



Employment Law Matters

Welcome to the March-April edition of the Employment Law Matters newsletter. As we head towards the Australian federal election, potential changes to the HR law landscape are looking very interesting. Similar to New Zealand, if a Labor Government comes in to power there will be a lot of changes focused on the rights of employees, contractors, and a renewed focus on Industrial Relations. In this month's edition, we'll take a look at a couple of those issues, along with insights about recent legislative updates and emerging considerations for HR and business.

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Australian federal election reforms: Enterprise Bargaining in focus

The IR policy platform the ALP will take to the coming election is bold and transparent. The team at Herbert Smith Freehills are publishing a series of articles in the weeks approaching the election to examine the practical impacts for business. Click [here](#) to look at your options for Enterprise Bargaining in the article 'Enterprise Bargaining – if it's 'Broken', is there a Fix Ahead?'

Employees vs. Independent Contractors

For employers with operations in multiple jurisdictions, successfully entering into a working relationship, whether with an employee or an independent contractor, is a very real challenge and one that impacts every sector of industry in every region of the world. The latest edition in the anthology of global handbooks from L&E Global, Employees vs. Independent Contractors features analysis is from 32 key jurisdictions across 6 continents and explains the distinction between contractors and employees, as well as the consequences of the re-characterisation of a contractor into an employee. It also offer tips to employers on best practices to minimise such risks and effectively establish an independent contractor relationship. **For an interactive report across many global jurisdictions click [here](#). For information specific to Australia please click [here](#).** Of course, also watch this space for any changes which may come in following the Australian federal election. Provided courtesy of Harmers Workplace Lawyers (a member of the L&E Global alliance).

AI and employees: AI stole my job!

AI technologies promise many organisational benefits, including the potential to transform the customer experience, create organisational efficiencies and foster economic growth. With all of this hype, it can be easy for organisations to overlook a crucial part of the success, or failure, of implementing new technology in its organisation – employees. For insights provided by Russell McVeagh New Zealand please click [here](#).

Whistleblowing reforms: Australia

Whistle While you Work

On 12 March 2019, royal assent was given to the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018, which amends several pieces of legislation, notably the Corporations Act 2001 (Cth). These amendments come into force on 1 July 2019. The amendments to the Corporations Act are intended to harmonise the protections and remedies available to whistleblowers, as well as introduce a requirement for certain companies to implement whistleblower policies. Article courtesy of K&L Gates. Click [here](#).

Extended private sector whistleblowing protection scheme, with amendments, becomes law

Reform and extension of private-sector whistleblowing laws has finally passed parliament, and will likely commence on 1 July 2019. Ben Motro, Special Counsel and Amrita Howell, Associate at Piper Alderman talk through the last-minute refinements that are part of the new scheme. Click [here](#) for the article.

#MeToo inspires employees to act: Dismissal of Coles manager upheld by Fair Work Commission

52-year-old Peter Angelakos was employed by Coles as the Duty Manager at its supermarket in Moranbah, Queensland. Two junior female employees made complaints about Mr Angelakos's inappropriate behaviour, including claims of sexual harassment. Due to the nature of the alleged conduct, Mr Angelakos was immediately stood down with pay. Read the article [here](#), courtesy of Lander & Rogers.

How to nurture an ageing workforce

It's a form of workplace discrimination that has long flown under the radar, but eventually it will catch up to us all. On any given day, when you open your newspaper, or scroll through your newsfeed, there will be a story about the gender pay gap, or a person who missed out on a job opportunity because of illness or their ethnic background. However, there is another type of unlawful discrimination that is equally as prevalent in our workplaces, and is often overlooked — ageism. Read the article [here](#), courtesy of Lander & Rogers.

Australia: Does 1 + 1 = Overtime? The Federal Court Says No

In the recent decision from the Federal Court of Australia *Lacson v Australian Postal Corporation* [2018] FCCA 511, the Court has confirmed that if an employee has two clearly distinct jobs with one employer, overtime or other penalty rates under an enterprise agreement are calculated separately on each job, not cumulatively on all hours worked for the one employer. Read the article [here](#), courtesy of FCB Workplace Law.

Managing difficult employee case reviews:

New Zealand: Bullying, WorkSafe and personal grievances

Recently WorkSafe (NZ) announced that it will 'typically only investigate bullying and harassment claims where there is diagnosis of serious mental harm'.

