



Employment Law Matters

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

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Events: up to the minute insights and education

The dangers of digital dismissals

Termination of employment by text message found to be "unconscionably undignified", even for small businesses. Two recent decisions from the Fair Work Commission serve as a warning to employers that advising employees via text message that their employment has been terminated is rarely appropriate or considerate. Article courtesy of **Lander & Rogers**. Please click [here](#).

The WHS Response to psychological health and an employer's obligations

Psychosocial hazards and work-related stresses are amongst the most challenging workplace health and safety issues. In recent times, there has been an increased focus by WHS regulators on 'mentally healthy' workplaces. Organisations are expected to have appropriate systems in place to eliminate or reduce psychosocial hazards, such as bullying and harassment, to effectively respond to issues and provide safe and healthy workplaces. Courtesy of **Norton Rose Fulbright**, this article looks at primary obligations, how to approach psychosocial health and safety matters, and reviews some case law. Please click [here](#).

Norton Rose Fulbright are also delivering the Employment Law Matters 'Managing Ill & Injured Employees' workshop around Australia in November. This one day workshop will look at injury and illness management scenarios, including mental health related illness. For more information and to take advantage of the 4th October early-bird (saving \$300) please click [here](#).

11 questions for HR teams when reviewing the state of your employment law basics

With most businesses wrapping up their financial compliance obligations required by the Australian Tax Office, it is the perfect time to review your employer obligations and the human resources and industrial relations aspects of your business. As we move into another busy HR period with Christmas leave, public holidays, extra casual hires and of course the work/client functions, set some time aside to review the compliance environment you're operating within. This article, courtesy of **Australian Business Lawyers & Advisors**, poses 11 key questions to ask your HR team when reviewing the state of your employment law basics. Please click [here](#).

Performance management: Getting it right

Managing employee performance effectively will often mean the difference between okay outcomes and good ones. Performance management all too often is seen as 'dealing with poor performers' but it needs to be seen more holistically to get results. How employees perform day to day is conditioned by the culture they work in, the behaviours you have allowed them to learn and your approach to leadership. Click [here](#) for a webinar on performance management by **Australian Business Lawyers & Advisors**, plus a handy PIP templates.

Crunch(ie) time for leave entitlements: Win for Cadbury shift workers could impact leave entitlements for many Australian workplaces

The Full Federal Court has confirmed how the entitlement to 10 days of paid personal/carer's leave is quantified under section 96(1) of the Fair Work Act 2009(Cth) (FW Act). In a 2-1 decision, the Court in *Mondelez v AMWU* [2019] FCAFC 138(Mondelez) ruled that employees are entitled to 10 days of personal/carer's leave per year, regardless of the pattern of hours worked by employees. Mondelez represents an important shift in the way that personal/carer's leave has previously been understood to accrue, and is likely to have significant ramifications for employers and for any of their employees working more than 7.6 "ordinary hours" per day (such as shift workers). For analysis and a review of the decision, click [here](#). Article courtesy of **Maddocks**.

ASIC Releases Draft Whistleblower Policy Guide

In August, ASIC released a draft Regulatory Guide for Whistleblower policies. The draft guide comprehensively sets out the information that must be included in a company's whistleblower policy, as well as good practice guidelines on establishing, implementing and maintaining a whistleblower policy. The requirements are extensive, and the regulator has stated its expectation that companies have a "robust" yet "clear" policy to effectively deal with disclosures. Article courtesy of **K&L Gates**. Please click [here](#).

New Zealand: A turning point in triangular employment relations

It is currently full steam ahead in the world of employment legislation and businesses who make use of labour-hire arrangements should take note. The Employment Relations (Triangular Employment) Amendment Bill passed its third and final reading on 27 June 2019, and was promptly given royal assent the following day. The Employment Relations (Triangular Employment) Amendment Act 2019 (Act) will come into force on the 27th of June 2020, unless an earlier date is appointed by the Governor-General. The Act creates new clauses which will be inserted into the Employment Relations Act 2000. To understand what is in store please click [here](#). Article courtesy of **Lane Neave**.

New Zealand: What to do when you suspect an employee is lying during a disciplinary process

The Court of Appeal case of *George v Auckland Council* [2014] NZCA 209 looked specifically at the situation where an employee was untruthful in a disciplinary process. Ms George held a senior position at the Council. Ms George recruited a casual employee and the Council believed that Ms George did not follow the Council's recruitment policy. The Council initiated a disciplinary process. The Council became concerned about the truthfulness of the explanations that Ms George gave. The Council advised her that "If it becomes evident that your explanation has not been truthful then this may itself constitute serious misconduct." The process was then expanded to include the alleged untruthfulness. For more on the process, and key points to remember please click [here](#). Article courtesy of **Lane Neave**.

New Zealand: Compensation for employee availability

An Employment Court decision has confirmed if employers want their employees to be available outside of their normal working hours, then they must pay for their availability, even if they don't do any extra hours. NZ Post was taken to the Employment Court by the Postal Workers Union, challenging them on the question of whether they could require their employees to work additional hours, on top of their normal hours, and not pay them for keeping themselves available. To understand provisions in the Collective Agreement, the decision and legislative

requirements regarding compensation for availability please click [here](#). Article courtesy of **Chapman Employment Relations**.

New Zealand: What employers need to check before remunerating employees with cryptocurrency

Employers now have greater clarity regarding IRD's approach to the taxation of employee remuneration where some or all of the remuneration is in cryptocurrency, following a recent run of IRD rulings. While this means that key tax elements of remunerating staff in cryptocurrency are now clearer, what is not so clear is the interplay with employment legislation covering how salaries, wages and holiday pay must be paid. In addition, payroll systems may not be able to deal with cryptocurrency, and may need further development to cater for this. For more on the rulings, and IRD's approach to the taxation of crypto-remuneration please click [here](#). Article courtesy of **Simpson Grierson**.

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](#): **There's still time to book for Adelaide** 1 October; **Brisbane** 3 October; and **Perth** 9 October

Workplace Investigations workshop

Plan and manage effective investigations

[Australia](#): **There's still time to book for Adelaide** 30 September; **Brisbane** 2 October; and **Perth** 8 October

[Managing Ill & Injured Employees Workshop](#)

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

Women in Leadership Summits

[Adelaide](#): 23-25 October 2019

[Canberra \(Public Sector\)](#): 29-31 October

[Perth](#): 2-3 December 2019

[Brisbane](#): 2-4 December 2019

[Melbourne](#): 4-6 December 2019

[Wellington](#): 4-6 December 2019

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