

The Domestic Violence – Victim's Protection Act 2018 came into force on **1 April 2019**.

The Act aims to ensure that people who are affected by domestic violence are supported in their workplace.

What does the Act do?

Employees can:

- access up to **ten days** per year of paid domestic violence leave; and
- ask for changes to their working arrangements for up to two months,

in order to help them deal with the effects of domestic violence.

The 10 days paid leave is only available to employees who have been employed continuously by their current employer for **six months**.

No different treatment

The Act also says that employees or potential employees can't be treated adversely because they are (or because they are suspected of being) someone who is affected by domestic violence.

Who can apply?

An employee can make a request if:

- they have suffered from domestic violence, either recently or in the past (and even if the domestic violence happened before they started their current job); or
- they normally care for a child (either part-time or full-time) who has suffered from domestic violence.

The leave or change in working arrangements must be genuinely requested ***to help the employee deal with the effects of the domestic violence.***

What is domestic violence?

Violence against any person by any other person with whom that person is, or has been, in a domestic relationship (normally a marriage or de-facto partnership).

Domestic violence is not limited to just physical or sexual abuse. It can also include psychological abuse such as threats, damaging property or denying or restricting access to money, employment opportunities or education.

Do employees need to provide proof that the domestic violence happened?

Not initially, but an employer can ask for proof if they wish.

A timeline for providing proof applies where the employee has asked for changes to their working arrangements:

- If the employer wants proof, then they must ask as soon as possible, and no later than **three working days** after they receive the employee's request;
- If asked, the employee must provide proof as soon as possible, and no later than **ten working days** after their original request was received by the employer.

If proof is not provided within ten working days then the request for changed working arrangements can be declined.

Similarly employers can ask for proof to support applications for domestic violence leave. If the leave has already been taken then the employee may not be paid until they provide the required proof.

Process – changes to working arrangements

Response time

If an employee asks to make changes to their working arrangements then the employer has to deal with that request and notify the employee of their decision as soon as possible, and no later than **ten** working days after the request is received.

Telling the employee about support services

When the employer notifies the employee of its decision the employer must also provide information about appropriate specialist domestic violence support services.

Domestic violence support services and resources include, but are not limited to:

- New Zealand Police
<https://www.police.govt.nz/>
- Women's refuge
<https://womensrefuge.org.nz/get-help/>
- Are you ok?
<http://areyouok.org.nz/>
- The domestic abuse helpline
0508 744 633
- The National Network of Stopping Violence
<https://nnsvs.org.nz/>
- Barnardos (for children exposed to family violence)
<https://www.barnardos.org.nz/>
- The Family Services Directory
<https://www.familyservices.govt.nz/directory/>

Do employers have to change working arrangements?

The intent of the new Act is that employers should support victims of domestic violence by making short-term changes to working arrangements where that is reasonable and feasible.

However requests can be declined if they cannot be accommodated for genuine business reasons.

A request to vary working arrangements may be declined for one or more of the following reasons:

- a) Inability to reorganise work among existing staff
- b) Inability to recruit additional staff
- c) Detrimental impact on quality
- d) Detrimental impact on performance
- e) Insufficiency of work during the periods the employee proposes to work
- f) Planned structural changes
- g) Burden of additional costs
- h) Detrimental effect on ability to meet customer demand

However a significant reason will be required (and will need to be clearly supported by evidence) to justify declining a request on one or more of the above grounds. Mere inconvenience or additional costs won't be enough.

What will an employee be paid while on domestic violence leave?

An employee will be paid the same as if they were taking sick leave.

Domestic violence leave is to be paid at the employee's relevant daily pay (what the employee would have been paid if they had worked that day). If relevant daily pay cannot be determined, or the employee's daily pay varies during the pay period, the employer can use "average daily pay". See sections 9 and 9A of the Holidays Act 2003.

What happens if the employee is off on ACC due to domestic violence?

It's the same as if they were off on ACC due to sickness.

After the first week of ACC the employer can (but doesn't have to) use domestic violence leave to top up the employee's 80% ACC compensation to 100% of their weekly earnings, just like they can with sick leave.

Are there ways to dispute an employer's decision?

Employees can refer to a labour inspector, request mediation, or apply to the Employment Relations Authority, if they believe their employer has not complied with its obligations under the Act.

What about adverse treatment?

Employees or potential employees can raise a personal grievance in the Employment Relations Authority or make a complaint to the Human Rights Commission if they believe they have been adversely treated because they are, or are believed to be, a person affected by domestic violence.

Disclaimer

While every effort has been made to ensure this information is accurate at the time of writing, this information sheet is necessarily brief and general. It is not a substitute for legal advice about your specific situation.