



Employment Law Matters

Welcome to 2019 and the January edition of the Employment Law Matters newsletter. We hope the year has started well for you! In this month's edition:

- **Changes to Modern Awards:**
 - Casual employment uncertainties for employers
 - Casual employee rights & casual conversion
 - How variations to awards may affect the BOO
- **Workplace respect & language:**
 - More than just a damaged ego: defamation in the current climate and its potential at work
 - Let's talk about gendered language in the workplace
- **New domestic violence leave legislation – what you need to know**
- **Unfair dismissal proceedings gone wrong**
- **Victoria: Long Service Leave Act reforms**
- **New Zealand: New Employment Laws coming in to effect**
- **New Zealand: Trial period trials & tribulations**
- **Events:**
 - For exclusive and practical strategic, operational and legal HR insight
- **As always: Regulator insights**
 - The latest Fair Work decisions
 - The latest news from the Fair Work Ombudsman

Time will tell if a new regulation on casual employment will provide certainty for employers

The decision in *Workpac Pty Ltd v Skene* [2018] FCAFC has created a wave of uncertainty for a range of businesses who rely on casual employment. In this case, Mr Skene – who was employed for two years working 'seven days on, seven days off' – was paid a loaded rate which was said to be inclusive of casual loading. The Full Federal Court found that Mr Skene was in fact not a casual employee and was therefore entitled to paid annual leave on termination. But what has created considerable concern for employers is that the annual leave was to be paid at the loaded rate, rather than at the base rate exclusive of casual loading. Read the full article [here](#), courtesy of Moray & Agnew.

Recent changes to Modern Awards – What employers should know

As part of the Commission's four-yearly review of modern awards^[1], the Full Bench of the Fair Work Commission (FWC) recently handed down a number of decisions^[2] which have the effect of inserting a model casual conversion clause (Model Clause) into 84 Modern Awards^[3] from 1 October 2018. This provides "regular casual" employees the right to request to convert their employment to permanent full-time or part-time. The other 28 Modern Awards that already contain a casual conversion clause prior to 1 October 2018 will remain unchanged. Read the full article [here](#), courtesy of Norton Fulbright.

Does the BOOT fit?

Recent significant variations to modern awards will impact how employers should approach bargaining for new enterprise agreements. As part of the 4-yearly review of modern awards being undertaken by the Fair Work Commission (FWC), a number of variations have been made to modern awards which should be considered when employers are bargaining for new enterprise agreements and submitting them for approval against the better off overall test (BOOT). Read the full article [here](#), courtesy of Colin Biggers & Paisley.

New legislation about domestic violence leave – what you need to know

On 12 December 2018, the Fair Work Amendment (Family and Domestic Violence Leave) Act 2018 (Act) came into effect. The Act amends the National Employment Standards in the Fair Work Act 2009 (Cth) (Fair Work Act) to create an entitlement for employees covered by the Fair Work Act to receive 5 days of unpaid family and domestic violence leave in a 12 month period. Read the full article [here](#), courtesy of Harmers Workplace Law

The [6th annual HR Law Masterclass conference](#) Australia:

Brisbane March 12; Sydney March 14 ; Melbourne March 18; Perth March 20; Canberra March 21

New topics

- Reducing personal implications for HR professionals: Vicarious, Accessorial & Ancillary Liabilities
- Managing difficult employee behaviour
- Recent and emerging compliance requirements: Changes to casual and part-time entitlements; Independent contracting arrangements; & Future work models

Combined sessions, reducing overlap

- Psychological injury claims risk; Injury management and Return-to-Work
- Bullying, harassment and sexual harassment

Other insights to be discussed

Workplace mental health and duty of care; Workplace investigations; Adverse Actions, General Protections and protected rights; Terminations and unfair dismissal claims

More than just a damaged ego: defamation in the current climate and its potential at work

Making claims for damages to reputation can quite easily enter the workplace. You don't have to insult someone famous to find yourself on the receiving end of a defamation lawsuit – so what does the law say? Read the full article [here](#), courtesy of Maurice Blackburn.

