



# Employment Law Matters

## Welcome to the May edition of the Employment Law Matters newsletter

Post election in Australia, with clearer direction on the way forward we cover some of the most topical HR risk issues facing employers. Whilst in Australia we will not be facing the wholesale change that the pollsters predicted, wide ranging new HR laws have come in to effect this month in New Zealand.

In this month's edition:

- **Potential prosecution by a safety regulator for poor workplace culture** – is it coming to a workplace near you?
- **The 'untouchable' employee and the danger of playing office politics**
- **International:** Country by country employment law overviews
- **Australia:** Annualised wages in modern awards – a new approach
- **Are confidential wage rates in enterprise agreements a thing of the past?**
- **New code of practice for managing the mental health of FIFO workers:** a first of its kind in Australia
- **Staying Ahead of the Curve:** Overcoming workforce management challenges in the aged care industry
- **Health workforce insights** for health, social, disability or other service provision organisations
- **#MeToo inspires employees to act:** Dismissal of a Coles manager upheld by the Fair Work Commission
- **New Zealand:** New obligation for employers with collective bargaining agreements
- **New Zealand:** Wide ranging provisions from the Employment Relations Amendment Bill have now come into effect, but do you need clarification on the new laws?
- **Regulator and decisions insights:**
  - The latest Fair Work decisions
  - The latest news from the Fair Work Ombudsman
  - The latest Employment Court of New Zealand decisions

## **Potential prosecution by a safety regulator for poor workplace culture – is it coming to a workplace near you?**

In December 2018, the Review of the Model Work Health and Safety Laws: Final Report (the Review) was handed down. Within the Review, one key recommendation was to amend the model work health and safety (WHS) regulations to specifically require businesses to identify and effectively manage the risks of psychological injury in the workplace. This represents a considerable shift in policy. Click [here](#) for these insights, provided by Piper Alderman.

## **The 'untouchable' employee and the danger of playing office politics**

Imagine being forced to reinstate a senior employee you sacked three years ago, pay them \$1.1 million in back pay, and not have the ability to take any action against them once they are back in the office. This has become a reality for the power solutions company, Cummins Group, following a recent Federal Circuit Court decision where Judge Wilson warned that any inappropriate behaviour following the decision may have serious consequences. Full insights [here](#), courtesy of **K&L Gates**.

## **International: Country by country employment law overviews**

Do you have international operations and need current insights on key HR/employment laws in those jurisdictions? L&E Global's employment law overviews 2019-2020 global edition has now been released, and can be viewed [here](#). Reproduced with permission of **Harmers Workplace Law**, a member of L&E Global.

### **Australia: Annualised wages in modern awards – a new approach**

The model clauses proposed by the Fair Work Commission are fundamentally different from the previous clauses, and indeed from any regulation previously proposed. They require a radically different approach. They are extremely prescriptive. They will impose a number of significant administrative burdens on employers covered by those awards. These administrative burdens will undoubtedly impact the utility of using annualised salaries in many workplaces, particularly where working hours are variable from pay cycle to pay cycle. Article courtesy of **Herbert Smith Freehills**. Click [here](#).

### **Ssshhhh: Are confidential wage rates in enterprise agreements a thing of the past?**

In a recent Full Bench decision, it was found that the Commission lacked the necessary power to redact the wages rates in the published version of an enterprise agreement. This is the first Full Bench decision to consider the proper construction of sections 601(4)(b) and 594(1) of the Fair Work Act 2009 (Cth) (FW Act). This decision is particularly important for those organisations who currently have confidential wages rates in their agreements and those looking to have an agreement approved with confidential wage rates. Consideration will now have to be given to the effect of an enterprise agreement being published in full. Article courtesy of **Vincent Young Lawyers**. Click [here](#).

