



Employment Law Matters

Welcome to the August edition of the Employment Law Matters newsletter, and the release of the redesigned www.EmploymentLawMatters.com site. Issues surrounding employment, the workplace, human resources and your organisation's people, culture and development are important to you, and we've refreshed the site to better align with those issues. HR law, strategic and operational HR insight is provided for:

- **Health, Wellbeing & EEO:** Holistic wellbeing; Mental wellness; Equal opportunity; Diversity & Inclusion; Gender balance
- **Talent & Performance:** Talent management; Engagement; Difficult behaviour; Analytics; Recruitment; Redundancies; Performance management; Underperformance; Remuneration; Reward
- Dismissal, Behaviour, Investigations: Bullying; Harassment; Sexual harassment; Workplace investigations; Unfair dismissal
- **Injury, Safety & RTW:** Ill & injured; Return-to work; WHS; Mental health risks; Medical incapacity; Case law updates
- **Employee Relations & IR:** Enterprise bargaining; Industrial disputes; Regulatory decisions; Agreements
- **Disputes, Liabilities, Case Law:** Unfair dismissal; Conflict resolution; Adverse action claims; Rights and responsibilities; Accessorial liability

In this August 2018 edition of the Employment Law Matters newsletter:

- Case review: A termination relating to sexual harassment
- Legal insight: Sham contracting
- Recent decisions: Redundancy payouts, and recognition of casual work periods
- Stay up to date: New entitlements for employees
- Employee use of social media, and HR policies
- First look: Global trends emerging in the intersecting domains of employability, work integrated learning, and career development learning. A must read if you're partnering with universities and employing graduates
- Flexibility: Results were so positive for New Zealand company Perpetual Guardian when they trialled four day working weeks that they're making this a standard going forth
- As always: The latest Fair Work decisions, and news from the Fair Work Ombudsman

Sham Contracting: A New Era of Exploitation or Just More Regulation?

Contracting has long been a feature of Australian industry sectors where there is a demand for highly specialised tradespersons, operating their own businesses, providing their own labour and engaged to provide a defined service and result. [Here](#), Rod Marshall, Partner & Solicitor at FCB Workplace Law examines the evolving landscape of independent contracting.

Four day week trial: results in for Perpetual Guardian New Zealand

Between March and May of this year, Perpetual Guardian New Zealand trialled a four day work week, which included a no reduction in their normal five day/week salary. The result was a significant work-life balance improvement, increased engagement, better day-to-day productivity and, despite concerns about getting work done in less time, reduced stress and mental health triggers were reported. It was so successful that Perpetual Guardian are planning to bring in the four day week on a permanent basis. For full information please visit the site www.4dayweek.co.nz.

We're also very excited to announce that Christine Brotherton, Head of People and Capability at Perpetual Guardian Trust will be speaking on this at our upcoming **Future Talent & Agile HR conference**. The program will be released soon... to register interest in receiving the brochure please email info@aventedge.com

Employer takes proactive steps to stamp out sexual harassment

At a time when the #MeToo Movement continues to gain momentum worldwide, the Fair Work Commission (FWC) recently found in favour of the City of Rockingham for sacking a long-standing senior employee for sending salacious texts during and after working hours to his female (and much more junior) colleagues. Courtesy of Moray & Agnew Lawyers, read more [here](#).

For current and emerging up to the minute insight be sure to attend the HR Law Masterclass conference in September (across Australia and New Zealand).

Risk management topics and case law insight at a glance. Each location has all key HR law issues covered in one day, with up to 12 legal experts present. A day you shouldn't miss:

Australia

Brisbane Sept 10, Sydney Sept 12, Melbourne Sept 13, Perth Sept 17, Adelaide Sept 19:

1. Workplace mental health & wellbeing
2. Workplace injury management & RTW
3. Performance management
4. Risks associated with terminations
5. An Adverse Actions hour
 - o Triggers, procedural issues, remedies and penalties
 - o Defending adverse actions
6. Workplace investigations
7. Enterprise bargaining agreements
8. Bullying & harassment
9. Sexual harassment
10. Future outlooks for HR law risks

New Zealand

Wellington Sept 25, Auckland Sept 27:

1. Mental health and workplace wellbeing
2. Workplace injury management, medical evidence and Return To Work
3. Performance management and performance improvement
4. Terminations risks, and preventing unjustified dismissal claims
5. Misconduct-based investigations
6. Annual holidays and other leave
7. Collective bargaining agreements
8. Pay equity
9. Bullying and harassment prevention
10. Recent case law reviews

Employee use of social media, and HR policies

The issue of how employers fairly deal with supposed transgressions of policy by expressing their personal or political views on social media has again arisen, with Cricket Tasmania terminating employment of a staffer who expressed how disappointed she was with how the Tasmanian Government was managing access to reproductive health services. As an employer, are you entitled to constrain someone's opinion on social media? When can you? Although the employee was in a Government relations role, did her opinions on an issue unrelated to her actual role blur the lines? This is a timely reminder to provide guidance on reasonable social media usage that could be associated with the company, employees or clients.

