



Employment Law Matters

Welcome to the September edition of the Employment Law Matters newsletter. In this month's edition:

- “Fair go”, unfair dismissal and performance improvement
- What you need to know about Modern Slavery legislation and changes under the Act
- The increased liabilities for HR professionals: vicarious, accessory and ancillary liability risks
- Equal pay and Australia's gender pay gap. Time to analyse and benchmark your pay data.
- The link between company values and culture, in light of the Banking Royal Commission
- Navigating the murky waters of employee bonuses and incentive payments
- NZ: An analysis of the wholesale reform of workplace laws taking place in New Zealand
- NZ: Domestic violence leave assistance - new Bill and compliance requirements for employers
- NZ: The Holidays Act review
- Events for up to the minute workplace law insight
- As always: The latest Fair Work decisions; & The latest news from the Fair Work Ombudsman

NO “FAIR GO” MAKES DISMISSAL FOR A VALID REASON UNFAIR

The Fair Work Commission will inevitably find a dismissal to be ‘unfair’ if, despite having legitimate performance concerns, an employer does not give the employee a ‘fair go’ to both respond to those concerns and improve their performance. For the full article, courtesy of Norton Rose Fulbright, click [here](#).

WHAT HR NEEDS TO KNOW ABOUT MODERN SLAVERY LEGISLATION

On 28 June 2018, the Australian Government introduced the Modern Slavery Bill 2018 (Federal Bill). Similar to the NSW Act, the Federal Bill would require entities to submit a modern slavery statement every 12 months, addressing the actions taken to manage modern slavery risks in supply chains. Modern slavery is not so different to the idea that may spring to your mind. It's characterised by extreme working conditions such as low or no pay, excessively long hours and no recreation days. Modern slavery is common among young and migrant workers and in industries such as agriculture, construction, hospitality and domestic services. Slavery is a real issue in Australia, and new legislation designed to tackle it will affect a surprising number of businesses. For a breakdown of how, and key changes under the Act, click [here](#) for insight from Landers & Rogers.

HR PROFESSIONALS: REDUCE YOUR VICARIOUS, ACCESSORIAL AND ANCILLARY LIABILITY RISKS

Under Australian law, any person or business providing payroll or other employment/HR-related advice or support to an employer can be held personally liable as an ‘accessory’ for that employer's breaches of the Fair Work Act, National Employment Standards, and the Modern Slavery Act. Then there the increased vicarious liability, accessory liability and ancillary liability risks in relation to inappropriate behaviour & harassment. Our newly released **5th annual [Workplace Law Forum](#)** (Sydney 19 – 21 November Sydney) will include an essential panel discussion providing regulator and legal views on how HR professionals can reduce their vicarious, accessory and ancillary liabilities.

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Discussing the implications and risk reduction will be:

- **Janine Webster**, Chief Counsel, **Fair Work Ombudsman**
- **Cilla Robinson**, Partner, **Clayton Utz**
- **Stephen Trew**, Partner, **Holding Redlich**
- **Christa Lenard**, Partner, **K&L Gates**

Visit the [Workplace Law Forum website](#) to found out more.

EQUAL PAY AND AUSTRALIA'S GENDER PAY GAP. TIME TO ANALYSE AND BENCHMARK YOUR PAY DATA

On August 31st the Workplace Gender Equality Agency (WGEA) publishes its gap analysis. The national gender pay gap is gradually reducing to 14.6% across the board. The gap for full time remuneration nationally, however, is 22.4%. For more specific analysis of results of the WGEA dataset by industry, and by management and non-management occupational categories click [here](#).

NZ: EMPLOYMENT LAW LEGISLATIVE CHANGES ARE FAST APPROACHING

Having passed the half way mark of 2018, the New Zealand Government progresses with its package of employment law reforms. Together, these reforms will have a significant effect on New Zealand’s employment law landscape. The upcoming legislation and timeframes and advice for employers click [here](#).

