

Domestic Violence – Victims' Protection Act 2018



Domestic Violence – Victims' Protection Act 2018

The Domestic Violence – Victims' Protection Act adds legal protections in the workplace for people affected by domestic violence.

From 1 April 2019, the Act gives employees affected by domestic violence the rights to:

- › get paid domestic violence leave
- › ask for short-term flexible working
- › not be treated badly at work because they might be affected by domestic violence.

These rights do not apply to people who carry out domestic violence. In other words, people who are violent or abusive to someone they're in a family or domestic relationship with.

Domestic violence is also known as family violence, and is not just physical violence. It can take many forms.

Employers must not treat employees or job applicants adversely – badly – if they think they might have been affected by domestic violence.

It does not matter when the domestic violence took place. The employee still has these rights if they experienced domestic violence before they began working for their current employer or before these changes to the law.

It is a good idea for employers to update workplace policies to cover domestic violence rights and responsibilities. Having clear policies helps build good working relationships between workers and employers and makes it simpler for both employee and employers to handle the effects of domestic violence.

Employers who break employment law may have to pay up to \$20,000.

- › Use the [www.business.govt.nz workplace policy builder](https://wpb.business.govt.nz/workplacepolicybuilder/familyViolence/whyWeHaveThisFamilyViolencePolicy):
<https://wpb.business.govt.nz/workplacepolicybuilder/familyViolence/whyWeHaveThisFamilyViolencePolicy>
- › See details of the Domestic Violence – Victims' Protection Act 2018:
www.legislation.govt.nz/act/public/2018/0021/17.0/DLM7054315.html
- › See more about legal protections for employees affected by domestic violence at
www.employment.govt.nz/domestic-violence

What is domestic violence?

In New Zealand the terms 'family violence' and 'domestic violence' are used for the same thing. They mean all forms of violence in family and intimate relationships.

Domestic violence is defined in section 3 of the Domestic Violence Act.

See <http://www.legislation.govt.nz/act/public/1995/0086/latest/whole.html#DLM372117>

Someone experiences domestic violence if they are being abused by an intimate partner, ex-partner, someone in their family or whānau, or by a flatmate. This can happen to women or men, and within heterosexual or same-sex couples. Someone who carries out domestic violence might not live with the person they are abusing.

Domestic violence can be physical, sexual or psychological abuse. When someone is bullying or threatening or tries to control what someone else does or thinks, it's domestic abuse. Some examples of abuse are:

- › **intimidation** – scaring someone into doing something or making them or their family feel unsafe, by, for example, following or watching them
- › **harassment** – again and again acting in a way that upsets someone or their family or contacting them when they don't want it
- › **damaging their things**

- › **threatening to abuse them**
- › **financial or economic abuse** – taking their money, stopping them from working or going to school or college
- › **emotional or psychological abuse** – putting them down, always criticising them or calling them names, playing mind games, making them think they're going crazy.

Someone is affected by domestic violence if either:

- › they have experienced domestic violence themselves
- › a child who has experienced domestic violence lives with them, even if it's not all the time.

Domestic violence can affect someone for a long time, even after it ends. The Domestic Violence – Victims' Protection Act is for employees who experience domestic violence that either:

- › is taking place now
- › took place in the past.

Changes from 1 April 2019

Employees affected by domestic violence have the right to:

- › take 10 days of paid domestic violence leave – this is separate from annual leave, sick leave and bereavement leave
- › ask for short-term flexible working arrangements – lasting up to 2 months
- › not be treated adversely or badly in the workplace because they might have experienced domestic violence – this is discrimination.

SEE MORE ABOUT

- › **Domestic violence rights at work** at www.employment.govt.nz/domestic-violence

Domestic violence leave

Employees who meet the 'hours worked test' can get at least 10 days of paid domestic violence leave each year if they need it. This leave helps them deal with the effects of domestic violence. Examples are getting help from a family violence support service, moving house, or supporting their children.

Domestic violence leave is separate from annual leave, sick leave and bereavement leave rights.

Employers must pay employees who take domestic violence leave. Employees must tell their employer as soon as they can if they need to take domestic violence leave, as with sick leave.

The employer can ask for proof the employee is affected by domestic violence. The employer does not need to pay the employee until they get this proof, unless the employee has a 'reasonable excuse'.

If the employee does not have enough domestic violence leave, they and their employer can agree that they can take annual leave or unpaid leave instead.

If the employee has problems taking their domestic violence leave or being paid for it, they should first talk to their employer. They can also get help from experts in employment law.