[Redundancy payouts and casual work](#)

At a recent Fair Work Commission (FWC) full bench review, Unilever has been successful in challenging a requirement to include prior casual employment periods when determining redundancy payouts. This places into doubt whether the FWC decision from 2016 that casual work periods should be included stands.

Australian workers entitled to unpaid domestic violence leave from August 1 2018

From the first full pay period on or after August 1, 2018, many workers will be able to apply for unpaid family and domestic violence leave. This applies from the first full pay period on or after August 1st and will enable people on industry or occupation awards, including casual employees, to take five days off each year. The Fair Work Commission's [website](#) says that all industry and occupation awards will be updated to include a clause regarding this new leave entitlement. Workers on enterprise awards, some state based public sector awards, and enterprise agreements which don't already have these provisions aren't covered under this Family and Domestic Violence leave reform, and will need to avail themselves of other paid or unpaid entitlements.

Regardless of the awards or agreements covering your staff base, do you have a policy and HR procedures in place allowing people to confidentially access family and domestic violence leave? "1 in 6 women (aged 15 or above) - equating to 1.6 million women - have experienced physical or sexual violence by a current or former partner, while for men it is 1 in 16 - or half a million men" reported the Australian Institute of Health and Welfare (AIHW) in February 2018. It's a scourge which affects all socioeconomic and demographic groups of society, but some groups can be more vulnerable. For the full AIHW report [click here](#).

[National minimum wage and Modern Award minimum rates now in effect](#)

The Fair Work Commission's Minimum Wage Panel decision about the 3.5% national minimum wage and Modern Award minimum increase is in effect, for the first full pay period on or after 1 July 2018.

In short:

- The National Minimum Wage increases to \$719.20/ week or \$18.93/hour
- Existing Enterprise Agreements (EA's) need to reflect new minimum base rates
- For new EAs, the new minimum base rates are a baseline for "better off overall" (BOOT) testing
- Some allowances may also need to increase

Other threshold changes:

- The high income threshold, which limits an employee's eligibility to pursue an unfair dismissal claim, increases to \$145,300, from \$142,000. The exception is if they are under an award or agreement
- Unfair dismissal compensation is now \$72,650, capped at half the high income threshold.
- The Eligible Termination Cap (ETP) threshold will increase to \$205,000

Do you employ graduates? View the recently launched study "Employability in a Global Context: Evolving Policy and Practice in Employability, Work Integrated Learning, and Career Development Learning" [here](#).

The report looks at global trends emerging in the intersecting domains of employability, work integrated learning, and career development learning. This paper was released for the first time by the study's author Martin Smith (Career Development & Employability specialist; & Former Director, Graduate Career Development & Employability, University of Wollongong), who spoke at the Avertedge Graduate Employment Outcomes & Industry Partnerships conference in Sydney last week. The event looked at how universities and industry organisations can improve graduate employability and employment outcomes. It was an incredibly insightful few days about how employer needs are evolving, and showcased how to strengthen collaboration between tertiary institutions and industry.

As always:

For the latest Fair Work decisions click [here](#).

For the latest news from the Fair Work Ombudsman, click [here](#).

Scheduled events which may be of interest to you:

2nd annual Public Sector Workforce Planning & Organisational Capability

Examining how to prepare for and plan the future of the workforce & lead your organisation through change

[Canberra](#). 4th – 6th September 2018

3rd annual Performance Management & High Performance Teams

Strategic engagement and talent initiatives to drive performance

[Sydney](#): 17th – 18th September 2018.

5th annual HR Law Masterclass conference roadshow, September 2018

Leading employment law event series covering the most significant HR, IR & ER issues

[Australia](#): Brisbane 10th September; Sydney 12th; Melbourne 13th; Perth 17th; Adelaide 19th

[New Zealand](#): Wellington 25th; Auckland 27th September.

Strategic HR Business Partnering

Australia's only conference looking at driving business performance through better strategic use of HR Business Partners

[Melbourne](#) 29th – 31st October 2018 [co-located with Workforce Inclusion and Diversity]

The 3rd annual Workforce Inclusion and Diversity Australia conference

Diversity and inclusion outcomes which embrace values, beliefs, experiences, backgrounds, for a happy, healthy, productive place to work

[Melbourne](#) 29th – 31st October 2018 [co-located with Strategic HR Business Partnering]

Upcoming events we are currently producing:

Workplace Mental Health & Wellbeing conference

26 – 28 November 2018, Melbourne

Future Talent & Agile HR conference

26 – 28 November 2018, Melbourne

5th annual Employment Law Matters Workplace Law Forum

Case study led conference looking at practical HR legal risk management

20 – 22 November 2018, Sydney