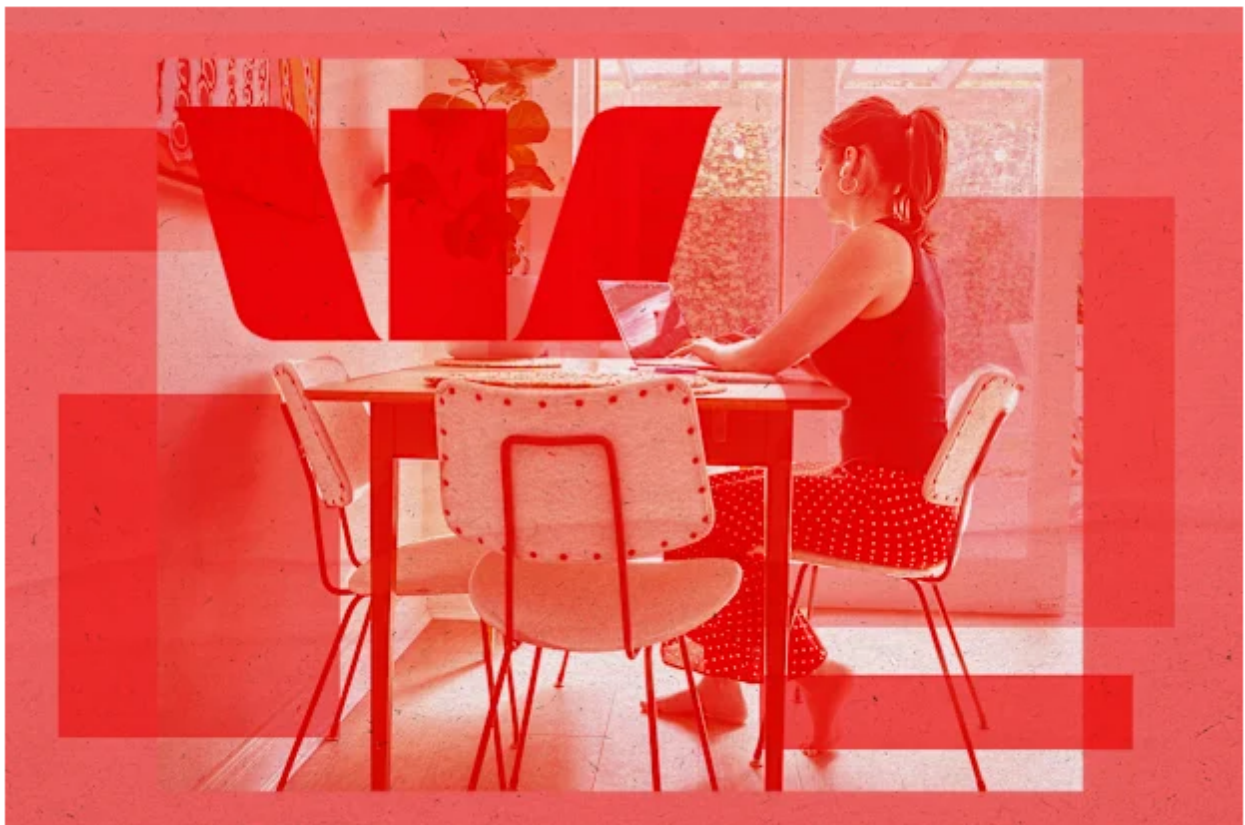


FINANCIAL REVIEW

More WFH claims to come as workers strive to reset power balance

Business leaders and workplace lawyers are warning employers to brace for more work-from-home claims as unions promise to use this week's [Fair Work Commission decision against Westpac](#) to further entrench worker entitlements.

“Business is hard enough without unnecessary over-reaching by government to make it even harder,” businessman Tim Gurner told *AFR Weekend* after ACTU leader Sally McManus said the decision was a clear rebalancing of the power between employees and employers.



The Westpac Fair Work ruling has made employers jittery, with unions saying it entrenches work from home as an enforceable right. **Bethany Rae**

Bosses are jittery following the FWC decision, which supported a Westpac worker's refusal to return to the office after she moved 80km away from the Sydney CBD during the COVID-19 pandemic.

Bridget Little, a partner at law firm Arnold Bloch Leibler, which represents big corporate clients, said the ruling had caused a stir.

"This decision is attracting a lot of attention from employers because it may encourage more employees to agitate and generally take a more forthright position on these issues," she said.

The Albanese government introduced a right to challenge refusals of flexible work arrangements, including working from home, in June 2023. In the two years since the law came into effect, [the number of challenges has jumped by almost 50 per cent](#), from 207 in 2023-24 to 306 in 2024-25, according to Fair Work Commission data.

The applications form part of a broader surge in Fair Work claims, which are on track to reach a new record of more than 50,000 this financial year. And lawyers on both sides of the equation see more cases like this one on the horizon.

Former Business Council of Australia president Tony Shepherd said the notion that everybody should automatically have the right to work from home was unreasonable. "Work is not a holiday, it is not a gift," he said.

But union leaders say the ruling is a vindication that flexible conditions are [a right, not a privilege](#).

"Flexibility is not a 'favour' that can be arbitrarily withdrawn," said Australian Services Union national secretary Emeline Gaske.

“This ruling isn’t just a win for one Westpac employee, it’s a win for workers nationwide. It confirms that an employee’s legal right to request flexibility isn’t a mere suggestion, it’s an enforceable right that employers can’t simply veto.”

In deciding the case in the worker’s favour, FWC deputy president Tom Roberts assessed a series of individual factors including her high-performance rating and caring responsibilities for young children.

The Westpac worker said she needed to live in her chosen location so she could drop her six-year-old twins off at the private school they attended.

All parents of children school age and younger are entitled to apply for flexible work arrangements under the Fair Work Act. Employers who wish to deny that application need to show reasonable business grounds for the refusal, such as cost, practicality, or a negative impact on productivity. Persons caring for elderly relatives or with a documented disability are also entitled to request flexibility.

And while the ruling relates to just this one specific set of facts, those facts might describe many people.

Shepherd said the work-from-home debate was “out of whack”.

“We have got to be very careful if we think people can automatically choose to work from home or the office,” he said.

“That is not to say that there aren’t jobs where people can work productively from home. But if companies feel they need people in the office, you can’t criticise them for that.”

Gurner agreed. “Work from home can be appropriate for some specific roles, but that must be at the discretion of the employer,” he said. “Government needs to be supporting business, not making it more challenging.”

Employment and industrial lawyer at Maurice Blackburn, Jess Dawson-Field, suggested the case was the rebuttal of the previous default position: just because the employer wants their staff physically present, that isn’t by itself enough of a reason to require office attendance.

“What this case suggests is that requiring a worker to come back into the office, simply to engage in face-to-face interactions with colleagues, may not be enough,” she explained.

“[Employers] may not be able to sustain a blanket policy requiring attendance, although that remains to be seen. They need to show a reasonable basis for rejecting a flexible work request.”

And that’s the real crux of this fight. Who gets to decide where people work? And do they – employer or employee – need to have a good reason?

“This will give employees more say over their work lives,” said ACTU secretary Sally McManus. “It is a clear rebalancing of the power between employees and employers into something much fairer when it comes to getting work done at home and in the office.”