Who can get paid domestic violence leave

Employees can take paid domestic violence leave if they have worked for their employer for at least 6 months or meet one of the following conditions. These are that:

- › the employment has continued for 6 months
- › during those 6 months they have worked for at least an average of 10 hours a week. During this time, the employee must have worked either:
 - 1 hour each week
 - 40 hours each month.

These are the same conditions for getting sick leave and bereavement leave.

Employees can take domestic violence leave when they need it, as with sick leave and bereavement leave. They get the right to at least 10 days of new domestic violence leave each year if they still meet the conditions above – the 'hours worked' test.

Domestic violence leave and sick leave or other leave

An employee qualifies for domestic violence leave in the same way they qualify for sick and bereavement leave.

Domestic violence leave is not exactly like sick leave or holiday leave because if an employee:

- › does not use their domestic violence leave in 12 months, they cannot carry it over to the next year
- › stops working for their employer, their employer does not have to pay them for any domestic violence leave they have not taken.

10 days of domestic violence leave

Employers must give at least 10 days of paid domestic violence leave each year to employees who qualify.

An employer can decide to:

- › offer more than the 10 days of paid domestic violence leave the law sets out
- › let an employee take annual leave or unpaid leave when they have used all their paid domestic violence leave.

Pay rate for domestic violence leave

An employer must pay employees who take domestic violence leave.

An employer must pay an employee their 'relevant daily pay' or 'average daily pay' for each day of domestic violence leave they take on a day they usually work – an 'otherwise working day'.

An employer does not have to pay an employee for any time they get weekly payments through the Accident Compensation Act 2001 or former ACC Act.

- › **Work out payments for leave and holidays** at www.employment.govt.nz/leave-and-holidays/calculating-payments-for-leave-and-holidays/relevant-and-average-daily-pay
- › **See what an otherwise working day is** at www.employment.govt.nz/leave-and-holidays/otherwise-working-day

Taking domestic violence leave

On or before the day they are meant to work, the employee must tell their employer they want to take it as domestic violence leave as early as they can. If they cannot do that, they must tell their employer as soon as they can.

This is the same as an employee telling their employer about sick leave and bereavement leave they want to take.

The employer can ask for proof that the employee is affected by domestic violence. The employer does not need to pay the employee until they get this proof, unless the employee has a 'reasonable excuse'. An example of a 'reasonable excuse' could be that the employee had to move home quickly and has not had time to get proof.

SEE MORE ABOUT

- › **Proof of domestic violence** at www.employment.govt.nz/domestic-violence

If there's not enough domestic violence leave

Sometimes an employee needs to take time off to deal with the effects of domestic violence but does not qualify or have enough domestic violence leave.

If an employee runs out of domestic violence leave, the employer and employee can agree that they can take domestic violence leave in advance. The employer must record this agreement in writing.

If an employee needs more time to deal with the effects of domestic violence but does not have enough domestic violence leave to cover this time, the employer and employee can agree that the employee can take annual holidays or leave without pay instead. The employer must record this agreement in writing.

Employees who have worked for their employer for fewer than 6 months do not have the right to take domestic violence leave. In this case, the employer and employee can agree that the employee can take domestic violence leave in advance. The employer must record this agreement in writing.

If an employee qualifies for domestic violence leave and needs it while they are on annual holiday leave, they can choose to take domestic violence leave instead of annual leave. They should tell their employer as soon as they can. The employer must record this in writing.

If an employee has problems with domestic violence leave

An employee should first talk to their employer if they have:

- › been refused domestic violence leave
- › problems getting paid for their domestic violence leave.

The employee may want to go to mediation with their employer to try to fix what's wrong. Both employee and employer must agree to go to mediation. During mediation, a trained person helps the employer and employee talk about what is wrong. The mediator helps them agree how to resolve it. Mediation is free, confidential and does not take one side.

Employees can get free, confidential information and mediation from Employment New Zealand.

If the problem is not resolved at mediation, the employee can get in touch with either the:

- › Labour Inspectorate
- › Employment Relations Authority (ERA).

The employee can contact the Labour Inspectorate at any time. The Labour Inspectorate checks that workplaces meet basic employment law, including paid leave.

The employee must contact the ERA within 12 months. The ERA is a specialised body like a court. It finds facts, applies the law and makes reasoned, binding decisions.

