence/abuse in a trauma-informed way? Are they sufficiently supported to deal personally with the mental-health impacts of this role?

The considerations above are not limited to the topic of violence against women – employers, boards and directors should equally consider such an assessment as necessary to meet their positive duty obligations under the *Sex Discrimination Act 1984* (Cth) and state-based work health and safety laws. These obligations have been strengthened and brought into sharp focus by recent Respect@Work reforms and related enhancement of regulatory investigation powers.

BENEFIT OF VISIBILITY

Some organisations may consider it unnecessary to formalise or document these supports, assuming that employees know that they would be provided if needed or requested. However, this approach significantly underestimates both the fear and stigma associated with raising family and domestic violence issues and asking for help. Employees may hesitate to raise issues or take action to avoid dangerous circumstances due to uncertainty of their options and supports that they can rely on. A proactive, vocal stance on support can overcome this hesitation and allow a vulnerable individual to take action.

EMPLOYER CONCERNS

Employers will rightly pause to consider potential risks in implementing measures such as those described above, including improper or misguided application of these benefits and ensuring compliance with local law and employment instruments in implementation.

While these risks cannot be entirely eliminated, there are certainly controls and mitigants that can be established to lower an employer's exposure while still facilitating the intended support and protection. Ensuring that policies are carefully drafted to include flexibility, discretion, and reasonable evidentiary requirements are all critical to a balanced and responsible approach. Similarly, ensuring that benefits and supports are implemented with transparency, consent and in the correct manner can allow progress without breach of any employer obligations.

To discuss further or for assistance in connection with any of the above, please do not hesitate to reach out.

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