



Employment Law Matters

Welcome to the November-December 2019 edition of the Employment Law Matters newsletter!

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- The latest Employment Court of New Zealand decisions

EVENTS:

- Up to the minute insights and education

LEGAL INSIGHT – Key takeaways from leading employment lawyers who spoke at our recent HR Law Masterclass Conference:

Tim McDonald from **Moray & Agnew** provides some key lessons for HR to minimise **unfair dismissal risks**. [Watch here.](#)

Jane Silcock from **Clayton Utz** looks at the **unique and changing challenges** of managing the modern workplace. [Watch here.](#)

Amy Walsh from **Minter Ellison** discusses a couple of key take-aways for educating your operational and senior managers, which help **reduce adverse actions risks**. [Watch here.](#)

Tim Frost from **HWL Ebsworth** discusses some current observations regarding **sexual harassment, harassment and bullying**. [Watch here](#).

The Federal Court of Australia finds that reliability and credibility issues are insufficient to discharge reverse burden of proof

The Federal Court of Australia has upheld an appeal from the Industrial Magistrates Court of Western Australia, finding that an employer (“Employer”) had failed to disprove underpayment allegations made by a pair of former employees (“Employees”). In doing so, the Court considered section 557C of the Fair Work Act 2009 (Cth) (“FW Act”), which places the burden of proof on an employer to disprove allegations of certain contraventions of the FW Act in circumstances where the employer has failed to keep and maintain proper records, or give proper pay slips to its employees. **Harmers Workplace Law** [investigate here](#).

Federal Government eyes the criminalisation of ‘wage theft’

Media reports of ‘wage theft’ by household Australian names have put into sharp focus the issue of wage compliance and the adequacy of penalties for contravening workplace laws. While the deliberate underpayment of wages is generally confined to a small number of employers operating in lower-skilled industries, the complex nature of Australia’s workplace relations legislation means that employers seeking to do the right thing by their employees can inadvertently breach obligations. **Maddocks** unpacks the issue and looks at the potential consequences [in this article here](#).

Updates on Industrial Manslaughter laws in Australia

- State by state: An update on Industrial Manslaughter laws in Australia

For the article, click [here](#). Courtesy of **Herbert Smith Freehills**.

- Industrial Manslaughter laws introduced to Victorian parliament.

For this two part look at the Bill, click [here](#) (part 1) and [here](#) (part 2). Courtesy of **Norton Rose Fulbright**.

Managing leave lawfully: a web cast

Redundancies and restructuring in a business are never easy to carry out and they usually come about as a result of significant change in the business. If harnessed correctly the process can be a powerful tool within the change management evolution. However, when done poorly, with little planning or communication to the whole business, it can severely damage the culture of a business very quickly. Not to mention, potentially exposing your business to unfair dismissal claims.

This [free one hour webcast](#) analyses the processes to adopt when looking at making redundancies, plus tools to manage these tricky decisions in your business. Courtesy of **Australian Business Lawyers & Advisors**.

The webcast features leading Lawyer **Joe Murphy**, who will also be speaking at the Sydney day of the [HR Law Masterclass Conference](#) in March 2020.

How to ensure loaded rates of pay pass the BOOT

In June 2018, the Fair Work Commission handed down its decision in Loaded Rates Agreements [2018] FWCFB 3610 (“the Loaded Rates in Agreements Case”). Following the decision, on 16 October 2019, the Fair Work Commission approved the ALDI Foods enterprise agreements for ALDI’s Prestons and Stapylton sites, which both contain loaded rates. Courtesy of **Piper Alderman**, click [here](#) for the details.

Stupid comes in every flavour: real life HR and legal scenarios

These stupid events actually happened. They are real, but the names have been changed. **FCB Workplace Law** unpack the scandals and scenarios they have seen and dealt with, [in this article here](#).

NEW ZEALAND UPDATES

Avoid the Holidays Act headache

With the holiday season fast approaching, many employers may be wanting the gift of new holidays legislation. The current Holidays Act has proven tricky to comply with for many employers. Unfortunately, any relief is some time away - at least another Christmas or two. The Government set up a Taskforce last year to review the legislation and explore options for a new way forward. The Taskforce reported to the Minister in September after being delayed several months but the report is not yet public. Once the shape of the reform is announced it will work through the usual parliamentary process. There will likely be a considerable lead-in time before any new legislation comes into force to enable employers to adapt to the new requirements and transition their payroll systems.

In the meantime, employers need to comply with the current Act, and failure to comply may result in costly remediation work that could go back six years (or more). To assist ahead of these holidays, **Buddle Findlay** summarise some of the relevant provisions that may apply [in this article here](#).

The government's proposals for fair pay agreements move forward

After a period of quiet, the Government has revealed plans to move ahead with a Fair Pay Agreements system. On 17 October 2019, Immigration and Workplace Relations and Safety Minister, Hon Iain Lees-Galloway, announced the launch of two consultations, which respectively seek feedback on the following issues: How to design Fair Pay Agreements system to protect workers in vulnerable sectors; and How to tackle temporary migrant worker exploitation. Read all about it [in this article here](#), courtesy of **Kensington Swan**.

Further consultation on the Fair Pay Agreements system - your submissions sought

The Government is now seeking feedback from businesses, employees and the public on options for the design of its intended Fair Pay Agreements (FPA) system. Feedback is sought in the form of responses to questions regarding aspects of how an FPA system could work in practice. **Bell Gully** analyses [here](#).

When is a fixed term unlawful?

The requirements for fixed-term employment agreements often catch employers out. To stay on the right side of the law, employers must advise fixed-term employees of how their employment will end, and the reasons for this. Importantly, the reasons must be genuine, based on reasonable grounds. The Employment Court has recently provided further clarity on this in *Morgan v Tranzit Coachlines Wairarapa Ltd* [2019] NZEmpC 66. Please [click here for more details](#), courtesy of **Buddle Findlay**.

New immigration rules: A streamlined process or more red tape?

On 17 September, the Government announced significant changes to temporary work visas which will have a major impact on employers' recruitment processes where they hire migrant workers. While most of the changes are deferred until 2021, it will be critical that employers keep abreast of these changes and plan ahead for possible impact on their operations. **Bell Gully** analyses the key proposed changes [in this article 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 Australia](#)

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

Sydney: March 11; **Melbourne:** March 17; **Perth:** March 19; **Brisbane:** March 24; **Canberra:** March 26

[HR Law Masterclass Conference New Zealand](#)

New Zealand's leading and original employment law event series

Wellington: March 3; **Auckland:** March 5

[Effectively Managing Performance Workshop Australia](#)

Practical and legally effective approaches to performance processes

Sydney: March 10; **Melbourne:** March 16; **Perth:** March 18; **Brisbane:** March 23; **Canberra:** March 25

[Performance Management Processes & Risks Workshop New Zealand](#)

An interactive course which will help you unravel the complexities of managing performance

Wellington: March 2; **Auckland:** March 4

[Workforce Analytics & HR Data Conference Australia](#)

Revolutionising human resources through workforce analytics & HR data insights

Sydney: 19-21 February 2020

[Workforce Analytics & HR Data Conference New Zealand](#)

Revolutionising human resources through workforce analytics & HR data insights

Auckland: 26-28 February 2020

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