SEE MORE ABOUT

- › **The Labour Inspectorate** at www.employment.govt.nz/resolving-problems/steps-to-resolve/labour-inspectorate
- › **Mediation** at www.employment.govt.nz/resolving-problems/steps-to-resolve/mediation
- › **The Employment Relations Authority** at www.employment.govt.nz/resolving-problems/escalation-unresolved-problems/employment-relations-authority

MBIE OFFERS FREE, CONFIDENTIAL HELP WITH EMPLOYMENT

- › **Call the helpline** on 0800 20 90 20
- › **Email:** info@employment.govt.nz

Proof of domestic violence

If an employee takes domestic violence leave or asks for short-term flexible working arrangements, their employer can ask for proof. This proof should show the employee is affected by domestic violence.

The law does not state what kind of proof an employer can accept.

If the employer asks for proof, the employer and employee should both act in good faith. That means being open, honest and quick to respond.

Employers can accept any type of proof that an employee is affected by domestic violence.

Proof for domestic violence leave

If the employer asks for proof but does not get it, they do not need to pay the employee until they get proof, unless the employee has a 'reasonable excuse'.

An example of a 'reasonable excuse' could be that the employee had to move home quickly and has not had time to get proof.

Proof for short-term flexible working

If the employer wants proof, they must ask for it within 3 working days of getting the request for short-term flexible working arrangements. As they must reply in writing within 10 days, this gives enough time for both the:

- › employee to get proof
- › employer to respond.

If the employee doesn't give proof when asked, their employer may refuse their request for short-term flexible working. The employer can say no to the request until the employee gives them proof.

Getting proof

Getting proof may not be simple, given the nature of domestic violence. Domestic violence often takes place behind closed doors, making it hard to 'prove'. Ringing police or applying for a protection order are usually very big steps for someone affected by domestic violence.

Examples of proof

- › Letter or email about what's going on and how it affects the employee from either a:
 - support organisation – for example, a domestic violence support service or Oranga Tamariki.
 - support person.
- › Report from a doctor or nurse.
- › Report from a school.
- › A declaration – a letter of evidence witnessed by an authorised person like a justice of the peace under the Oaths and Declarations Act 1957.
- › Any court or police documents about the domestic violence.

Short-term flexible working

Employees who are affected by domestic violence have the right to ask for short-term flexible working arrangements to help them deal with the effects of domestic violence. These arrangements can last for up to 2 months.

The employer must see to this request urgently because an employee may wish to change their working arrangements to stay safe. The employer must reply within 10 working days at the latest.

Employees have the right to ask for this kind of flexible working at any time, even if the domestic violence took place before they became an employee.

Employees must ask their employer in writing for changes to their normal working arrangements. Someone else can also ask for short-term flexible working for them. Whoever writes asking for short-term flexible working, they must include certain information.

This new right adds to the right of all employees to ask for flexible working arrangements at any time and for any reason. This kind of flexible working arrangement can be longer than 2 months or a lasting change. Employers must deal with these requests differently and have longer to respond.

The employer must follow rules when they decide about short-term flexible working arrangements. They must reply in writing within 10 working days at the latest. They must use only certain reasons to decide. If they want proof that their employee is affected by domestic violence, they must ask for it within 3 working days. They must give their employee information about suitable support services that can help with domestic violence within 10 working days at the latest.

What employers and employees must do is set out in the new section 6AB of the Employment Relations Act 2000.

Updating workplace policies to cover domestic violence rights and responsibilities helps build good working relationships between workers and employers.

Employers must always keep short-term flexible working records, just as they must keep records of all kinds of working arrangements.

If the employee has problems taking their domestic violence leave or being paid for it, they should first talk to their employer. They can also get help from experts in employment law.

SEE MORE ABOUT

- › **Short-term flexible working** at www.employment.govt.nz/leave-and-holidays/domestic-violence-leave/short-term-flexible-working
- › **Flexible work** at www.employment.govt.nz/workplace-policies/productive-workplaces/flexible-work

Who can ask for short-term flexible working

All employees have the right to ask for flexible working arrangements at any time and for any reason. Employees who are affected by domestic violence can also ask for changes to their working arrangements that last up to 2 months – short-term flexible working arrangements.

If an employee is affected by domestic violence, they can ask for this kind of flexible working at any time.

The employer must see to a request for short-term flexible working urgently because an employee may wish to change their working arrangements to stay safe. The employer must reply as soon as possible and within 10 working days at the latest.

Working arrangements

‘Working arrangements’ mean one or more of the following things that affect how employees do their jobs. These are:

- › hours and days of work
- › where their workplace is
- › where in the workplace they do their job
- › duties at work
- › contact details that they must give to their employer
- › any other employment term that they think needs to change so they can deal with the effects of the domestic violence. An example is that the employee does not need to answer phone calls from the public.

