

In 2008 the Federal Government changed 85 laws to give same-sex couples in a de facto or registered relationship the same legal rights and protections as different-sex de facto couples.

As a result of the same-sex law reforms, a range of new rights and responsibilities in the workplace have been introduced for same-sex couples and their families.

One part of the 85 reforms was to treat same-sex couples and their families equally under the new Fair Work Act 2009 (Cth) (Fair Work Act). The Fair Work Act creates a new workplace relations framework that is overseen by Fair Work Australia.

In many workplaces around Australia, the rights of same-sex couples will now be equal to those of different-sex couples, through the Fair Work Act. This new law applies to you if you are employed within the 'national system'. As of 1 January 2010, the national system applies to all Australian employees and employers except:

- Most State government public sector employers and local government employers;
- Western Australian corporations whose main activity is not trading or financial: and
- Western Australian sole traders, partnerships, or other unincorporated entities.

If you or your employer are not sure whether you are covered by the Fair Work Act, check with the Fair Work Ombudsman, your union or call your local community legal centre.

Ten new National Employment Standards (NES) ensure that the basic minimum standards of employment conditions are met in all workplaces in the federal system in order to meet and adapt to community needs. The NES are mandatory for all employers, and regulated by the Federal Government from 1 January 2010.

The employment conditions covered under the NES include employee leave, such as unpaid parental leave, carer's leave and compassionate leave. These leave categories specifically include same-sex couples in a de facto relationship.

Actions you can take

- Check if you are covered by the new Fair Work Act by speaking with your union, Human Resource department or the Fair Work Ombudsman, or call your local community legal centre.
- If you are not covered by the Fair Work Act, find out what your entitlements are under your employer's policies and your employment contract by speaking with your Human Resources department or your union.

Please note: This factsheet provides general information only. It does not constitute legal advice and may not be applicable to your individual circumstances. If you need specific legal advice contact your local Community Legal Centre.

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Things you should know

- The Fair Work Act includes same-sex families recognised under the Family Law Act 1975 (Cth). This means that most lesbian mums and some gay dads will have their extended family recognised as a "near relative" when they seek to access compassionate and carer's leave. All same-sex couples in a registered relationship or de facto relationship will also be eligible for such leave.
- You may take carer's leave if your de facto partner or a member of their immediate family is suffering from a personal illness, injury or unexpected emergency. An employee is entitled to up to 10 days of paid carer's leave annually.
- You may take compassionate leave if your de facto partner or a member of their

Need more information?

Fair Work Australia
1300 799 675
or email inquiries@fwa.gov.au

Fair Work Ombudsman
13 13 94

Australian Council of Trades Unions
1300 362 223

Community Legal Centres

Gay and Lesbian Counselling and
Community Services of Australia
1800 18 45 27

If you have any questions or concerns about these changes and your workplace you can talk to your Human Resources representative or Union delegate in your workplace.

- immediate family is suffering from a life-threatening illness, injury, or has died.
- Where they have 12 months' continuous service with their employer, both members of a same-sex couple are entitled to unpaid parental leave when a new child is born or adopted. Generally, each eligible new parent can take a maximum of 12 months' continuous unpaid parental leave where they have responsibility for the care of the child. However you may be able to apply to extend one parent's leave by up to 12 months by using your partners parental leave allocation. An employer may only refuse this request on reasonable business grounds. • It is your responsibility to give your employer written notice at least 10 weeks before the leave will start to let them know that you will be taking unpaid parental leave.
- Same-sex couples and their children may now be included as family members when determining things such as costs related to injury or death of a seaman or the passing of property onto the seamen's family members.
- For seafaring employees who are injured in the course of their work, same-sex partners and their children may now be considered in calculating compensation for the death of the seafarer.
- For employees of Telstra, same-sex partners and their children may now to be recognised as 'relatives' in relation to various entitlements as well as transitional arrangements stemming from the sell-off of Telstra.
- For Trade Representatives or Trade Officers, same-sex partners and their children may now be recognised when calculating allowances and benefits.

Frequently asked Questions

▼ What is a national system employer?

National system employers include the following:

- constitutional corporations (these are corporations that are trading or financial, usually Pty Ltd or Ltd companies);
- the Commonwealth and its authorities (for example Australia Post or Telstra); and
- employers who employ flight crews, maritime employees or waterside workers in connection with interstate or overseas trade and commerce;
- all employers in Victoria, the Northern Territory and the Australian Capital Territory;
- private sector employers in New South Wales, Queensland, South Australia and Tasmania; and
- local government employers in Tasmania;

but only to the extent that they employ, or usually employ, an individual.

Collectively these employers are referred to as 'national system employers' in this fact sheet. All national system employers are bound by the Fair Work Act and must follow the NES.

▼ Are there any workplaces that are exempt from National Employment Standards?

It is mandatory for all workplaces that are under the Commonwealth workplace relations system to follow the NES (i.e. those within the new national system). Most State government public sector employers and local government employers, Western Australian corporations whose main activity is not trading or financial; and Western Australian sole traders, partnerships, or other unincorporated entities are generally exempt.

However, regardless of the Fair Work Act, if your employer treats you differently because of your sexual orientation you may have recourse to relevant State or Territory anti-discrimination legislation [<http://antidiscrimination.gov.au/>].

▼ What is an 'employee couple'?

An 'employee couple' is two people that are both employed by a national system employer and who are in a de facto or registered relationship together. They don't need to work for the same employer so long as both employers are within the national system.

▼ I don't think my employer is following the National Employment Standards. What can I do?

As of 1 January 2010, if your employer is a 'national system employer' (which includes any constitutional corporation), they are bound by the Fair Work Act and

must follow the NES. If you think your employer isn't following the NES you can contact the Fair Work Ombudsman and make an application for your employer to be investigated. You can also talk to your Human Resource representative or union delegate at work.

The Workplace laws that have changed

- #26** Prohibition of Human Cloning for Reproduction Act 2002
- #27** Research Involving Human Embryos Act 2002
- #28** Australian Postal Corporation Act 1989
- #29** Safety, Rehabilitation and Compensation Act 1988
- #30** Fair Work Act 2009
- #31** Aboriginal Land Grant (Jervis Bay Territory) Act 1986
- #32** Airports Act 1996
- #33** Navigation Act 1912
- #34** Corporations (Aboriginal and Torres Strait Islander) Act 2006
- #35** Pooled Development Funds Act 1992
- #36** Seafarers Rehabilitation and Compensation Act 1992
- #37** Telstra Corporation Act 1991

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