Let's talk about gendered language in the workplace

While using terms like “sweetheart” and “babe” in the workplace may come from a friendly place, they can cause staff to feel undervalued and land you in hot water. The recent turmoil over at the ABC shone a light on the use of gendered language in the workplace, when Justin Milne was accused of referring to female staff as “chicks” and “babes”. What are the legal and social pitfalls of using gendered language at work? Let's look at Gendered language; Legal risks; and Social risks. Read the full article [here](#), courtesy of Lander & Rogers.

Rubbing salt into the wound of an applicant in unfair dismissal proceedings - Nov 2018

An applicant whose claim was “doomed to fail”, and was pursued by her to inflict as much damage as possible on her former employer, has led to severe consequences when the Fair Work Commission ordered her to pay indemnity costs to her former employer. Read the full article [here](#), courtesy of Piper Alderman.

Executive dismissed “because of” mental disability

The Federal Court of Australia has held that a global payments management company engaged in adverse action against a client executive “because of” his mental disability, when it dismissed him for reasons that included “serious concerns about [his] capacity to return to work” whilst he was on sick leave due to work stress and depression. Read the full article [here](#), courtesy of Harmers Workplace Lawyers.

Making long service leave fairer for everyone - An overview of significant changes for employers in Victoria

The Long Service Leave Act 2018 (Vic) (the New Act) took effect on 1 November 2018. The New Act repeals and replaces the Long Service Leave Act 1992 (Vic) (the Current Act), and provides employees with greater flexibility, consistency and equity. All Victorian employers need to be aware of the changes the implementation of the New Act makes to long service leave (LSL) entitlements. The most significant changes are explained in an article [here](#), courtesy of Colin Biggers & Paisley.

New Zealand: New Employment Laws will come into force in May 2019

On December 5th the New Zealand Government succeeded in passing one of the most important pieces of their legislative agenda, the Employment Relations Amendment Bill. The Bill strengthens the legal rights of employees, enhances the workplace power of unions, and bans larger employers from using 90-day trial periods. Read the full article [here](#), courtesy of Simpson Grierson.

New Zealand: Charitable Trust's approach to trial periods uncharitable

A recent decision to come out of the Christchurch Employment Court, Roach v Nazareth Care Charitable Trust, has highlighted the importance of complying with notice provisions when relying on a 90-day trial period to dismiss an employee. Read the full article [here](#), courtesy of Buddle Findlay.

AS ALWAYS: REGULATOR INSIGHTS

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

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

EVENTS

FOR CURRENT, PRACTICAL AND EMERGING UP TO THE MINUTE INSIGHT

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

[The 6th annual HR Law Masterclass conference Australia](#)

Australia's leading biannual employment law event series

Brisbane: March 12 | **Sydney:** March 14 | **Melbourne:** March 18 | **Perth:** March 20 | **Canberra:** March 21

[The 6th annual HR Law Masterclass conference New Zealand](#)

New Zealand's most comprehensive workplace law, covering the most significant HR, IR & ER issues
Wellington 5th March & **Auckland** 7th March 2019.

[Performance Management Processes and HR Risks one day workshop](#)

Held in conjunction with the 6th annual HR Law Masterclass conference.

Available: **Brisbane:** March 11 | **Canberra:** March 20

Almost sold out: **Sydney:** March 13 | **Melbourne:** March 19 | **Perth:** March 19

[Workforce Analytics & HR Data](#)

Sydney: 18th – 20th February 2019

Strengthening HR practices & business outcomes through workforce data and analytics

[Strategic HR Business Partnering New Zealand](#)

Auckland: 26th – 28th February 2019

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

[Psychological Injury Claims & Return-To-Work](#)

Sydney: 26th – 28th March 2019

Managing the complexities of psychological injury case management & return to work

[Organisational Culture, People & Engagement Australia](#)

Australia's only event focused on building adaptive and empowered workplace cultures

Melbourne: 2nd – 4th April 2019