### **New code of practice for managing the mental health of FIFO workers: a first of its kind in Australia**

The Western Australian Department of Mines, Industry Regulation and Safety, in conjunction with the Commission for Occupational Safety and Health and the Mining Industry Advisory Committee, has released a Code of Practice "Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors" (Code).[1] The Code recommends implementing a risk-based approach to prevent and manage harm from psychosocial hazards and risk factors in the workplace. The Code is the first of its kind in Australia. More information [here](#) – courtesy of **Norton Rose Fulbright**.

### **Staying ahead of the curve: Overcoming workforce management challenges in the aged care industry**

This article from **FCB Workplace Law** explores how aged care providers can gain a competitive advantage in both employment and commercial spheres by embracing workplace flexibility, being proactive and responsive to change, and getting the balance right between compliance and productivity. Click [here](#) for the article.

**Are you a health, social, disability or other service provision employer who could learn from the above article?** If so, you may also be interested in the [Health Sector Workforce conference](#) happening in **Sydney, June 25th - 26th**. Attend to hear from practitioners who are creating a new wave of transformation within their organisation to drive a successful workforce strategy and enable a high-performing culture, committed to delivering better patient outcomes.

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

Two junior female employees made complaints about inappropriate behaviour by a Duty Manager, including claims of sexual harassment. Due to the nature of the alleged conduct the Duty Manager was immediately stood down with pay. Then an investigation commenced into the conduct and an additional six employees came forward and made complaints about inappropriate behaviour. Read more about what ensued, including how unfair dismissal proceedings fared in the Fair Work Commission. Article courtesy of **Lander & Rogers** [here](#).

### **New Zealand: New obligation for employers with collective bargaining agreements**

From 6 May 2019 employers must provide certain new employees a copy of the just released 'Active Choice Form' (Form). The purpose of the Form is for employees to notify their intent to join the union and/or object to their information being provided to the union(s). More information on how to comply is available at the following two links:

- **Simpson Grierson** article [here](#).
- **Buddle Findlay** article [here](#).

### **New Zealand: Wide ranging provisions from the Employment Relations Amendment Bill have now come into effect, but do you need clarification on the new laws?**

The popular 1 day **HR Law Masterclass conference NZ** conference will be launched soon – Up to 10 Lawyers at each location will discuss insights and case law on all key HR risk topics.

**Wellington** September 10; **Christchurch** September 12; **Auckland** September 17

### **NEW: Add-on pre-conference training: Workplace Investigations workshop (coming soon)**

Plan and manage effective investigations. Facilitated by leading New Zealand law firm Simpson Grierson.

**Wellington** September 9, **Christchurch** September 11, **Auckland** September 16

To stay informed please email [info@employmentlawmatters.com](mailto:info@employmentlawmatters.com) or phone us on **+64 9 8909 499**.

Special rates apply for people attending both the HR Law Masterclass conference & workplace investigations training day.

## REGULATOR INSIGHTS

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

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

For the latest **Employment Court of New Zealand** decisions 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

#### [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](#)

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

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

#### [Workforce Inclusion & Diversity conference NZ](#)

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

**Auckland**: 28-30 August 2019

### ***Being released soon: New Zealand***

#### **HR Law Masterclass conference NZ**

Up to 10 Lawyers presenting on all key HR risk topics in 1 day.

**Wellington** September 10; **Christchurch** September 12; **Auckland** September 17

#### **Workplace Investigations workshop NZ**

Plan and manage effective investigations

**Wellington** September 9, **Christchurch** September 11, **Auckland** September 16

### ***Being released soon: Australia***

#### **HR Law Masterclass conference Australia**

Up to 12 Lawyers presenting on all key HR risk topics in 1 day.

**Brisbane** 19 September; **Sydney** 24 September; **Melbourne** 26 September; **Adelaide** 1 October; **Perth** 9 October

**Plus a new pre-conference workshop:**

**Workplace Investigations workshop**

Plan and manage effective investigations

**Brisbane** 18 September; **Sydney** 23 September; **Melbourne** 25 September; **Adelaide** 30 September; **Perth** 8 October

Register your interest for any of the above at: [info@employmentlawmatters.com](mailto:info@employmentlawmatters.com)