

Supporting Working Parents: Pregnancy and Return to Work National Review Submission



SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED

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Introduction

The South Australian Wine Industry Association (SAWIA) is an industry association representing the interests of wine grape growers and wine producers throughout the state of South Australia.

SAWIA is a not for profit incorporated association, funded by voluntary member subscriptions, grants and fee for service activities, whose mission is to provide leadership and services which underpin the sustainability and competitiveness of members' wine business.

SAWIA membership represents approximately 96% of the grapes crushed in South Australia and about 36% of the land under viticulture. Each major wine region within South Australia is represented on the board governing our activities. Where possible, SAWIA works with the national Winemakers Federation of Australia and state counterparts in the wine industry. In relation to this submission we will be seeking their views and support for the position we have made below.

SAWIA has a strong track record as an industry leader and innovator in many areas. SAWIA pro-actively represents members and the greater wine industry with government and related agencies in all aspects of business in the wine sector.

SAWIA has been providing industrial relations advice to its members since 1995.

Background

On 22 June 2013, the Attorney General's Department asked the Sex Discrimination Commissioner, on behalf of the Australian Human Rights Commission to conduct a national review on the prevalence, nature and consequences of discrimination in relation to pregnancy at work and return to work after parental leave.

As stated by the Australian Human Rights Commission, there are still a significant number of complaints being received by the Australian Human Rights Commission and the Fair Work Commission in relation to discrimination in the workplace due to pregnancy or returning to work after taking a period of parental leave.

The review seeks to gather further data about the prevalence of any discrimination that is occurring as a result of pregnancy at work and returning to work after parental leave. It is also expected the review will identify leading practices in workplaces where employers have successfully supported pregnant employees and those who return to the workplace after parental leave. The review will also provide recommendations for future actions to address any forms of discrimination that may be identified throughout the review.

Introduction

SAWIA is pleased to have been given the opportunity to provide this submission on behalf of its members.

After consultation with members regarding the issue of pregnancy in the workplace and return to work after parental leave, we advise that our members' have not reported difficulties in managing pregnancy or return to work after pregnancy in their workplaces. The feedback that was received in most cases stated that employers took the time to work with their employees to agree on mutually beneficial outcomes in cases where employees were pregnant, or where they were returning to work.

Challenges and leading practices / case studies

Some of the challenges that have been faced by SAWIA's members include employees leaving critical roles after taking parental leave so they can be full time carers – this is not a criticism by the employer, as it is a choice of the employee, but it can prove to be challenging for the employer. One employer stated this happened to them twice where employees on parental leave did not return to work. The employer stated that in one administration role the resignation was more easily managed, but the other role (related to wine making) was a critical role in the organisation and proved to be more difficult to recruit for as the employer is located in a regional area of South Australia and extensive notice periods are not always feasible to be worked whilst a replacement is found.

The wine industry is one that requires workers to perform a variety of hazardous manual tasks, for example lifting cartons of wine, standing for long periods during a shift, bending, handling chemicals, operating heavy machinery, shiftwork and climbing stairs. Workers are also subject to working in hot and cold conditions both within a winery environment and outdoors in vineyards. In some cases, large businesses may be able to accommodate suitable alternative duties where a pregnant employee cannot safely perform manual tasks any longer, but smaller businesses generally find it more difficult to find suitable duties for the employee to do.

One such case occurred in a small to medium sized business where a pregnant casual employee provided a medical certificate to state she was unable to lift cartons of wine. This proved to be problematic for the employer because the employee was engaged to work in the cellar door (i.e. customer sales), where lifting cartons of wine is an inherent part of the role. The employer liaised with the employee to try to find alternative duties, but was unable to provide sufficient work or alternative duties to maintain the hours that were similar to the average weekly hours that the employee had previously been working. As the employee had only been employed for a short time she would not be eligible for unpaid parental leave (and associated transfer to paid no safe job leave). The outcome in this instance was that the employee worked less hours during her pregnancy, however the employer was not discriminating against the employee, but was taking into consideration the health and safety of the employee by ensuring she did not do tasks that could cause harm to her or her unborn child.

One employer reported that they have experienced times where employees have claimed personal / carers leave for regular doctor's appointments and routine scans while pregnant. The *Fair Work Act 2009* provides that an employee (other than casual employees) is entitled to take personal / carers leave if they have a personal illness or personal injury, or to provide support to an immediate family member who is ill or where there is an unexpected emergency.

The majority of businesses will try, where possible to accommodate an employee's pregnancy and return to work after pregnancy.

Laws and Policies

There are a number of pieces of legislation that cover pregnancy in the workplace and return to work that provide more than adequate protection for pregnant employees and those returning to work after parental leave.

Equal Opportunity Act 1984 (SA)

The *Equal Opportunity Act 1984 (SA)* makes it unlawful for an employer to discriminate on the grounds of pregnancy, association with a child or caring responsibilities.

Sex Discrimination Act 1984 (Cth)

In relation to pregnancy and return to work, the objects of the *Sex Discrimination Act 1984* are to eliminate so far as is possible, discrimination against persons on the ground of pregnancy or potential pregnancy, or breastfeeding in the workplace and to eliminate, so far as possible, discrimination on the ground of family responsibilities in the area of work.

Fair Work Act 2009 (Cth)

The *Fair Work Act 2009* provides protection for employees who are pregnant, who have given birth and are returning to work after a period of parental leave and for those employees who are seeking flexible working arrangements if they are a parent or if they have the responsibility for the care of a child school age or under.

Some of the challenges that businesses face in implementing these laws is the size of the business and the resources they have in the workforce. In some cases it can be difficult for an employer to accommodate flexible working arrangements where the employee is working in a critical role with a specific skill set and the business is in a regional area. In these sorts of instances it can be difficult to look at job sharing or part time hours due to the small (or non-existent) pool of suitable candidates with the required skills to recruit from.

The lack of dedicated human resources staff to assist with implementing the laws is also an issue in many small and small to medium enterprises. For those members of SAWIA that do not have a dedicated HR resource, SAWIA assists by providing advice and conducting training and education sessions regarding industrial matters, which includes pregnancy in the workplace and returning to work after parental leave (along with other obligations under the *Fair Work Act 2009*) for members and non-members in the wine industry.

Feedback that SAWIA receives regularly in relation to employment is that there is currently a lot of 'red-tape' that employers / business owners have to deal with. As we can see with the laws that govern pregnancy and return to work, there are at least 3 pieces of legislation that businesses need to be familiar with to understand their obligations in this area and this does not include Work Health and Safety legislation which imposes a duty of care on the person conducting a business or undertaking (PCBU) to ensure the health and safety of workers. SAWIA members are not denying pregnant employees the entitlement to be treated fairly, equitably and in a safe manner in the workplace, but rather making the point that trying to interpret and understand these pieces of legislation is onerous for many businesses given the raft of other legislative requirements they are also required to comply with. Whilst employer organisations like SAWIA do assist their members to navigate and understand their obligations in this area of the law, it still remains confusing and more complicated than it needs to be.

It would be of assistance to employers if the laws could be streamlined into one piece of national legislation that covers employees who are pregnant or returning to work after parental leave.

Summary

Anecdotally, discrimination due to pregnancy or for employees returning to work after parental leave does not seem to be prevalent in the SA wine industry. A small percentage of enquiries to SAWIA are in relation to issues surrounding pregnant employees or those employees returning to work after parental leave. For the most part, employers will work with employees to ensure the best outcome for both parties during pregnancy and when and if an employee decides to return to work.

Please feel free to contact me should you require any further information.