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BUSINESS BULLETIN

AUTUMN 2023

SECURE JOBS, BETTER PAY changes to Australian workplace laws

The Federal Government's first wave of changes to workplace laws has started to take effect, with the Fair Work Legislation Amendment (Secure Jobs, Better Pay), receiving Royal Assent 6 December 2022. The Legislation makes changes to the existing workplace laws and introduces a range of new workplace laws. Some of the changes are effective from 7 December 2022, while other changes will be progressively introduced over the course of the 2023 calendar year. Following is some of the changes you need to be across if you have employees.

Pay Secrecy - Effective 7 December 2022

The Fair Work Act now gives employees' rights to share, or not share, information about their pay and their employment terms and conditions, that would be needed to work out their pay, such as their hours of work. Employees also have the right to ask other employees about their pay and employment terms and conditions that would be needed to work out their pay, such as their hours of work. These new rights apply after 7 December 2022 but do have some transitional arrangements in place to deal with existing employment contracts with a final sunset date of 7 June 2023. It is important that all employers review their employment contracts to understand whether changes are needed

KEY DATES

21 MARCH

February monthly Activity Statements due for lodgement and payment

21 APRIL

March monthly Activity Statements due for lodgement and payment

28 APRIL

Due date for 3rd Quarter Activity Statements (if lodging by paper)

21 MAY

April monthly Activity Statements due for lodgement and payment

21 MAY

FBT annual return - due for lodgement for some employers

26 MAY

Due date for 3rd Quarter Activity Statements (if using a BAS Agent or Tax Agent)

28 MAY

Due date for Superannuation Guarantee Charge Statement (if you failed to meet your 28 April contribution obligations on time)

for any new employment contracts and what needs to be changed before 7 June 2023. The Fair Work Ombudsman has the power to take enforcement action including starting court proceedings for alleged breaches and employers in breach could face penalties.

Job ads - Effective 7 January 2023

Advertisements for jobs can't include pay rates that would breach either the Fair Work Act or a Fair Work Instrument (such as an award or enterprise agreement). In essence this means that job ads cannot include pay rates that undercut an employee's minimum entitlements. Where an employer is advertising for pieceworker positions, where the employee would also be entitled to a periodic rate of pay (for example an hourly or weekly rate of pay) then the ad would need to either specify the pay rate that applies, or state in the ad that the periodic pay rate would apply. Once again employers can face fines for breaching the provisions.

Gender equality measures and small claims process

There are a raft of changes in relation to gender equality measures including:

- There are new protected attributes at work regarding breastfeeding, gender identity and intersex status which prohibits employers from taking adverse action against employees because of these attributes. This change is effective from 7 December 2022.
- With effect from 6 March 2023, a person or company will also be liable for sexual harassment committed by an employee or agent in connection with work, unless they can prove they took all reasonable steps to prevent the sexual harassment.
- With effect from 6 June 2023, there will be changes as to how an employer needs to respond to requests for an extension of unpaid parental leave.
- With effect from 1 July 2023 the monetary cap for recovering unpaid entitlements via the small claims process will increase from \$20,000 to \$100,000.

Flexible Work - Effective 6 June 2023

For some time, certain employees have

had the ability to request flexible working arrangements from their employer, such as those aged 55 or over and parents or carers of a child who is under school age. The ability to request flexible working arrangement has been widened to also include:

- Employees who are pregnant
- Employees, or a member of their immediate family or household who are experiencing family and domestic violence



Employers will have new obligations before they can refuse a request from an employee for a flexible working arrangement including:

- Discussing the request with the employee
- Making a genuine effort to find arrangements to accommodate the employee's circumstances
- Consider the consequences for the employee if they were to refuse
- Provide a written response that includes an explanation of the reasonable business grounds for refusing the request if that were to apply, other changes the employer is willing to make that would accommodate the employees circumstances and information about referring a dispute to the Fair Work Commission

Key Start Dates Summary

Following is a handy table produced by the Fair Work Ombudsman summarising the changes and the effective dates. As an employer you should keep an eye on the key dates and consider any changes to procedures, HR Manuals or employment agreements that need to be made.

