

## Senate Standing Committees on Education and Employment

### QUESTION ON NOTICE Date of hearing: 22 August 2022

**Outcome: Workplace Relations**

**Department of Employment and Workplace Relations Question No. IQ22-000032**

Senator Matt O'Sullivan on 22 August 2022, Proof Hansard page 65

#### ***Penalties***

#### **Question**

Senator O'SULLIVAN: Would there be penalties imposed on an individual who claims family and domestic violence leave but is later found to actually be the perpetrator?

Mr Still: I think that, if a person made false statements in order to claim an entitlement, there might be a range of existing general law prohibitions that would apply to that. For example, it could perhaps be characterised in some circumstances as being fraudulent. I'm not sure the act itself would regulate that; I might need to take that on notice.

#### **Answer**

The Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 does not impose any penalty on an individual who falsely or fraudulently claims paid family and domestic violence leave.

The *Fair Work Act 2009* (Cth) also does not impose a penalty on an employee who falsely or fraudulently claims a paid leave entitlement. However, an employer may be able to take disciplinary action pursuant to their workplace policies or procedures against an employee who has claimed a leave entitlement they are not entitled to.

If an employer suspects an employee's actions are false or fraudulent, an employer could:

- come to a written agreement with the employee to repay the funds obtained;
- begin civil proceedings against the employee; or
- report this behaviour to the police, as it could amount to criminal fraud depending on the circumstances.

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#### ***Workforce Health and Safety Laws***

##### **Question**

Senator O'SULLIVAN: Does an employer have any potential liability under workforce health and safety laws if they discover an employee is experiencing family and domestic violence? Does this introduce any complication there?

Mr Still: I might need to take that on notice.

##### **Answer**

Employers have duties under work health and safety (WHS) laws to ensure the health and safety of workers so far as is reasonably practicable while they are at work. This includes actively managing the risk of family and domestic violence happening at the workplace.

The Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 (the Bill) does not create any additional WHS obligations.

Employers may become aware that an employee is experiencing family and domestic violence in a number of ways, including through the existing right to unpaid family and domestic violence leave. The Bill does not alter the existing interactions between the Fair Work Act and WHS laws.