Asking for short-term flexible working

Employees must ask their employer in writing for changes to their normal working arrangements. Someone else can also ask for a short-term flexible working arrangement for them. The written request must include certain information.

The employer must tell the employee in writing whether they approve or refuse the request. They must reply as soon as possible, and at the latest within 10 working days of getting the request.

What an employee must put in their request

When an employee writes to their employer asking for short-term flexible working arrangements, they must include certain things. The employee must:

- › give their name
- › give the date they are making the request on
- › say that they are asking for short-term flexible working, as set out in Part 6AB of the Employment Relations Act 2000
- › give the details of what they want to change about their normal working arrangements
- › say how long they want these changes to last – up to 2 months
- › say when they want these changes to start and finish
- › say how these changes will help them
- › say what changes the employer may need to make to the employer’s arrangements if they agree to the employee’s request.

Agreeing or refusing short-term flexible working

The employer must give their answer in writing as soon as they can. At the latest, they must reply within 10 working days of getting the request for short-term flexible working arrangements.

The employer can ask for proof the employee is affected by domestic violence to help decide whether to agree to short-term flexible working.

If the employer wants proof, they must ask for it within 3 working days of getting the request for short-term flexible working arrangements. This gives enough time within the 10-working day period for both the:

- › employee to get proof
- › employer to respond.

If the employee doesn’t give proof when asked, their employer may refuse their request for short-term flexible working. The employer can say no to the request until the employee gives them proof.

Whether the employer says yes or no to the request, they must give their employee information about suitable support services that can help with domestic violence. They can do this when they give their written answer to the employee’s request, or before.

SEE MORE ABOUT

- › **Proof of domestic violence** at www.employment.govt.nz/domestic-violence

Refusing a request

If the employer refuses to give short-term flexible working to their employee, they must:

- › say that the request is refused
- › say why it has been refused
- › explain the 'non-accommodation grounds'.

The employer can refuse a request **only** if they:

- › did not get the proof they asked for within 10 working days of getting the request
- › cannot reasonably change working arrangements – using a 'non-accommodation ground' – to give their employee the flexible working arrangements they have asked for.

Non-accommodation grounds are:

- › not being able to reorganise work among other workers
- › not being able to recruit more workers
- › detrimental impact on quality – making the quality of work worse
- › detrimental impact on performance – making the performance of the workplace worse
- › not enough work expected at the times the employee wants to work
- › changes to the workplace structure that are already planned
- › burden of additional costs – having to spend more money
- › detrimental effect on ability to meet customer demand – making it harder to serve customers properly.

If a request is refused

An employee can ask for expert help if their request is refused and they think that their employer has not followed the right process or has got it wrong.

They can only bring it to experts if they think their employer has either:

- › not followed the law – for example, has not responded to their request within 10 working days
- › got it wrong when they said they cannot reasonably change their working arrangements – for example, has not used the right 'non-accommodation grounds' or has said they cannot reorganise work but the employee thinks they could.

The employee may want to go to mediation with their employer. Both employee and employer must agree to go to mediation. During mediation, a trained person helps the employer and employee talk about what is wrong. The mediator helps them agree how to resolve it. Mediation is free, confidential and does not take one side.

Employees can get free, confidential information and mediation from Employment New Zealand.

If the problem is not resolved at mediation, the employee can get in touch with either the:

- › Labour Inspectorate
- › Employment Relations Authority (ERA).

The employee can contact the Labour Inspectorate at any time. The Labour Inspectorate checks that workplaces meet basic employment law, including flexible working.

The employee must complain to the ERA within 6 months of the date:

- › when their employer refused their request for short-term flexible working
- › after the 10 working days response period if their employer did not answer.

The ERA is a specialised body like a court. It finds facts, applies the law and makes reasoned, binding decisions.

Contact details

LABOUR INSPECTORATE

- › Email: info@employment.govt.nz
- › Call 0800 20 90 20
- › See more about the Labour Inspectorate at www.employment.govt.nz/resolving-problems/steps-to-resolve/labour-inspectorate

EMPLOYMENT MEDIATION SERVICES

- › Fill in the form on www.employment.govt.nz/resolving-problems/steps-to-resolve/mediation/request-meditation
- › You will need a RealMe login. If you don't have a RealMe account, create one at www.realme.govt.nz/how-apply
- › Call 0800 20 90 20
- › See more about mediation at www.employment.govt.nz/resolving-problems/steps-to-resolve/mediation

EMPLOYMENT RELATIONS AUTHORITY

- › Email: info@employment.govt.nz
- › Call 0800 20 90 20
- › See more about the Employment Relations Authority at www.employment.govt.nz/resolving-problems/escalation-unresolved-problems/employment-relations-authority

Personal grievance and Human Rights Act complaint

Employers must not treat their employees adversely – badly – because they might be affected by domestic violence. This includes people who are applying for jobs. It does not matter when the domestic violence took place.

