

ACTUS WORKPLACE LAWYERS

Insights into Current Workplace Relations Issues



6 December 2024

Welcome to the December 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 the workplace relations support that Actus Workplace Lawyers could provide to your business.

Wishing you all a very Happy Christmas and New Year, and a relaxing break.

The 'nexus' requirement for flexible work arrangement requests to work from home

Many employees have made requests to work from home, some of which have been made with reference to section 65 (Requests for flexible work arrangements) of the Fair Work Act.

Some recent Fair Work Commission (FWC) decisions highlight the jurisdictional requirement that there be a 'nexus' between the employee's circumstances (e.g. the employee is a parent of a child of school age or younger, or aged 55 and over), and the flexibility requested. If a 'nexus' does not exist, the jurisdictional requirements for making a request under section 65 are not met and the issue of whether the employer had 'reasonable business grounds' to refuse the request does not arise.

The 'nexus' requirement arises from section 65(1) which gives an employee to whom particular circumstances apply, a right to request flexible work arrangements "because of those circumstances". For example, it is not enough that an employee is aged 55 years or over. The requested flexible work arrangements must relate to the circumstance of the employee being aged 55 or over, e.g. the employee is suffering from an age-related health condition. [Read more](#)

Supported bargaining developments

There have been some important developments regarding the supported bargaining provisions of the Fair Work Act. These provisions enable multi-enterprise agreements to be made for employers and employees who require support to bargain. The supported bargaining stream gives unions many additional rights they do not have under other bargaining streams and consequently they are endeavouring to establish excessively wide boundaries for this bargaining stream. [Read more](#)

Full Federal Court review of FWC single interest employer decision

Three major coal mining companies (Peabody, Whitehaven and Ulan) have applied to the Federal Court of Australia for judicial review of a decision of the FWC to make a single interest employer authorisation requiring them to bargain with the Association of Professional Engineers, Scientists and Managers Australia for a single interest employer agreement. The case will be heard by the Full Federal Court in March 2025. [Read more](#)

Employment contracts and practices for apprentices

Many employers will be hiring new apprentices in the New Year. It is important for employers to ensure that employment contracts for apprentices are well drafted to avoid unnecessary risks and that employment practices take account of the relevant exemptions in the Fair Work Act.

Also, at the time when the employment commences, or as soon as practicable afterwards, employers need to provide the Fixed Term Contract Information Statement and the Fair Work Information Statement to new apprentices. [Read more](#)

No extra claims clauses in enterprise agreements present major risks for employers

A 3 December 2024 decision of Deputy President Roberts of the FWC has once again highlighted the risks for employers of including no extra claims clauses in enterprise agreements. [Read more](#)

'Short shift' clauses in awards and enterprise agreements

A recent decision of the Fair Work Commission highlights the importance of employers being mindful of the common 'short shift' clauses in awards and enterprise agreements, when structuring hours of work arrangements. [Read more](#)

Appeals against FWC decisions – right to appeal v leave to appeal

Dispute settlement clauses in enterprise agreements can readily provide a right of appeal against an arbitrated decision of the FWC, but only if the clause is drafted carefully. Otherwise, an appeal can only proceed if the Commission grants leave to appeal. This issue was canvassed in a recent FWC Full Bench decision. [Read more](#)

Explanation of the terms of a proposed enterprise agreement

Employers continue to run into problems with the onerous requirements in the Fair Work Act to explain the terms of a proposed enterprise agreement to the employees ahead of the vote to approve 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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