

ACTUS WORKPLACE LAWYERS

Insights into Current Workplace Relations Issues



17 April 2023

Welcome to the April 2023 edition of Actus Workplace Lawyers' *Insights into Current Workplace Relations Issues*. This month we report on a number of recent Federal Court and Fair Work Commission (FWC) decisions with important implications for employers.

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

Federal Court's public holiday decision is causing widespread concern amongst employers

A 28 March [decision](#) of the Full Federal Court is causing widespread concern amongst employers that need to operate on public holidays, including employers in the mining, manufacturing, aviation, healthcare, emergency services and hospitality industries.

In numerous industries it is very common for employees to be rostered to work on public holidays and for employees to understand that they need to work on those days. The Federal Court has interpreted the National Employment Standards in the Fair Work Act as requiring an employer to 'request' that an employee work on a public holiday to give an employee the opportunity to reasonably refuse to work. [Read more](#)

Update on the Government's upcoming IR reforms

The Federal Government is pursuing so many IR reforms this year, it is difficult to keep up. [Here is an update](#)

The effect of annual leave and personal/carer's leave on trigger points for overtime

On 12 April 2023, Deputy President Gostencnik of the FWC handed down a [decision](#) rejecting an application by a payroll company to vary the *Clerks - Private Sector Award 2020*, to resolve alleged ambiguity and uncertainty. The issue at hand was whether days of personal/carer's leave and annual leave taken in a particular week affect the 'trigger point' for overtime in that week.

A somewhat similar issue is being dealt with in a case relating to Officeworks which is before Justice Raper of the Federal Court of Australia. The case relates to the interpretation of provisions in the company's enterprise agreement.

[Read more](#)

Independent contractors must be 'natural persons' for super purposes

In a [decision](#) of 24 March, the Full Federal Court has confirmed that under the Superannuation Guarantee legislation, a principal does not have to make superannuation contributions for an independent contractor if the contractor is not a natural person.

Under subsection 12(3) of the Superannuation Guarantee (Administration Act) 1992, an expanded meaning of 'an employee' applies. Businesses that engage an independent contractor "under a contract that is wholly or principally for the labour of the person" are required to make superannuation contributions on the amounts paid to the contractor.

[Read more](#)

Manufacturing industry enterprise bargaining wage outcomes are continuing to increase

The FWC's latest fortnightly enterprise agreement [statistical report](#) shows that the average annualised wage increase in manufacturing and associated industry agreements lodged for approval between 25 February and 10 March was 4.6%. This figure needs to be treated with some caution because this average relates to only 17 agreements, and the average increase in manufacturing industry agreements lodged for approval in the previous two fortnightly periods was 3.4%. [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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