



# MEMBER UPDATE

## AFPA Industrial Dispatch #18

19 September 2017

Welcome to the AFPA Industrial Dispatch, a regular bulletin to keep our members up to date with significant industrial issues.

### CURRENT SIGNIFICANT ISSUES

#### Keeping in Touch Days

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Under the *Fair Work Act 2009* (Cth), employees on 12 months unpaid parental leave may access up to 10 keeping in touch days. The purpose of a keeping in touch day is to enable an employee to participate in a work activity while still on extended leave to help with the transition back into the workplace.

Employees are paid their normal rate of pay for the time (including core composite if relevant) they work during a keeping in touch day. Where an employee participates in a keeping in touch day, participating in that keeping in touch day does not have the effect of extending the period of unpaid parental leave.

Keeping in touch day activities include, but are not limited to:

- Participating in planning days
- Completing training at work
- Performing work to become familiar with the workplace or your role before returning to work, or
- Attending a work-related conference

The AFP notes that keeping in touch days cannot be used for activities such as:

- attending appointments with Organisational Health or the AFP's Employee Assistance Provider (EAP)
- visiting colleagues, and
- participating in social events.

Section 79A of the Fair Work Act states:

- employers cannot access a keeping in touch day within the first 14 days of the birth or placement of their child
- employers (the AFP in this case) cannot ask employees to participate in a keeping in touch day within the first 42 days after the birth or day of placement of a child, and
- If an employee requests or suggests a keeping in touch day more than 14 days after the birth, the employee can participate in a keeping in touch day.

For information on how to record a keeping in touch day, contact your local HR advisor or the HR advisory team.

**No win-no fee lawyers**

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'No Win No Fee' lawyers are not always what they appear to be.

A 'no win no fee' agreement usually means that your lawyer will not charge you for professional fees and some expenses if your claim/suit is not successful. However, this does not preclude you from being liable for the other party's court costs. You may be liable for thousands of dollars in the event you lose your case and the presiding judge awards costs against you.

In addition to this, if you lose your case, the usual practice is that you will also be billed for your own disbursements and a range of associated costs for your case, including the costs of any counsel your solicitor has engaged. We recommend you always check any lawyer's 'no win no fee' policy very carefully and remember to read the fine print before you commence legal proceedings in any jurisdiction.

## **Staff Transfers**

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While merit based selection and recruitment processes are always in the best interests of its members and an organisation overall, section 40H of the *Australian Federal Police Act 1979* allows delegates to directly assign an employee at their current classification level to a specific role without engaging an Independent Selection Advisory Panel process.

Transfers can include within a business area, by Coordinator approval, but can also include across business areas (including interstate). In cases of direct assignment, the employee being transferred would need to possess the skills required to complete the role or have the capacity to acquire those skills.

Depending on the circumstances, transfers of this type are generally only effected where operational requirements demand the position be filled quickly.

The AFPA reminds members that transfers also take place where:

- an employee has compassionate personal circumstances;
- management has initiated the transfer; or
- members have been deemed excess elsewhere under the conditions of the Enterprise Agreement.

All three scenarios can have challenges for the members involved. Section 40H (1) does not however apply to positions where the transfer is to a higher band level.

## **Fitness for Duty Medicals**

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If your workplace holds genuine concerns in relation to your fitness to carry out your duties, the Commissioner may, at AFP expense, direct you to attend a medical assessment. This assessment will be carried out by a suitably qualified and independent medical practitioner. The provisions for this assessment are in section 43 (11) of the EA. This referral should be prepared in consultation with AFP Wellbeing & Medical Services.

If you have been directed to attend a Fitness for Duty Medical and have concerns in relation to the reasons for the assessment, please contact our team for advice.

## **Exhibits**

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The AFP National Guideline on Property and Exhibits sets out the governance for AFP employee dealing with property seized through lawful means.

There are strict guidelines surrounding storage and processes for dealing with seized property and exhibits. The Guideline also detail how to dispose of property when property is no longer required for evidence and it cannot be returned to a lawful owner.

Conduct issues may arise when property is not dealt with in accordance with the Guideline, so remember to refer to it in times of doubt.

Please refer to your chain of command or contact the AFPA if you require clarification about your obligations.

### **Recruitment processes feedback**

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About two months ago, the AFPA received reports that AFP Recruitment has decided not to provide feedback to applicants at the conclusion of selection processes. The AFP was told that this decision had been made due to a lack of resources and that feedback was no longer a priority.

As a consequence, the President of the AFPA wrote to the National Manager People Safety and Security about this and other matters.

Last week, the AFP replied to that letter. Pleasingly, the reports that we received were not entirely accurate. The AFP wrote:

“Unless specifically stated otherwise in advice to applicants, all applicants are eligible to receive feedback from the Independent Selection Advisory Panel (ISAP) or Recruitment upon request. The level and detailed feedback provided to applicants is commensurate with the size of the recruitment activity in the relevant timeframes.”

However, the provision of feedback will vary where that feedback is sought by applicants in bulk recruitment processes. The reports that the AFPA received were likely from applicants in such processes. The AFP wrote:

“Where feedback is requested by applicant of a bulk recruitment process, the nature of the feedback will be articulated within the application guidance and materials, and will be generic (i.e. competitive, not competitive) in order to protect selection methodologies, and minimise the impact on AFP business outcomes. This outcome is consistent with that provided by other national security agencies, such as the Australian Security and Intelligence Organisation.”

The AFPA is interested in receiving information about your experiences with feedback after any recruitment process - good, poor or indifferent. Please let us know by emailing [vicki.linabury@afpa.org.au](mailto:vicki.linabury@afpa.org.au).

### **INDUSTRIAL QUERIES**

If you have any industrial queries or queries about issues raised in this Dispatch, please contact [sam.delaney@afpa.org.au](mailto:sam.delaney@afpa.org.au) or [Sharon.wright@afpa.org.au](mailto:Sharon.wright@afpa.org.au).



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