

ACTUS WORKPLACE LAWYERS

1 August 2023

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 Fair Work Act 2009 (**FW Act**) and other legislation dealing with unpaid parental leave, superannuation, pay deductions, enterprise agreements, migrant workers and long service leave.

The legislation has the following effects:

- **Unpaid parental leave**

The amendments:

- increase flexibility for parents by allowing them to take up to 100 days of their 12-month unpaid parental leave entitlement flexibly (up from 30 days);
- allow pregnant employees to access their flexible leave entitlement up to 6 weeks before the expected date of birth of their child;
- remove restrictions that prevented employees who are married or in a de facto relationship from taking more than 8 weeks of unpaid parental leave at the same time; and
- ensure both parents can take up to 12 months of unpaid parental leave, regardless of the amount of leave the other parent takes; and
- enable both parents to request an extension of up to 12 months, without impacting the amount of leave available to the other parent.

The amendments are operative from 1 July 2023.

- **Superannuation**

The amendments insert provisions in the National Employment Standards (**NES**) to require that employers make contributions to a superannuation fund to avoid liability to pay the superannuation guarantee charge under the superannuation guarantee legislation. The Australian Taxation Office still has primary responsibility for ensuring compliance with the superannuation guarantee and associated obligations. However, the Fair Work Ombudsman will now be empowered to pursue penalties for employers who breach the new NES entitlement. The current maximum penalty for breaching the NES is \$825,000.

The amendments are operative from 1 January 2014.

- **Protection for migrant workers**

The amendments ensure that a breach of the *Migration Act 1958*, or an instrument made under it, does not affect the validity of a contract of employment or a contract for services for the purposes of the FW Act. Migrant workers (including temporary

migrant workers) working in Australia are now entitled to the benefit of the FW Act regardless of immigration status. The amendments are operative from 1 July 2023.

- **Employee authorised deductions**

The amendments allow an employee to authorise the employer to make recurring salary deductions for amounts that vary from time to time. The deduction must be principally for the employee's benefit. The amendments ease the administrative burden on employees and employers. The previous provisions required a new written authorisation each time the deduction amount changed. The amendments are operative from 30 December 2023.

- **Enterprise agreement interaction rules**

The amendments clarify the interaction rules between enterprise agreements and workplace determinations to ensure that when a workplace determination comes into effect the relevant enterprise agreement will no longer operate. The amendments are operative from 1 July 2023.

- **Long service leave entitlements for casual employees in the black coal mining industry**

The amendments ensure that casual employees working in the black coal mining industry are treated no less favourably than permanent employees in the accrual, reporting and payment of their long service leave entitlements under the Coal Mining Industry Long Service Leave Scheme. The amendments will take effect on 1 January 2024, unless an earlier date is fixed by proclamation.

For further information or assistance in relation to the new laws, please contact Stephen Smith, Principal of Actus Workplace Lawyers on 0418 461 183 or Email: stephen.smith@actuslawyers.com.au.