

ACTUS WORKPLACE LAWYERS

Insights into Current Workplace Relations Issues



31 January 2023

Welcome to the first edition of Actus Workplace Lawyers' *Insights into Current Workplace Relations Issues* for 2023. This year is set to be an eventful one for workplace relations in Australia.

Please get in touch if there are any workplace relations services or support that Actus Workplace Lawyers can provide to your business.

The Federal Government's second tranche of IR reforms

The Federal Government is currently developing a second tranche of industrial relations amendments for implementation later this year, including most likely:

- Gig work reforms;
- The implementation of Labor's 'same job, same pay' policy;
- More restrictions on casual employment; and
- 'Wage theft' laws.

There is also the prospect of the Government giving the Fair Work Commission (FWC) the power to issue orders regulating rates and conditions for contract drivers, despite the failed experiment of the Road Safety Remuneration Tribunal that was abolished in 2016.

For any strategic or other assistance in influencing or preparing for the new laws, please contact Stephen Smith, Principal of Actus Workplace Lawyers on stephen.smith@actuslawyers.com.au.

It would be folly for the Government to treat millions of workers as 'free riders'

In an opinion piece published in the *Australian Financial Review* on 25 January 2023, Stephen Smith argues that the reasons why bargaining agents' fees were outlawed in Australia 20 years ago are as valid today as they were then. Every few years the unions raise the same tired old arguments about 'free riders' in pursuit of their perennial claim for non-members to be charged bargaining agents' fees.

Unions that provide good services and representation to their members have no need for bargaining agents' fees. Those that do not cannot expect to be propped up by unfair laws which trample on individual liberties.

Employees have the right to join a union and the right to not join one. Ninety two percent of private sector employees have chosen not to join a union and these millions of employees will no doubt be extremely opposed to the idea of paying hundreds of dollars a year to a union. [Read more](#)

Development of FWC Statement of Principles under the new bargaining laws

On 30 January, Acting President Hatcher of the FWC issued a [Statement](#) setting out a revised timeframe for developing the Statement of Principles that will play an important role in the new enterprise agreement approval process under the Secure Jobs, Better Pay amendments to the *Fair Work Act*.

The revised timeframe states that the new Principles will commence operation on 6 June 2023. This suggests that the Government has decided to allow the new enterprise bargaining approval laws and related amendments to come into operation on 6 June 2023 – the final date permitted under the legislation - rather than proclaiming an earlier operative date. [Read more](#)

A copy of Actus Workplace Lawyers handy 30-page digital *Guide to Bargaining under the Secure Jobs, Better Pay Amendments* can be ordered and immediately downloaded [here](#).

How can the new domestic violence leave entitlements be dealt with on pay slips?

Operative from 1 February, the National Employment Standards in the *Fair Work Act* will be varied to give employees an entitlement to 10 days of paid family and domestic violence leave. A delayed operative date of 1 August applies for 'small employers'.

In conjunction with the amendments to the Act, Regulations have been made prohibiting an employer from recording paid family and domestic violence leave on an employee's pay slip. The regulations provide guidance on how pay slips can lawfully deal with this issue. [Read more](#)

Large increase in penalties for underpayments from 1 January 2023

Operative from 1 January 2023, the value of a Commonwealth penalty unit increased from \$222 to \$275. This has resulted in a substantial increase in the penalties for breaching the *Fair Work Act* and industrial instruments. The maximum civil penalty for underpayments is now \$825,000 per contravention.

In addition, under the accessorial liability provisions in section 550 of the *Fair Work Act*, directors and managers can be held liable for the actions of a corporation if they have been in any way, by act or omission, directly or indirectly, knowingly concerned in the contravention. [Read more](#)

FWC 'short shift' decision will have implications for many industries

On 20 December, Deputy President Saunders of the FWC [decided](#) to retrospectively vary the *Road Transport and Distribution Award 2020* (RTD Award) to clarify the operation of the 'short shift' clause, in response to an application by Toll Transport. A similar clause appears in many other awards, including the *Manufacturing and Associated Industries and Occupations Award 2020* (Manufacturing Award).

The clause in question provides penalty rates for an afternoon or night shift which does not continue for at least five consecutive afternoons or nights.

Consistent with the history of the clause, which can be traced back to at least the 1930s in the metal industry, the variation to the RTD Award clarifies that the penalty rate applies to *shift rosters* which do not continue for five afternoons or nights; not to the work patterns of individual employees. For example, an employee who is rostered on three afternoon shifts is not entitled to the penalty rate if the afternoon shift roster is ongoing or continues for at least five afternoons.

The relevant penalty rate for 'short shifts' in the RTD Award and the Manufacturing Award is 150% for the first three hours and 200% thereafter. Therefore, if the FWC had accepted the Transport Workers Union's submissions in the case, there would have been very costly implications for employers in numerous industries.

Professional Employees Award – FWC coverage, hours of work and overtime decision

A Full Bench of the FWC has handed down a [decision](#) in a long-running case about the coverage, hours of work and overtime provisions in the *Professional Employees Award 2020*. This award covers professional engineers and scientists. It also covers IT professionals who work for IT companies. [Read more](#)

Higher wage increases in latest manufacturing industry enterprise agreements

The latest FWC fortnightly enterprise agreement [statistical report](#) shows that average annualised wage increases in manufacturing and associated industry agreements lodged for approval in the second half of December were 4.2%. 40% of these agreements included a higher wage increase on commencement than the other increases in the agreement. [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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