

ACTUS WORKPLACE LAWYERS

Insights into Current Workplace Relations Issues



14 August 2023

In the August 2023 edition of Actus Workplace Lawyers' *Insights into Current Workplace Relations Issues* we consider a number of recent decisions of the Federal Court and Fair Work Commission dealing with enterprise agreements, redundancy entitlements, award coverage and public holidays. Some recent changes to the Fair Work Act 2009 (FW Act) are also addressed.

Please get in touch if you would like to discuss any of the issues covered in this edition or the workplace relations services or support that Actus Workplace Lawyers could provide to your business.

Importance of carefully drafting hours of work clauses in enterprise agreements

Most enterprise agreements have been 'rolled over' numerous times, often without a careful review of whether any changes are required. Decisions are handed down regularly by the Fair Work Commission in settling disputes about the terms of enterprise agreements, and many of these decisions highlight inadequacies in the wording of key clauses. On many occasions there have been very costly implications for employers. Hours of work clauses, in particular, have been the subject of numerous disputes. A 10 August decision of Deputy President Anderson highlights one relatively common drafting problem in many enterprise agreements, i.e. a failure to clarify the interaction between hours of work clauses and shift work clauses. [Read more](#)

The dangers of 'status quo' clauses in enterprise agreements

A recent Federal Court decision highlights the dangers of 'status quo' clauses in enterprise agreements. [Read more](#)

What is the ‘ordinary and customary turnover of labour’?

In recent times, three important decisions have been handed down by the Full Federal Court dealing with the ‘ordinary and customary turnover of labour’ redundancy pay exclusion in section 119 of the FW Act. The decisions highlight various circumstances where the exclusion may apply, and those where the exclusion cannot be relied upon. [Read more](#)

Amendments to the Fair Work Act

The [Fair Work Legislation Amendment \(Protecting Working Entitlements\) Act 2023](#) came into operation on 30 June 2023. The legislation makes several amendments to the FW Act and other legislation dealing with unpaid parental leave, superannuation, pay deductions, enterprise agreements, migrant workers and long service leave. [Read more](#)

Which award applies when two awards cover the work?

Two recent Federal Court decisions provide substantial guidance on the principles for determining the award that applies, in circumstances where two awards cover the work. [Read more](#)

BHP applies for special leave to appeal the Federal Court’s public holiday decision

BHP has applied to the High Court of Australia for special leave to appeal the 28 March 2023 [decision](#) of the Full Federal Court which held that employers must request, not just require, employees to work on a public holiday. [Read more](#)

Manufacturing industry enterprise bargaining wage outcomes

The Fair Work Commission’s latest fortnightly enterprise agreement [statistical report](#) (published on 14 August) shows that the average annualised wage increase (AAWI) in manufacturing and associated industry agreements lodged for approval between 1 July and 14 July was 3.7%. [Read more](#)

Should you wish to discuss any of the issues in this report or require any legal advice or assistance, please contact Stephen Smith, Principal of Actus Workplace Lawyers at stephen.smith@actuslawyers.com.au. If any other members of your staff would like to receive this regular report, please advise of the details through this link: <https://actuslawyers.com.au/contact-us>

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