

# ACTUS WORKPLACE LAWYERS

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## Timing of payments to employees on termination – problematic Court judgment

A judgment of the Federal Circuit and Family Court of Australia relating to the timing of payments to employees on termination of employment is causing practical problems for employers.

In [\*Jewell v Magnium Australia Pty Ltd \(No 2\) \[2025\] FedCFamC2G 676 \(15 May 2025\)\*](#) (**Jewell**) Judge Champion imposed penalties on an employer for not paying notice of termination, accrued annual leave and redundancy pay by no later than the date of termination, to an employee who had been dismissed.

Employers should be aware that s 117(2)(b) of the Fair Work Act expressly requires that a payment in lieu of notice be made no later than the date of termination. However, the situation is less clear when it comes to annual leave and redundancy payments upon termination. Unlike s 117(2)(b) concerning notice of termination, there are no specific provisions in the Act addressing the timing of annual leave or redundancy payments on termination. Nonetheless, Judge Champion imposed a penalty on the employer in *Jewell* for failing to pay annual leave and redundancy pay by the date of termination.

In the earlier liability judgment in the case ([\*Jewell v Magnium Australia Pty Ltd \[2025\] FedCFamC2G 201\*](#)), Judge Champion stated (at paragraph [205]) that: “*Magnium had to make payments as to notice, redundancy pay and accrued and unused annual leave as at the date of the dismissal of Dr Jewell. It did not do so. It late paid these entitlements.*”

The Court’s judgment in *Jewell* casts doubt on the validity of some aspects of the Fair Work Commission’s (FWC’s) model award term relating to payments on termination, which is found in many awards:

### **X. Payment on termination of employment**

- (a) *The employer must pay an employee no later than 7 days after the day on which the employee’s employment terminates:*
  - (i) *the employee’s wages under this award for any complete or incomplete pay period up to the end of the day of termination; and*
  - (ii) *all other amounts that are due to the employee under this award and the NES.*
- (b) *The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.*

*Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee’s employment unless the employer has given the employee the required minimum period of notice or “has paid” to the employee payment instead of giving notice.*

*Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under clause X. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.*

*Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee’s employment terminates or shortly after.*

The FWC's model Payment on Termination of Employment clause has clearly been drafted and implemented on the assumption that it is permissible for the FWC to prescribe a seven-day deadline for the payment of NES annual leave and redundancy entitlements upon termination of employment for employees covered by an award. (See clause X(a)(ii) above).

For advice on any termination payment issues, please contact Justine Smith, Lawyer at Actus Workplace Lawyers, on 0414 947 651 or email [justine.smith@actuslawyers.com.au](mailto:justine.smith@actuslawyers.com.au).