

House of Representatives
Supplementary Order Paper

Wednesday, 19 September 2007

Employment Relations (Flexible Working Arrangements)
Amendment Bill

Proposed amendments

Hon Ruth Dyson, in Committee, to move the following amendments:

Clause 3(a): to omit “certain persons” (line 21 on page 2) and substitute “any person”.

Clause 6A

New section 69AA(a): to omit this paragraph (lines 7 to 12 on page 6) and substitute the following paragraph:

- “(a) provide certain employees with a statutory right to request a variation of their working arrangements if they have the care of any person; and

New section 69AA(c): to omit “reasonably” (line 17 on page 6).

New section 69AA(d): to omit this paragraph (lines 19 to 23 on page 6) and substitute the following paragraph:

- “(d) if an employer does not deal with a request in accordance with the process specified in this Part, provide for reference of the matter to a Labour Inspector, then to mediation, and then to the Authority.

New section 69AAA: to omit the definitions of **disabled child** and **relative** (line 26 on page 6 to line 1 on page 7) and substitute the following definitions:

“**mediation** means mediation provided under section 144

“**non-compliance with section 69AAE(1)**, except in **section 69AAIA**, includes an employer’s wrong determination about an employee’s eligibility to make a request under **section 69AAB**

New section 69AAB: to omit *subsection (2)(a)* (lines 20 to 23 on page 7) and substitute the following paragraph:

“(a) the employee has the care of any person; and

New section 69AAC(d): to omit “child or dependent relative” (lines 11 and 12 on page 8) and substitute “person”.

Heading to new section 69AAE: to omit “**Employer’s duties in relation to request**” (line 24 on page 8) and substitute “**Employer must notify decision as soon as possible**”.

New section 69AAE(1): to omit *paragraph (b)* (lines 29 to 32 on page 8) and substitute the following paragraphs:

- “(b) if the request is refused, notify the employee that the request is refused because—
 - “(i) the employee is not eligible to make a request under **section 69AAB**; or
 - “(ii) of a ground specified in **section 69AAEA(2) or (3)**; or
 - “(iii) both; and
- “(c) if the request is refused because of a ground specified in **section 69AAEA(2) or (3)**,—
 - “(i) notify the employee of the ground for refusal; and
 - “(ii) provide an explanation of the reasons for that ground.

New section 69AAE(2) and (3): to omit these subsections (line 33 on page 8 to line 14 on page 9).

New section 69AAEA: to insert the following section after *new section 69AAE* (after line 14 on page 9):

“69AAEA Grounds for refusal of request by employer

- “(1) An employer may refuse a request only if the employer determines that—
 - “(a) the employee is not eligible to make a request under **section 69AAB**; or
 - “(b) the request cannot be accommodated on 1 or more of the grounds specified in **subsection (2)**; or
 - “(c) both.
- “(2) The grounds are—
 - “(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.
- “(3) However, an employer must refuse a request if—
 - “(a) the request is from an employee who is bound by a collective agreement; and
 - “(b) the request relates to working arrangements to which the collective agreement applies; and

- “(c) the employee’s working arrangements would be inconsistent with the collective agreement if the employer were to approve the request.”

New section 69AAF: to omit this section (lines 15 to 22 on page 9).

New section 69AAH: to omit this section (line 29 on page 9 to line 9 on page 10) and substitute the following section:

“69AAH Labour Inspectors and mediation

- “(1) This section applies if an employee believes that his or her employer has not complied with **section 69AAE(1)**.
- “(2) The employee may refer the non-compliance with **section 69AAE(1)** to a Labour Inspector who must, to the extent practicable in the circumstances, assist the employee and employer to resolve the matter.
- “(3) If, after completion of the process under **subsection (2)**, the employee is dissatisfied with the result, the employee may refer the matter to mediation.
- “(4) For the purposes of **subsection (3)**, non-compliance with **section 69AAE(1)** is an employment relationship problem.

New section 69AAI: to omit this section (lines 10 to 25 on page 10) and substitute the following sections:

“69AAI Application to Authority

- “(1) This section applies if—
- “(a) an employee believes that his or her employer has not complied with **section 69AAE(1)**; and
 - “(b) mediation has not resolved the matter.
- “(2) The employee may apply to the Authority for a determination as to whether the employer has complied with **section 69AAE(1)**.
- “(3) An application under **subsection (2)** must be made within 12 months after the relevant date.
- “(4) If the Authority determines that the employer has made a wrong determination about an employee’s eligibility to make a request under **section 69AAB**, the employer must comply with **section 69AAE(1)** as soon as practicable.
- “(5) In **subsection (3)**, **relevant date** means,—
- “(a) if the employer notifies a refusal within 3 months after receiving a request, the date on which the employer notifies the employee of the employer’s refusal:
 - “(b) in any other case, the date 3 months after the employer received the employee’s request.

“69AAIA Penalty

- “(1) An employer who does not comply with **section 69AAE(1)** is liable to a penalty not exceeding \$2,000, imposed by the Authority.