From 1 April 2019, this kind of adverse treatment is unlawful under both the Employment Relations Act and the Human Rights Act.

If an employee thinks their employer has treated them badly because they might be affected by domestic violence, they can get confidential information and mediation from Employment New Zealand or the Human Rights Commission. These two organisations both offer free, confidential information and mediation, although they deal with different areas of the law.

If an employee thinks their employer has broken employment law, they can raise a personal grievance with their employer or go to Employment New Zealand. If an employee thinks their employer has broken human rights law, they can go to the Human Rights Commission.

If the employee wants to take it further, then they can choose to go to either the Employment Relations Authority (ERA) or the Human Rights Review Tribunal (HRRT), but not both.

At all stages, the employer and employee can go to mediation to try and fix the problem. If it's not resolved at mediation, employees can bring their case to either the ERA or the HRRT but not both. Which one they choose depends on the laws that apply in their case.

SEE MORE ABOUT

- › **Resolving problems** at www.employment.govt.nz/resolving-problems

Employment New Zealand

Employment New Zealand can help employees and employers with employment law.

If an employee thinks their employer has treated them adversely – badly – because they might be affected by domestic violence, they can raise a personal grievance with their employer. They must do this within 90 days.

SEE MORE ABOUT

- › **Personal grievances** at www.employment.govt.nz/resolving-problems/steps-to-resolve/personal-grievance

Human Rights Commission

The Human Rights Commission can help in a wider range of employment situations, including some people who are not usually covered by Employment New Zealand. For example, the Human Rights Commission can help:

- › voluntary workers
- › self-employed workers
- › in pre-employment situations, like applying for a job.

People should complain to the Human Rights Commission within 12 months.

VISIT

- › **The Human Rights Commission** at www.hrc.co.nz

Mediation

Employees and employers can try to fix their problems during mediation. Both must agree to go to mediation. During mediation, a trained person helps the employer and employee talk about what is wrong and agree how to resolve it. Mediation is free, confidential and does not take one side.

Employees can get confidential information and mediation from Employment New Zealand or the Human Rights Commission. These two organisations both offer free, confidential information and mediation, although they deal with different areas of the law.

SEE MORE ABOUT

› **Mediation** at www.employment.govt.nz/resolving-problems/steps-to-resolve/mediation

Employment Relations Authority and Human Rights Review Tribunal

If the problem is not resolved at mediation, employees can bring their case to either the Employment Relations Authority (ERA) or the Human Rights Review Tribunal (HRRT), but not both.

The ERA and the HRRT are specialised bodies like courts, which find facts, apply the law and make reasoned, binding decisions.

The two bodies are slightly different. The Employment Relations Authority deals with employment law. The Human Rights Review Tribunal deals with human rights law.

When an employee chooses one, they cannot bring their case to the other one.

FIND OUT MORE ABOUT

› **The ERA and HAART** at www.employment.govt.nz/resolving-problems/escalation-unresolved-problems

Penalties for employers

Employers that break employment law may have to pay a penalty of up to \$20,000.

If the employer is an individual, they may have to pay a personal penalty of up to \$10,000.

If the employer is a company or other body corporate, they may have to pay a penalty of up to \$20,000. The employer may have to pay higher penalties for serious breaches of the law.

The Employment Relations Act 2000 sets out the penalties for breaking the law. For more about the possible penalties for employers under the Human Rights Act 1993, visit the website of the Human Rights Commission: www.hrc.co.nz

Being a good employer

It is important for employers to have policies that make a workplace supportive for employees affected by domestic violence. Domestic violence can affect anyone at any time.

Some ways the employer can make the workplace safe and supportive include:

- › creating a family violence policy that sets out how the employer will support employees who are affected by family violence
- › updating existing leave and holidays as well as flexible policies or conditions
- › making changes at work to make sure staff affected by domestic violence are not treated adversely or badly.

Having clear policies helps build good working relationships between workers and employers and makes it simpler for both employees and employers to handle the effects of family violence.

FIND OUT MORE ABOUT

- › **Building a family violence policy using the Business.govt.nz Workplace Policy Builder at <https://wpb.business.govt.nz/workplacepolicybuilder>**

