



# Employment Law Matters

At [www.employmentlawmatters.com](http://www.employmentlawmatters.com) you'll see some changes soon about how we present information on the site and in your monthly newsletter. The site and newsletter will provide insight on the important developments in the areas of: Health, wellbeing & EEO; Injury & safety; Talent & performance; Investigations & harassment; ER / IR / Workplace relations; & Other laws relevant to HR and employee relations professionals.

This month we're featuring items relating to Talent & performance; Investigations & harassment; ER / IR / Workplace relations, and New Zealand HR law. We've of course also highlighted relevant events in these areas. Stay informed.

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## Investigations & harassment:

**Interim orders in a “stop bullying” application.** In a recent case, the FWC granted its first interim order issued in its anti-bullying jurisdiction, effectively issuing an injunction to stop an employer from proceeding with a workplace investigation for a bullying claim. Stephen Booth from Coleman Greig Lawyers explains what this decision means for employers [here](#).

### Three timely pieces on sexual harassment in the workplace:

Maurice Blackburn Lawyers explains [here](#) how the process of engaging with an employment lawyer unfolds, including key factors and considerations, strategies, outcomes, and protections available to employees who make complaints about sexual harassment in the workplace.

Clayton Utz also explain [here](#) about **the Weinstein Effect: Managing inappropriate conduct in the workplace** - managing sexual harassment, assessing legal risk, conducting investigations, assessing adversarial liability, and dealing with historical claims. Clayton Utz are speaking at our popular [HR Law Masterclass](#) - a one day event taking place in Brisbane, Sydney, Melbourne & Perth in March. You will also hear from Snedden Hall & Gallop on this topic at the Canberra HR Law Masterclass.

**Employment and management risks arising from relationships between colleagues.** Do you have policies in place? Is an affair any concern of an employer? Stephen Booth from Coleman Greig Lawyers investigates [here](#) in this article: *“Two of my employees are in a close personal relationship. Is it any of my business?”*

**To avoid getting lawyers involved, attend our [Preventing & Managing Sexual Harassment](#)** masterclass for HR managers, facilitated by [Dr. Moira Jenkins](#), who is a renowned clinical psychologist specialising in the area of psychological/mental health in the workplace, management of high conflict behaviours and dispute resolution. She is also author of the book *Preventing and Managing Workplace Bullying and Harassment: A Risk Management Approach*.

This full day masterclass aims to guide HR practitioners and managers through the process of preventing sexual harassment, as well as intervening without breaching the rights of the parties involved. Taking place in Melbourne (28th Feb), Sydney (7th March), Wellington (10th April) and Auckland (12th April), this is an important masterclass for HR professionals, not to be missed.

## ER / IR / Workplace relations:

### **Contractors & unfair dismissal: recent case law. Uber vs. driver**

In a recent decision of the Fair Work Commission, an Uber driver was found to be an independent contractor and not an employee, meaning he was unable to bring a claim of unfair dismissal. Lander & Rogers offer insight into the background of this case; elements of the employment relationship which the FWC considered to be absent; the suitability of traditional tests to changing work relationships; and the bottom line for employers. Click [here](#) to read.

### **Breaking: A Fair Work Ombudsman investigation finds contractor exploitation and underpayments of cleaning staff at Woolworths sites. The FWO concludes non-compliance with workplace laws.**

This was a case of exploitation occurring where supply chains involving vulnerable workers were not adequately monitored / audited. *“Our Inquiry found deficiencies in Woolworths’ governance arrangements with regard to its procurement and oversight of cleaning contracts, resulting in serious exploitation occurring at multiple levels of its cleaning supply chain,”* Fair Work Ombudsman Natalie James reported. More information is at the FWO site [here](#).

**Wage theft, your liabilities & responsibilities.** Results of the National Temporary Migrant Work Survey from the The Migrant Worker Justice Initiative are in and accessible [here](#).

### **FWC reinforces importance of consultation to genuine redundancy**

Employers have been put on notice to take a more cautious and methodical approach to consultation with employees before redundancies after the Fair Work Commission reasserts the importance of proper consultation processes. Read more by Stephen Booth from Coleman Greig Lawyers [here](#).

## Talent & performance:

**A guide to managing “complicated” top performers.** When should you keep them, and how to do so without alienating the rest of your staff. Courtesy of Lander & Rogers, view the overview of handling talented but complicated employees [here](#).

**Just launched: “Managing Difficult Employee Behaviour” interactive training course** around Australia in May (Brisbane, Sydney, Melbourne, Perth). Visit website [here](#). The New Zealand program will be released soon for June. ([Email us](#) to ensure you receive the program when released).

**There’s also still time to book for our Performance Management Re-Design [masterclass](#) taking place in March** (Brisbane, Sydney, Melbourne, Perth). The course looks at every aspect of performance management to link organisational goals with workforce performance objectives and help achieve individual and team alignment.

## Other laws: Data breach compliance + New Zealand HR law

### **New Zealand's workplace laws under the microscope.**

The Annual [Employment Law Matters Forum New Zealand](#) (Wellington 9 April, Auckland 11 April) will bring together leading legal experts and ER/HR practitioners to provide regulatory updates, best-practice strategies and important case law outcomes on the most pertinent industrial relations and employee relations issues. Gain an in-depth look at new and emerging employment law and strategy changes involving: **pay equity, parental leave, 90-day trials, bullying and harassment, collective bargaining and mental health and wellbeing**. You can expect speakers that will provide you with insights designed to keep you up-to date with changing bill and legislative amendments.

### **What HR needs to know about the new data breach laws.** Lander & Rogers explains [here](#).

The Privacy Amendment (Notifiable Data Breaches) Act 2017 comes in to effect 23rd February 2018, including laws regarding mandatory data breach notifications – for all private companies with revenue over \$3m, and for federal agencies. Penalties of up to \$1.8m apply. **Is your organisation prepared?** There are new obligations, your organisation needs to be ready for the increased transparency and compliance requirements regarding data protection and privacy. Our popular one day [Data Breach Compliance & Preparedness masterclass](#) (Brisbane 12 March, Sydney 14 March, Melbourne 20 March, Perth 22 March) addresses these issues. [David Pulikottil](#) of Sense Of Security will guide risk and compliance, Information technology, Data, Operations, and Corporate services executives. Who in your organisation could benefit by attending?

## Upcoming events which may be of interest to you:

[Preventing & Managing Sexual Harassment](#) – a masterclass for HR Professionals  
Melbourne 28th February; Sydney 7th March; Wellington NZ 10th April; Auckland 12th April

[Data Breach Preparedness & Compliance](#)  
March 2018: Brisbane 12th, Sydney 14th, Melbourne 20th, Perth 22nd

[Performance Management re-design Masterclass](#)  
Brisbane 12th & 13th March; Sydney 15th & 16th March; Melbourne 19th & 20th March; Perth 22nd & 23rd March

**Workforce Inclusion & Diversity Conference**  
[Hong Kong](#) 14th – 15th May; [Singapore](#) 16th - 18th May; [Sydney](#) 21st – 23rd May

[Employment Law Matters Annual Forum, New Zealand](#)  
Wellington 9th April; Auckland 11th April

[Managing Difficult Employee Behaviour Masterclass](#)  
Brisbane, 14th May; Sydney, 16th May; Melbourne, 21st May; Perth, 23rd May  
Auckland, 21st May; Wellington, 23rd May (NZ program in development)

**Workplace Mental Health & Wellbeing Conference**  
[Sydney](#) 21st – 23rd May 2018  
Auckland 18th – 20th June 2018 (NZ program in development)