

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Budget Estimates 2011-2012**

Agency - Fair Work Ombudsman

DEEWR Question No.EW0264_12

Senator Abetz asked on 30/05/2011, Hansard page 59.

Question

Individual Flexibility Agreements And Non-Monetary Components

Senator ABETZ: If it is a monetary value, the chances are that it is relatively easy, but there is the much used example that Minister Gillard had in the explanatory memorandum of being able to coach the son's soccer team. That is not necessarily something you can put a monetary value on. How is a judgment made in relation to whether somebody is better off overall?

Mr Wilson: In that particular circumstance—my recollection of the example is a bit hazy—but there were three or four criteria which were spelled out, including that the individual had initiated the request, that they had reached agreement about the transaction which was to occur and that they then put that into effect by writing it up and the person concerned had not walked away from it. That is my recollection.

Senator ABETZ: I do not want to make this a memory test. Could you take that on notice just to be sure of all of those factors, or to see whether you would wish to add to any of those factors.

Answer

The Fair Work Ombudsman has provided the following response.

In providing the example of an employee leaving work early to coach his son's soccer team, the explanatory memorandum to the Fair Work Act outlines the following considerations relevant to assessing whether or not an employee is better off overall under the Individual Flexibility Agreement (IFA):

- Whether or not the employee initiated the request for an IFA and genuinely agreed to it, which would provide an indication of the relative value of the non-monetary benefit to the employee
- Whether the monetary benefit that is forgone under the IFAs is substantial
- Whether the value of that monetary benefit is in the view of a reasonable person disproportionate to the non-monetary benefit that replaces it.

To assist employers in ensuring that an IFA is lawful, fair and productive, the Fair Work Ombudsman's Best Practice Guide provides the following checklist:

“Employers who are working at best practice will:

- check the range of permitted matters that an IFA can vary under the enabling flexibility term in the relevant enterprise agreement or modern award*
- identify opportunities in the organisation where an individual flexibility arrangement could benefit the employee and employer*
- have a process for consultation that allows employees to identify appropriate flexible work practices in their interests*
- support employees to balance their work and personal lives. IFAs may be useful in achieving this*
- ensure that IFAs are used to reflect the genuine needs of the particular situation of the employee and employer*
- ensure the IFA does not disadvantage an employee and leaves the employee covered by it better off overall*
- ensure the IFA for an enterprise agreement does not include any unlawful terms*
- ensure employees are not unduly influenced or pressured to agree to an IFA. Employees should be given reasonable time to consider a proposed IFA and opportunity to raise issues with their employer and vice-versa*
- allow employees to be represented if they wish when negotiating an IFA with their employer*
- be open to approaches from employees about making IFAs*
- give genuine consideration to an employee’s requests for an IFA.”*