



Employment Law Matters

Welcome to the April edition of the Employment Law Matters newsletter – certainly an interesting time in Australia now that the federal election campaign is in full swing. Depending on the outcome of the election there could be a lot of change relating to workforce entitlements, including more emphasis on General Protections, sham contracting, and casual pay rates and conditions. Classification of contractors could be tightened, along with labour hire regulations. Enhanced workplace privacy regulations may be likely, along with a renewed focus on gender equity and gender parity in the workplace. On the I.R front, industry-wide agreements could also be on the table, along with restrictions about termination of enterprise agreements.

Our readers in New Zealand have just gone through similar changes resulting from their change in Government about 18 months ago. There's been a focus on the Industrial / Employment Relations front, with terms of collective agreements in focus and union rights enhanced. Other new laws enhance the benefits and conditions for employees and contractors, provide remedies for unjustified dismissals, more protections for vulnerable workers, and improve gender equity in the workplace. Most of these New Zealand laws take effect in May, and the level of change likely in Australia will become more evident after May 18th.

Meanwhile, in this month's edition:

- **Bite-sized Vox Pops: Leading Employment Lawyers provide on-point legal insight for you in short videos from the March 2019 HR Law Masterclass conference:**
 - Mental health and duty of care in the workplace: Clayton Utz
 - Casual conversion – changes to casual and part time entitlements: K&L Gates
 - Managing risks of ill and injured employees: Gadens
 - Terminations, unfair dismissal claims and common pitfalls: MinterEllison
 - **When management of ill or injured employees goes wrong**
 - **New whistleblowing laws require a compliant policy**
 - **Company directors held to be personally liable as accessories to underpayment of employees**
 - **New Zealand: The 'Triangular Employment' Bill is back before Parliament**
 - **New Zealand: High Court clarifies reparations under the Health and Safety at Work Act**
 - **Regulator insight:**
 - The latest Fair Work decisions
 - The latest news from the Fair Work Ombudsman
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BITE-SIZED TAKEAWAYS FROM LEADING EMPLOYMENT LAWYERS WHO SPOKE AT OUR RECENT HR LAW MASTERCLASS CONFERENCE IN SYDNEY:

Mental health and duty of care in the workplace

Liam Meagher, Senior Lawyer at Clayton Utz discusses duty of care, along with the importance of empathetic approaches to employees with mental illness. Liam raises the question of whether an employer needs to know about an employee's mental health issue. He also talks about considerations for seeking independent medical assessment, and the HR risks for terminating employees whilst they are away from work.

Casual conversion – changes to casual and part time entitlements

Lucy Shanahan, Special Counsel at K&L Gates provides insights on the important considerations relating to the new casual conversion clauses, which now cover the majority of awards. She provides suggestions about checks and balances to understand the likelihood whether your employees may be entitled to request casual conversion. Lucy also looks at reasonable business grounds for not granting casual conversion requests.

Managing risks of ill and injured employees

Emma Corcoran, Lawyer at Gadens discusses the heightened risks HR professionals and employers should consider when managing ill and injured workers - from the points of view of legal requirements, and shifting community expectations about how employers should act.

Terminations, unfair dismissal claims and some common pitfalls

Stacey Rolfe, Senior Associate at MinterEllison discusses use of casual employees, and what the Fair Work Ombudsman is focusing on. Stacey also looks at exposure to unfair dismissal claim risks by contractors. Should you have fixed term or maximum contract arrangements?

RECENT NEWS:

New whistleblowing laws require a compliant policy

Amendments to the Corporations Act 2001 (Cth) and the Taxation Administration Act 1953 (Cth) take effect from 1 July 2019 ushering in significant changes to Australia's whistleblowing laws.[1] Chief among the key changes is a requirement on public companies and large proprietary companies[2] to have a compliant whistleblowing policy by 1 January 2020. A failure to have such a policy will be a criminal offence attracting a maximum penalty of \$126,000. Continue reading [here](#). Courtesy of Norton Rose Fulbright.

Have you got what it takes to manage an ill or injured worker?

When management of ill or injured employees goes wrong, an aggrieved employee has many legal avenues to pursue their claim. Depending on the avenue taken, the compensation and/or damages that can be awarded to such an employee if successful, is significant. The recent case of Elaina Tito v Pilbara Iron Company (Services) Pty Ltd [2018] FWC 7469 highlights the considerable lengths that employers have gone to prior to terminating an employee on grounds of incapacity. In this particular case, the employer was able to successfully defend an unfair dismissal claim that was made in response to its decision. For the full article click [here](#), Courtesy of Coleman Greig.

Company directors held to be personally liable as accessories to corporate respondents' underpayment of employees in the Federal Circuit Court of Australia

The Federal Circuit Court of Australia recently ruled that two company directors were personally liable as accessories to the corporate respondents' contraventions because they were "involved", within the meaning of section 550 of the Fair Work Act 2009 (Cth) (FW Act), in the underpayment of employees. The two directors were "involved" because, despite the fact that they relied on others to perform day to day human resources functions, they knew the employees were not being paid their wages or salaries as they should have been. This decision serves as a timely reminder of the potential personal liability that managers can face with contraventions to Australia's workplace relations laws. Article courtesy of Harmers Workplace Lawyers – more [here](#).

New Zealand: The 'Triangular Employment' Bill is back before Parliament

The Employment Relations (Triangular Employment) Amendment Bill had its second reading in parliament on 3 April 2019. The Bill's second reading follows the Select Committee report on the Bill in late 2018. The Committee recommended a number of amendments to the Bill, which were approved (by a majority) at its second reading. This article explains what the Bill is, what the changes made by the Committee were, and what the Bill's impact is likely to be, should it pass into law. Courtesy of Russell McVeagh – click [here](#) for details.

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. In his recent decision, Justice Venning considered two appeals, one by Oceana Gold (New Zealand) Limited and one by Cropp Logging Limited. Article courtesy of Russell McVeagh – more information [here](#).

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

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

Embrace employee values, beliefs, identities and experiences for an inclusive, progressive and productive workplace

Sydney: 27th – 29th May 2019

Auckland: 28-30 August 2019 (website coming)

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

Health Sector Workforce conference

Foster future-focused health workforce solutions, for improved health outcomes

Sydney: 24th – 26th June 2019. Co-located with the Healthcare Innovation Summit

3rd annual Managing Ill & Injured Employees Masterclass NZ (website coming)

Manage your legal HR risks, workplace mental health scenarios, return-to-work & rehabilitation processes

Auckland 30th July 2019; **Wellington** 5th August; **Christchurch** 6th August