



# Employment Law Matters

Hi, and welcome to your free Employment Law Matters newsletter for March.

It's clear that 2018-2019 will be a time of much change, with new benchmarks being set for workplace law compliance, and clearer regulator focus on liability provisions for both organisations and HR management. After attending the HR Law Masterclass conferences around the country last week which sold out in Sydney, Melbourne and Brisbane, it's also clear that there is renewed interest and a need for clarity around these matters. **In this month's Employment Law Matters newsletter, we are providing updates and insight regarding: Adverse actions; Sexual harassment; Terminations & unfair dismissal; Performance management; ER / IR / workplace relations; and Labour hire.**

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## Adverse Actions: worthy of your attention

**Adverse actions: David Bates of Harmers Workplace Lawyers** spoke to these issues in 4 cities at this month's HR Law Masterclass on the triggers, procedural issues, remedies and penalties. Just one little known fact: did you know that companies can counter adverse action claims with an adverse action claim of their own? Are you aware of the broad scope under which an adverse action claim can be made? Or the civil remedy provisions, and lengthy historical time limit on bringing an adverse action about? **Adverse actions are undoubtedly a game changer in workplace law and employee relations, with the onus being on the company to mis-prove claims.** [Here](#), David gives a succinct overview of Adverse Actions, and a few key tips for employers managing an adverse action claim.

## Inappropriate behaviour:

### #MeToo: a Sexual harassment case update

The #MeToo movement may empower employees to raise sexual harassment allegations. These allegations may be both historic and recent. This poses an important question for employers: Will the current avalanche of sexual harassment allegations toppling prominent men in media and government cascade down to my workplace? **Click [here](#) for case law updates and emerging references from courts and tribunals.** Courtesy of Cooper Grace Ward.

In this [video](#), Cilla Robinson, Partner at Clayton Utz, discusses how **expectations of employers have shifted to meet society's expectations regarding sexual harassment and inappropriate behaviour.** Cilla spoke last week at the HR Law Masterclass conference Sydney.

**Key policies HR needs to adopt:** Rebecca Byun, Senior Associate at Clayton Utz, also discusses in [this video](#) the policies HR needs to implement to ensure adequate procedures are in place for the **prevention and management of sexual harassment in the workplace.** Rebecca also spoke last week at the HR Law Masterclass conference Sydney.

## Terminations & unfair dismissal:

**Terminations and minimising chances of unfair dismissal claims in 1 minute:** Following his presentation at the HR Law Masterclass conference in Brisbane March 12th, **Liam Fraser, Senior Associate at McCullough Robertson** took on the challenge of highlighting key factors which reduce risks relating to terminations & unfair dismissal claims in [1 minute](#).

**Abandonment of employment:** The Fair Work Commission (FWC) will determine a standard replacement provision for **abandonment of employment clauses in six modern awards after finding that these clauses are inconsistent with the Fair Work Act 2009**. Click [here](#) for full information. Courtesy of Colin Biggers & Paisley.

## Performance management:

**Key insight on performance management processes you should be adopting are highlighted [here](#) in this short video by David Dilger, Partner, Employment & Safety, Page Sager.** David spoke at the Melbourne HR Law Masterclass conference this month – providing invaluable information on: reasonable management actions; managing performance vs. misconduct; tips on reducing risk of bullying and harassment claims resulting from performance processes; how to not take the proverbial ‘sledge hammer to a walnut’ during performance management processes; and tailoring performance conversations.

## ER / IR / Workplace relations:

**New reporting requirements for Bargaining representatives.** Under new legislation which took effect at the end of January, bargaining representatives (whether acting for employers, peak bodies or unions) are now required to disclose any personal financial benefits arising from enterprise agreements before they are voted on. The purpose of these disclosure documents is to help workers, employers and other stakeholders track the revenue an enterprise agreement will generate for unions and for any other bargaining representative. Insight courtesy of Lander & Rogers can be viewed [here](#).

**Do you really need to be bargaining in 2018?** Courtesy of Cooper Grace Ward, [this article](#) looks at the decline of enterprise bargaining, current situation regarding termination of agreements, trends over the past few years, increased scrutiny under the BOOT and case reviews for Aurizon Operations Limited; Aurizon Network Pty Ltd; Australia Eastern Railroad Pty Ltd [2015] FWCFB 540; Murdoch University [2017] FWCA 4472; Hart v Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Ltd; the Coles Store Team Enterprise Agreement 2014-17 [2016] FWCFB 2887.

**‘Generous & liberal’ view of enterprise agreement by FWC adds overtime to worker’s accident pay.** For a summary of Oktay Guner v Cranbourne Transit Pty Ltd T/A Cranbourne Transit [2018] FWC 327, click [here](#). Courtesy of Moray & Agnew Lawyers.

## Injury management & safety:

March 2018: **Resolution of a case in Queensland may set the benchmark for the new WHS industrial manslaughter offence in QLD.** The principal of Cold Spark Pty Ltd has been imprisoned following the death of a labourer who was electrocuted when was holding up a construction switchboard with supporting poles in a trench that was being backfilled. Preventative measures were inadequate and the conviction was made under the Queensland Criminal Code. This is an important reminder to review and audit your Work, Health and Safety systems and incident response.

## Talent & labour hire:

**Focus on temporary employment** – two recent cases put employers on notice about entitlements and rights for temporary and casual workers under the Fair Work Act. *Saeid Khayam v Navitas English Pty Ltd t/a Navitas English* [2017] FWCFB 5162 – fixed term employment and dismissal at the initiative of the employer. Article courtesy of Cooper Grace Ward [here](#).

**Impending changes to laws regulating the labour-hire sector are likely in Victoria, following introduction of similar schemes in Queensland and South Australia.** For insight courtesy of Harmers Workplace Lawyers click [here](#).

## As always:

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

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

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

### **Workforce Inclusion & Diversity Conference**

[Hong Kong](#) 14th – 15th 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, 25th June; Wellington, 28th June (NZ program to be released shortly)

### **Workplace Mental Health & Wellbeing Conference**

[Sydney](#) 21st – 23rd May 2018

[Auckland](#) 18th – 20th June 2018

