

Article Information

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The next tranche of Fair Work Act changes is underway as the Protecting Worker Entitlements Bill passes both Houses of the Commonwealth Parliament

The Protecting Worker Entitlements Bill has passed both Houses of Parliament, with the 2023 set of Fair Work Act amendments officially underway. This Bill will make a number of changes aimed at improving the workplace relations framework, including the expansion of access to unpaid parental leave, including the right to superannuation in the National Employment Standards, and greater protection for migrant workers.

Last year, the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act* was passed, with the intention to lift wages, improve job security and close the gender pay gap. On Thursday 22 June 2023, the second tranche of *Fair Work Act (FW Act)* amendments, contained in the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023*, officially passed both Houses. As the name suggests, this Bill is intended to make changes aimed at protecting worker entitlements, and Tony Burke, the Minister for Industrial Relations, says the government's aim this year is to close the "loopholes" that some businesses use to undercut worker and workplace relations standards, like those provided for in the *Secure Jobs Better Pay Act*.[\[i\]](#)

The *Protecting Worker Entitlements Bill* will make the following changes:[\[ii\]](#)

Provision(s)	Commencement
Protection for migrant workers	The day after the Bill receives Royal Assent
Unpaid parental leave	The later of: (a) 1 July 2023; and (b) the day after this Bill receives Royal Assent
Superannuation in the NES	The first 1 January, 1 April, 1 July or 1 October to occur at the end of 6 months after the Bill receives Royal Assent
Other superannuation amendments	The day after the Bill receives Royal Assent
Workplace determinations	The day after the Bill receives Royal Assent
Employee authorised deductions	The day after the end of 6 months after the Bill receives Royal Assent
Coal mining long service leave scheme	The earlier of: (a) a single day to be fixed by Proclamation; and (b) the first 1 January, 1 April, 1 July or 1 October to occur at the end of 6 months after the Bill receives Royal Assent

Protections for migrant workers

The Bill will insert a new provision to deal with the interaction between the FW Act and the *Migration Act 1958* (Cth). The effect of the change is that a breach of the Migration Act, or an instrument made under it, will not affect the validity of a contract of employment or contract for services for the purposes of the FW Act. This change will make it explicit that a

migrant worker is entitled to the benefit of the FW Act, regardless of their immigration status. However, the provision will not affect work rights (or consequences of non-compliance) under the Migration Act. These changes seek to ensure that migrant workers who are, for example, employed for 38 hours per week but are working under a visa that limits their working hours to less than that, that they are still entitled to be paid (and pursue any non-payment or underpayment) for their contracted hours.

Unpaid parental leave

The Bill will strengthen access to unpaid parental leave (**UPL**) and help families share work and caring responsibilities. The changes seek to complement changes already made to the *Paid Parental Leave Act 2010* by the *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Act 2023*, by increasing flexibility for working parents by allowing them to take up to 20 weeks of their 12-month UPL entitlement flexibly, including as single days. The Bill will also allow the entitlement to flexible UPL to be taken before, as well as after, a period of continuous UPL taken under s 71 of the FW Act.

The Bill will further strengthen access to UPL to remove barriers to parents sharing responsibility by:

- allowing employees to commence UPL at any time in the 24 months following the birth or placement of their child;
- removing barriers preventing employee couples from taking more than 8 weeks of UPL at the same time;
- allowing pregnant employees to access flexible UPL in the 6 weeks prior to expected birth of their child; and
- allowing parents to request an extension to their period of UPL, regardless of the amount of leave the other parent has taken. [\[iii\]](#)

The amendments are intended to give families more choice and flexibility in how they combine their care and work responsibilities, and encourage parents to share caring responsibilities. Employees will still be required to comply with the existing notice requirements in the FW Act when taking flexible unpaid parental leave.

Superannuation

The Bill will insert the entitlement to superannuation into the National Employment Standards, and the FW Act will expressly require that employers make superannuation contributions. While the current law sees superannuation underpayment issues as primarily the responsibility of the ATO, the reforms will provide employees, unions and the Fair Work Ombudsman with legal standing under the FW Act to directly pursue any unpaid or underpaid compulsory superannuation.

The Bill will also make a consequential amendment to s 149B of the FW Act to ensure alignment between the new provisions and the terms relating to superannuation in modern awards.

Workplace determinations

An express interaction rule for workplace determinations and enterprise agreements will be included in the FW Act. This change will confirm that an enterprise agreement ceases to apply when it is replaced by a workplace determination.

Employee authorised deductions

The amendments will also allow employees to expand the circumstances in which employees can authorise employers to make valid deductions from payments due to employees, though only where the deductions are principally for the employee's benefit. Employees will be permitted to authorise employers, in writing, to make regular deductions for amounts that vary from time to time, provided that the deductions are not for the direct or indirect benefit of the employer. This change is intended to ease the administrative burden on employees and employers, because the current provision requires employees to provide employers with a new written authority on each occasion when the amount of an authorised deduction varies.

Coal mining long service leave scheme

Finally, the Bill will make changes to the statutory scheme for long service leave in the coal mining industry with the intention that casual employees are treated no less favourably than permanent employees for the purposes of accrual, reporting, and payment of long service leave entitlements.

Key Takeaways

Employers will need to be across these changes, on the understanding that more are likely to follow as the government has made commitments and undertaken consultation on many more FW Act amendments. At this stage, it is important for employers to:

- familiarise themselves with the new unpaid parental leave entitlements, and amend their policies accordingly;
- ensure they are compliant with superannuation contribution requirements; and
- review their practices for employee authorised deductions.

[\[i\]](#) *Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023 Second Reading Speech*

[\[ii\]](#) *Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023*

[\[iii\]](#) *Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023 Explanatory Memorandum*