SECURE JOBS BETTER PAY

key start dates

2022

7 December

- ✓ Changing the objectives in the Fair Work Act to include promoting:
 - job security
 - gender equality
- ✓ Prohibiting pay secrecy
- ✓ New protected attributes under the Fair Work Act:
 - breastfeeding
 - gender identity
 - intersex status
- ✓ Sunsetting of 'zombie' agreements
- ✓ Fair Work Commission has powers to correct errors in enterprise agreements
- ✓ Changes to how bargaining can be started through the Fair Work Commission
- ✓ Updates to rules for agreements to allow the Fair Work Commission to terminate an agreement after its nominal expiry date

2023

7 January

- ✓ Job advertisements can't include pay rates that would breach:
 - the Fair Work Act, or
 - a fair work instrument (such as an award or enterprise agreement)

6 February

- ✓ Abolition of the Australian Building and Construction Commission (ABCC)

6 March

- ✓ Prohibition of sexual harassment in the workplace
- ✓ Creation of 2 expert panels at the Fair Work Commission to focus on pay equity and the care and community sector

6 June

- ✓ Changes to agreement making
- ✓ Increased access to multi-employer bargaining through:
 - single-interest bargaining
 - supported bargaining
 - cooperative bargaining
- ✓ Changes to extending unpaid parental leave, including giving the Fair Work Commission the power to deal with disputes
- ✓ More employees being able to access flexible working arrangements
- ✓ Abolition of the Registered Organisations Commission (ROC), with its functions moving to the Fair Work Commission

1 July

- ✓ Creation of the National Construction Industry Forum
- ✓ Increase in monetary cap for recovering unpaid entitlements via the small claims process

6 December

- ✓ Limiting the length of fixed term contracts, with the Fair Work Commission having powers to deal with disputes
- ✓ Requirement to give Fixed Term Contract Information Statement



Fair Work
OMBUDSMAN

For more information and details about these changes, including transitional arrangements, visit fairwork.gov.au/sjbp

Last updated 21 December 2022

Paid Family and Domestic Violence Leave

Paid family and domestic violence leave is now in effect across Australia, replacing the existing unpaid leave for those affected by family and domestic violence.

Effective 1 February 2023, Employees of non-small business employers (employers with 15 or more employees) can now access 10 days of paid family and domestic violence leave each year. Effective 1 August 2023, employees of small business employers (employers with less than 15 employees) will also have the same access.

Under the new provisions, family and domestic violence means violent, threatening or other abusive behaviour by an employee's close relative, a current or former intimate partner, or a member of their household that both:

- seeks to coerce or control the employee; and
- causes them harm or fear.

Employees who are experiencing family and domestic violence can take this paid leave if they need to do something to deal with the impact of family and domestic violence. This could include, for example, the employee:

- making arrangements for their safety, or the safety of a close relative (including relocation)
- attending court hearings
- accessing police services
- attending counselling
- attending appointments with medical, financial or legal professionals.

Entitlement

All employees in the Fair Work system (including part-time and casual employees) will be entitled to 10 days of paid family and domestic violence leave in a 12-month period.

It is important to note that this entitlement also applies to casuals. While casuals are, in some cases, not included in the head count for determining whether an employer is small or non-small, they are entitled to paid family and domestic violence leave.

It is also important to note that casual and part-time employees have the full 10-day entitlement. It is not apportioned or pro-rated in any way. Employees are entitled to the full 10 days upfront, meaning they won't have to accumulate it over time. It resets on the employee's work anniversary but doesn't accumulate from year to year if it is unused.

Once an employee becomes entitled to this paid leave, it replaces their previous entitlement to 5 days of unpaid family and domestic violence leave.

Employers and employees should also check any agreement that applies to them, to see if it provides any additional entitlements or conditions for dealing with family and domestic violence.

Payment for leave

Full-time and part-time employees are paid their full pay rate for the hours they would have worked if they weren't on leave. Casual employees are paid their full pay rate for the hours they were rostered to work.

An employee's full pay rate is their base rate plus any:

- incentive-based payments and bonuses
- loadings
- monetary allowances
- overtime or penalty rates
- any other separately identifiable amounts.

Further Information

For further information, please refer to the Fair Work Ombudsman's [Employer guide to family and domestic violence](#).

