

ACTUS WORKPLACE LAWYERS

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'Same job, same pay' developments

Unions in the mining and aviation industries are pursuing applications under the 'same job, same pay' provisions that were inserted into a new Part 2-7A of the Fair Work Act in December 2023.

Under the new provisions, the Fair Work Commission (FWC) is empowered to make a regulated labour hire arrangement order (RLHA order), requiring an employer to pay the employees (the 'regulated employees') that it supplies to perform work for a host business, at the 'protected rate of pay'. The 'protected rate of pay' is the amount that would be payable to a regulated employee if the host's enterprise agreement applied to the employee.

Various exclusions apply, including where the work is "*for the provision of a service, rather than the supply of labour*".

Any obligations on an employer to pay a regulated employee at the 'protected rate of pay' does not apply until at least 1 November 2024.

Key developments include:

- A Mining and Energy Union (MEU) application for a RLHA order covering a group of employees of WorkPac who work at a black coal mine operated by Batchfire near Bileola in Queensland. WorkPac has not objected to the application or the [draft order](#) that the MEU has submitted to the FWC which identifies the specific 'protected rates of pay' that WorkPac would need to pay to the relevant employees. The FWC intends to deal with the matter 'on the papers' but a decision has not yet been handed down.
- An MEU application for a RLHA order covering 27 mine workers employed by Programmed who worked at the Mount Pleasant coal mine in NSW's Hunter Valley which is operated by Thiess Pty Ltd. The application was withdrawn after Thiess agreed to employ the workers directly.
- Two applications by the Flight Attendants' Association of Australia (FAAA) for RLHA orders covering two employers that supply cabin crew on aircraft operated by Qantas Airways Limited. The applications are likely to be vigorously contested.
- 10 MEU applications covering 1700 labour hire workers who work at various BHP coal mines in Queensland. The workers are employed by WorkPac, Chandler Macleod and BHP's in-house provider of labour, Operations Services. The applications are likely to be vigorously contested.

For further advice or assistance on any 'same job, same pay' issues, please contact Stephen Smith, Principal of Actus Workplace Lawyers on 0418 461 183 or Email: stephen.smith@actuslawyers.com.au.