

# ACTUS WORKPLACE LAWYERS

## Insights into Current Workplace Relations Issues



**18 June 2024**

Welcome to the June 2024 edition of Actus Workplace Lawyers' *Insights into Current Workplace Relations Issues*. 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.

### **FWC approves AMWU single interest employer agreement for the NSW HVAC sector**

On 14 June 2024, the Fair Work Commission (FWC) approved a single interest employer agreement covering the Australian Manufacturing Workers Union and a group of eight employers in the Heating, Ventilation and Air-conditioning (HVAC) industry in New South Wales.

The agreement is called the [AMWU On-site Construction HVAC Workers NSW Enterprise Agreement 2023-2027](#). It contains very generous and inflexible conditions that would be very damaging for employers in most parts of the HVAC sector if they are roped-in to the agreement. The AMWU has already signalled its intention to seek to flow on the provisions to other businesses in the HVAC sector. [Read more](#)

### **'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 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. [Read more](#)

## **Delegates' rights term for modern awards**

Over the coming days the FWC will issue the delegates rights term for modern awards. Over the past few months, the Commission has received submissions from employer groups and unions about the term and conducted consultations. It also issued a [draft term](#) in May.

All modern awards must contain a delegates' rights term by 30 June 2024.

Enterprise agreements that are voted upon and approved by employees on or after 1 July 2024 must include a delegates rights' term. For enterprise agreements that are currently being negotiated, it is important for employers to be aware of this requirement. [Read more](#)

## **High Court asked to consider the meaning of a 'genuine redundancy' for the purposes of the unfair dismissal laws**

Peabody has applied to the High Court of Australia for special leave to appeal a decision of the Full Court of the Federal Court of Australia about the meaning of the 'genuine redundancy' exclusion in the unfair dismissal laws.

Under s 389(2) of the Fair Work Act, a person's dismissal was not a case of 'genuine redundancy' if it would have been reasonable in all the circumstances for the person to be redeployed within the employer's enterprise or an associated entity.

In April 2024, the Full Court of the Federal Court ruled that the dismissal of a group of employees at Peabody's Helensburgh Coal Mine was not a case of 'genuine redundancy' because it was reasonable in all the circumstances for the employees to be redeployed ([Helensburgh Coal Pty Ltd v Bartley \[2024\] FCAFC 45](#)). Katzmann, Snaden and Raper JJ reached this conclusion despite there being no relevant vacancies at the time when the employees' positions became redundant. [Read more](#)

## **Federal Court decision – Outer limit contracts and unfair dismissal laws**

Over the years there have been conflicting decisions of Courts and tribunals regarding whether an employee who is terminated upon the expiry of an outer limit contract (also known as a maximum term contract) has access to the unfair dismissal laws

In the relevant cases, two key issues have typically been involved:

1. Has the employment been terminated "*on the employer's initiative*" (as referred to in s 386(1)(a) of the Fair Work Act)?
2. Is the employment contract a "*contract of employment for a specified period of time*" for the purposes of the exclusion from the unfair dismissal laws in s 386(2)(a) of the Fair Work Act?

A recent Federal Court decision has changed the status of the law on the second issue and will be welcomed by employers. [Read more](#)

## **Employees who are sick or take annual leave on a rostered public holiday**

In many industries, employees are rostered to work on public holidays. It is important for employers to understand how the National Employment Standards operate when an employee is sick or takes annual leave on a public holiday on which the employee was rostered to work. [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](mailto: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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