



Employment Law Matters

Welcome to the August 2019 edition of the Employment Law Matters newsletter

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Regulator and decisions insights:

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- The latest news from the Fair Work Ombudsman
- The latest Employment Court of New Zealand decisions

Events: up to the minute insights and education

Personal leave is not accrued in hours but days

A day means a day: The Full Federal Court hands down important decision for accrual and payment of paid personal leave. On August 21st the Full Federal Court confirmed that all employees (including part-time employees) are entitled to 10 "working days" of personal/carer's leave per year under the Fair Work Act, regardless of how many hours the employees work per day or how many days are worked per week. The decision will have wide-ranging implications for employers, the overwhelming majority of whom do not presently accrue personal/carer's leave in this manner. More information and analysis of what this means for employers is [here](#). Article courtesy of **Australian Business Lawyers & Advisors**.

Should NDAs be restricted in sexual harassment cases?

In Australia the general practice for resolving disputes (other than going to court) has a standard formula. However, the inclusion of secrecy clauses in sexual harassment settlement agreements has come under scrutiny around the world, and workplaces need to change the culture of silence around sexual harassment. Legal experts offer their advice. Legal experts from **Lander & Rogers** offer their advice [here](#).

Severe punishment on the horizon for employers under potential new wage theft laws

In Federal Parliament on Wednesday, July 24, the Attorney General and Minister for Industrial Relations, Christian Porter MP, said that the Government had “zero tolerance” for wage theft, with the Prime Minister, Scott Morrison, stating that the Attorney General was working on laws tackling worker exploitation, which may even extend to criminalising wage theft. These comments during question time follow statements earlier in the week from the Attorney General that the appropriateness of the current penalties for underpayment of wages would be examined by the Government as part of its review of the industrial relations system. Article courtesy of **Norton Rose Fulbright** [here](#).

Initial considerations of a workplace investigation

Is an investigation needed? If so, what style of investigation to use? Here is a checklist of eight initial considerations when determining if an investigation is required, and if so what style of investigation to use. Article [here](#), courtesy of leading investigations specialist **Q Workplace Solutions**.

Q Workplace Solutions are facilitating our national [Workplace Investigations workshop](#) series, to help you plan and plan and manage effective investigations

Brisbane 18 September; Sydney 23 September; Melbourne 25 September; Adelaide 30 September; Perth 8 October. Please click [here](#) for more information.

Mental health study could pave the way for better prevention and more resilient workers

Released earlier this year, research carried out by the UNSW Workplace Mental Health Research Team and **The Black Dog Institute** highlights how organisations can be more proactive to identify and protect staff at risk of PTSD and depression. Please click [here](#) to read.

Why sacking senior executives is a risky business

Since the enactment of the ‘adverse action’ provisions under the Fair Work Act 2009(Cth) (FW Act) some 10 years ago, it is far more difficult for an employer to lawfully dismiss an executive or senior manager. Why?

Norton Rose Fulbright examines the upwards trend of senior, and highly paid, individuals commencing adverse action claims to challenge their dismissal under Adverse Action claims in this article [here](#).

Safety snapshots

To read about recent developments and trends in safety over the past couple of months please click [here](#) and for the Safety Snapshot, provided by **Herbert Smith Freehills**.

- Review of model WHS laws
- A push for industrial manslaughter offence
- Review of safety in the offshore oil and gas sector
- WA WHS Bill update
- Increasing focus on individuals and increased penalties, including imprisonment
- Technology challenging the parameters of safety
- A Safe Work Australia (SWA) update

Old Enterprise Agreements and class actions: Danger! Danger! Warning Warning!

Class actions, often funded by litigation funders, are a recent but thriving part of the employment law landscape. They significantly increase the risk of underpayment issues coming home to roost, because employees and ex-employees can join in at little cost and pursue claims which they were highly unlikely to litigate as individuals, with much enhanced bargaining power. Underpayments arising from misapplied or outdated enterprise agreements are a fertile field for class actions.

For more information, courtesy of **Coleman Greig**, please click [here](#).

Full Bench quashes ruling that CCTV footage of employee’s serious misconduct was inadmissible

The Full Bench of the Fair Work Commission has quashed a Commissioner’s ruling that a Krav Maga Institute’s installation of CCTV devices failed to comply with the Workplace Surveillance Act 2005(NSW) (“WS Act”) and that the CCTV footage it had obtained had been illegally or improperly obtained. Article courtesy of **Harmers Workplace Lawyers**. Click [here](#).

Working Class.. Independent Contractor

When, in 1985, Jimmy Barnes immortalised the Australian steeltown disciple, blue denim in his veins, a ‘working class man’, he sure wasn’t singing about a bike-riding, point-to-point self-employed food delivery technician. FCB Workplace Law have been following the developments in business practice and case law in Australia that examine non-standard employment, including workers in the gig economy. For insights, please click [here](#).

New Zealand: **for essential HR law updates, including the expansion of employees' rights under triangular employment relationships** there's still time to register for September's HR Law Masterclass conference in Auckland, Wellington & Christchurch. Click [here](#) for details.

New Zealand: **Windfalls for wayward employees in NZ?**

Recent media reporting would have you believe employees are receiving windfall payments for minimal and questionable work. Headlines can be deceiving. Consider for a moment - "Construction company to pay \$17,000 to builder with a drinking problem". Or "Café worker awarded \$9,000 for a day's work". **Buddle Findlay** analyses how actions or inactions of the employer, rather than the conduct of the employee, has contributed to high awards. Click [here](#).

New Zealand: **What could the legalisation of cannabis mean for NZ employers?**

If cannabis is legalised in New Zealand, employers will need to strike a balance between encroaching on the lawful activities employees might engage in during their own time, and ensuring employees are safe and productive at work. Most of us spend a significant amount of our adult lives at work. Arguably employers can only control what an employee does in their personal time as far as those activities impact their ability to safely and productively perform their role. Buddle Findlay looks at impairment issues, employer responses, plus drug and alcohol policies to have in place. Click [here](#).

New Zealand: **What you really need to know about the recent NZ Mitre 10 'living wage' decision**

The recent Employment Relations Authority (ERA) decision and subsequent upholding of this decision by the Employment Court (Court) has gained a significant amount of media attention – with headlines such as "Mitre 10 Workers Win Living Wage Case". However, these articles have misrepresented the case. The main issue of this case is around good faith in bargaining for collective agreements and the application of section 50J of the Employment Relations Act 2000 (Act). **Lane Neave** investigates [here](#).

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

HR Law Masterclass conference

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

Australia: Sydney 24 September; Melbourne 26 September; Adelaide 1 October; Brisbane 3 October; Perth 9 October

New Zealand: Wellington September 10; Christchurch September 12; Auckland September 17

Workplace Investigations workshop

Plan and manage effective investigations

Australia: Sydney 23 September; Melbourne 25 September; Adelaide 30 September; Brisbane 2 October; Perth 8 October

New Zealand: Wellington September 9; Auckland September 16

[Managing Ill & Injured Employees](#)

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

Brisbane 12 November; **Melbourne** 19th November; **Perth** 20th November; **Sydney** 21st November

[Workforce Inclusion & Diversity conference Australia](#)

The biggest D&I event, bringing 100+ delegates who are ready to advance their inclusion and diversity programmes for positivity, productivity and profitability in the workplace

Melbourne: 23-25 October 2019

[Workplace Mental Health & Wellbeing New Zealand](#)

Hear from and network with leading mental health experts, including several award-winning wellbeing program directors

Auckland: 22-24 October 2019

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