This significantly limits the complaints they will investigate. Although the clear acknowledgement of this is new, it is consistent with WorkSafe's actions to date. Article courtesy of Chapman Employment Relations – click [here](#).

Chapman Employment Relations will be facilitating our [Managing Difficult Employee Behaviour Training Masterclass NZ](#) (Auckland May 21; Wellington May 23; Christchurch May 28).

New Zealand: Sacked for flicking a ball of dough

Mr Sandhu had been a baker at Loaf Ltd in Penrose and had received a verbal warning regarding food and hygiene safety four months into his employment. A month later the HR Manager saw him flick a small ball of dough at another baker inside the bakery area where food is prepared. Article courtesy of Chapman Employment Relations – click [here](#).

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New Zealand: Employee awarded \$12K after being accused of threatening to injure a former worker

Mr Musson was dismissed from Mitre 10 Mega in Warkworth, after threatening violence against a former employee. A manager claimed to have heard Mr Musson “ranting on” to a colleague and within earshot of others about a former employee, JP, saying “that if he [JP] came back to work here he would punch his face in, knock his lights out”. Mr Musson was dismissed and he raised a personal grievance claiming the investigation was not sufficiently thorough, and the allegation was not sufficiently serious to warrant dismissal. Article courtesy of Chapman Employment Relations – click [here](#).

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Work Health & Safety insights:

Australia: Marie Boland’s Review of the model Work Health and Safety laws – industrial manslaughter, enhancing the Category 1 offence, and what it might mean for statutory safety duty holders

Since the start of this year, two directors have been sentenced to custodial terms for safety offences in relation to separate fatal incidents. In February this year, Marie Boland’s Review of the model Work Health and Safety laws – Final report (Report) was released which recommends including a new offence of industrial manslaughter in the model Work Health and Safety (WHS) Act. This article examines two of the Report’s key recommendations which reflect the changing health and safety regulatory environment, and what it might mean for statutory safety duty holders, including individuals and persons who conduct a business or undertaking. Article courtesy of Norton Rose Fulbright. Please click [here](#).

The role of psychological safety in high-performing workplaces

What is psychological safety? How do you make workplaces psychologically safer? FCB Workplace Law explores the benefits of psychologically safe workplaces and outlines some of the legal consequences for getting it wrong. To view the article click [here](#).

New Zealand: High Court clarifies reparations under the Health and Safety at Work Act

The High Court has released an important decision on the correct approach to reparation payments made under the Health and Safety at Work Act 2015 (HSWA). Reparations have been an area of some uncertainty and considerable interest, especially following the compensation orders made by the District Court in the Oceana Gold case, which exceeded \$800,000. Read the full article [here](#), courtesy of Russel McVeagh.

Update on case involving whether an employee can be compelled to give evidence in a coronial inquiry

The Full Court of the Federal Court of Australia (Full Court) handed down its decision on 15 February 2019 in *Helicopter Resources Pty Ltd v Commonwealth of Australia* [2019] FCAFC 25. The case involves an appeal to the Full Court by Helicopter Resources Pty Ltd (Helicopter) arising from a decision of the Federal Court. The matter relates to a Coronial inquest commenced in September 2017, and full information is available [here](#).

Worker sacked for taking Nurofen Plus - how does your D&A Policy stack up?

We have all been there — struggling to make it to work following a big night of Netflix, but having no choice but to either call in sick or reach for the painkillers to cure the insufferable headache from excess screen time. In fear of getting sacked for “chucking a sickie”, we take the pain killers — but is there a risk that you could get sacked anyway? Read the article [here](#), courtesy of Lander & Rogers.

REGULATOR INSIGHTS

For the latest Fair Work Commission 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

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

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

Sydney: 26th – 28th March 2019

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

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

Melbourne: 2nd – 4th April 2019

Managing Difficult Employee Behaviour one day Masterclass

NEW ZEALAND: **Auckland** 21st May 2019; **Wellington** 23rd May; **Christchurch** 28th May

AUSTRALIA: **Perth** 28th May 2019; **Melbourne** 30th May; **Brisbane** 4th June; **Sydney** 6th June

[Workforce Inclusion & Diversity Australia](#)

Moving beyond diversity and towards inclusion – identity, experience, values, and beliefs

Sydney: 27th – 29th May 2019

[Workplace Mental Health & Wellbeing Australia](#)

A signature event in the workplace mental health space, created to respond to the challenge of building mental resilience across a diverse range of public and enterprise organisations

Sydney: 27th – 29th May 2019