“(2) The penalty is payable to the employee concerned.

“69AAIB Limitation on challenging employer

An employee may not challenge his or her employer’s refusal of a request, or failure to respond to a request, except—

“(a) if the employee believes his or her employer has not complied with **section 69AAE(1)**; and

“(b) to the extent provided by **sections 69AAH to 69AIIA**.

Clause 7

Subclause (1): to omit “**section 69AAE**” (line 13 on page 11) and substitute “**section 69AAE(1)**”.

Subclause (2): to omit this subclause (line 14 on page 11 to line 8 on page 12).

Explanatory note

This Supplementary Order Paper amends the Employment Relations (Flexible Working Arrangements) Amendment Bill.

This Supplementary Order Paper amends *clause 3*; new sections inserted by *clause 6A*, namely, *new sections 69AA, 69AAA, 69AAB, 69AAC, 69AAE, 69AAF, 69AAH, and 69AAI*; and *clause 7*.

Clause 3(a) is amended by omitting “certain persons” and substituting “any person”.

The amendments to *clause 6A* are as follows:

- *new section 69AA(a)*: this paragraph is amended to provide certain employees with a statutory right to request a variation of their working arrangements if they have the care of any person:
- *new section 69AA(c)*: “reasonably” is omitted:
- *new section 69AA(d)*: this paragraph is omitted and substituted to state that one of the objects of *new Part 6AA* is to provide that if an employer does not deal with a request in accordance with that Part, the matter may be referred to a Labour Inspector, then to mediation, and then to the Authority:
- *new section 69AAA*: the definitions of **disabled child** and **relative** are omitted and definitions for **mediation** and **non-compliance with section 69AAE(1)** are substituted:
- *new section 69AAB(2)(a)*: this paragraph is amended to provide that 1 of the criteria for an employee to make a request is that he or she has the care of any person:
- *heading to new section 69AAE*: the heading to this section is omitted and the heading “**Employer must notify decision as soon as possible**” is substituted:
- *new section 69AAE(1)(b)*: this paragraph is amended to provide that an employer must, if a request is refused, notify the employee that the request is refused because the employee is not eligible to make a request under *new section 69AAB*, because of a ground specified in *new section 69AAEA(2) or (3)*, or both:

- *new section 69AAE(1)(c)*: this paragraph has been added to provide that an employer must, if a request is refused because of a ground specified in *new section 69AAEA(2) or (3)*, notify the employee of the ground for refusal and provide an explanation of the reasons for that ground:
- *new section 69AAE(2) and (3)*: these subsections now appear in *new section 69AAEA*:
- *new section 69AAEA*: this section sets out the only grounds on which an employer may refuse a request, namely, if an employer determines that—
 - the employee is not eligible to make a request under *new section 69AAB*:
 - the request cannot be accommodated on 1 or more of the grounds specified in *new section 69AAEA(2)*:
- *new section 69AAEA(3)*: this subsection provides that an employer must refuse a request if the request is from an employee who is bound by a collective agreement, the request relates to working arrangements to which the collective agreement applies, and the employee's working arrangements would be inconsistent with the collective agreement if the employer were to approve the request:
- *new section 69AAF*: this section, which provided that an employer must consult with the union in relation to a request with certain conditions, is omitted:
- *new section 69AAH*: this section is substituted with a new section, which applies if an employee believes that his or her employer has not complied with *new section 69AAE(1)*, which provides that the employee may refer the matter to a Labour Inspector, then to mediation:
- *new section 69AAI*: this section is omitted and substituted with *new sections 69AAI, 69AAIA, and 69AAIB*—
 - the substituted *new section 69AAI*, which applies if an employee believes that his or her employer has not complied with *new section 69AAE(1)* and mediation under *new section 69AAH* has not resolved the matter, extends the time in which an application may be made to the Authority for a determination of the matter from 3 months to 12 months (and this application period may no longer be extended at the discretion of the Authority):
 - *new section 69AAI(4)* provides that if the Authority determines that an employer has made a wrong determination about an employee's eligibility to make a request under *new section 69AAB*, the employer must comply with *new section 69AAE(1)* as soon as practicable:
 - *new section 69AAIA* provides that an employer who does not comply with *new section 69AAE(1)* is liable to a penalty, payable to the employee who made the request, not exceeding \$2,000 imposed by the Authority:
 - *new section 69AAIB* provides that an employee may not challenge his or her employer's refusal of a request, or failure to respond to a request, except if the employee believes his or her employer has

not complied with *new section 69AAE(1)* and to the extent provided by *new sections 69AAH to 69AAIA*.

Clause 7(1) is amended by omitting “section 69AAE” and substituting “section 69AAE(1)”.

Clause 7(2), which added *new subsections (4) and (5)* to section 161 of the Employment Relations Act 2001 to provide that where the Authority determined that an employer had not complied with *new section 69AAE* it must make a declaration to that effect and may make an order requiring the employer to reconsider the employee’s request, is omitted.