Topics covered: The Employment Relations Amendment Bill 2018, Employment Relations (Triangular Employment) Amendment Bill, Domestic Violence - Victims Protection Bill, Fair Pay Agreements, Parental Leave, the Holidays Act Review, Privacy Bill, and Pay Equity. Article courtesy of Simpson Grierson.

NZ: DOMESTIC VIOLENCE LEAVE ASSISTANCE - NEW BILL AND COMPLIANCE REQUIREMENTS FOR EMPLOYERS

The newly passed “Domestic Violence - Victims Protection Bill” legislation will take effect from April 2019 in New Zealand. In short, employees who are facing domestic violence circumstances are entitled to short term flexible working arrangements and up to 10 days off work. To find out more, be sure to attend the [HR Law Masterclass NZ conference](#) (Wellington 25th September & Auckland 27th September). Jim Roberts, Partner at Hesketh Henry, will clarify uncertainties around annual holidays and other types of leave.

NZ: HOLIDAYS ACT REVIEW

As announced earlier this year, the Government has established a taskforce to conduct a review of the Holidays Act 2003. The taskforce has now released an issues paper for public consultation to identify the issues that the taskforce will attempt to resolve as part of its review. For information about the new bill click [here](#). Courtesy of Russell McVeagh.

UNDERSTAND YOUR COMPANY’S VALUES TO ENSURE YOUR CULTURE THRIVES

We all aspire to work in an environment where we feel valued, free to express our views and confident that we’re all on the same page when it comes to ethical business practices and integrity. Unfortunately, as the misconduct scandals and high-profile resignations brought about by the Banking Royal Commission have shown, the reality is that many organisations suffer lapses in ethics and compliance. This is common for businesses driven solely by profits; where it’s easy for the relentless pursuit of financial gain to trump all other considerations. Employees will not come forward and report troubling behaviour if they fear retaliation. For insight on how you can establish and maintain your organisation’s values click [here](#). Courtesy of Landers & Rogers.

As always:

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

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

FOR CURRENT AND EMERGING UP TO THE MINUTE PRACTICAL LEGAL INSIGHT

Be sure to attend the following market leading events in Australia & New Zealand

Workplace Investigations Masterclass

[New Zealand](#): AKL 19 Nov; WLG 21 Nov

Facilitated by Simpson Grierson

[Australia](#): SYD 19 Nov; MEL 27 Nov; BNE 27 Nov; PER 5 Dec

Facilitated by legally qualified Investigators from Q Workplace Solutions

5th annual Workplace Law Forum

[Sydney](#) 19 – 21 November Sydney

1. Key insights for employers on compliance pitfalls for big businesses: Office of the Fair Work Ombudsman
2. Changing HR law landscapes: AI Group; Ashurst; Norton Rose Fulbright; Thomson Geer
3. Terminations & minimising risk of unfair dismissal: Maddocks
4. Wellbeing & injury management: Goldwind Australia; Veolia; Moray & Agnew
5. Adverse actions insights: Lander & Rogers; Harmers Workplace Lawyers; Sparke Helmore; Minter Ellison
6. Talent management & performance
7. Bargaining & IR: UGL
8. Reducing vicarious, accessory & ancillary liabilities: Office of the Fair Work Ombudsman; Clayton Utz; Holding Redlich; K&L Gates
9. Misconduct based investigations: Visy Industries

10. Inappropriate behaviour & workplace conduct: American Express; Thales

HR Law Masterclass Conference

[New Zealand](#)

1 day, 12 Lawyers

WLG Sept 25; AKL 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

Other scheduled events which may be of interest to you:

Strategic HR Business Partnering

[Melbourne](#) 29th – 31st October 2018

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

The 3rd annual Workforce Inclusion and Diversity Australia conference

[Melbourne](#) 29th – 31st October 2018

Workplace Mental Health & Wellbeing conference

[Melbourne](#) 26th – 28th November 2018

Future Talent & Agile HR conference

[Melbourne](#) 26th – 28th November 2018

5th annual Workplace Law Forum

Case study led conference looking at practical HR legal risk management

[Sydney](#) 19th – 21st November 2018

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