



# Employment Law

&

# People Management



21 March 2024



# SECURE JOBS BETTER PAY 2022

## 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



**SECURE JOBS BETTER PAY**

**key start dates**



**SECURE JOBS BETTER PAY**

**key start dates**

**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 expert panels at the Fair Work Commission to focus on pay equity and the care and community sector
- ✓ Transfer of the Registered Organisations Commission's functions to the Fair Work Commission

**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

**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

## OTHER LEGISLATION 2023



- ❑ 1 February 2023
- ❑ 1 August 2023 (small business code)

- ❑ 1 April 2023.

### New Code of Practice in Queensland

Managing the risks of psychosocial  
hazards at work

## FAMILY & DOMESTIC VIOLENCE LEAVE (FDV)

- ❑ Cannot refuse legitimate application for FDV leave
- ❑ Allow for 10-days paid FDV leave each year of employment
- ❑ The employer must believe the employee is controlled / coerced and in fear of their life because of that control/coercion
- ❑ Employers can:
  - request evidence to support the FDV leave application
  - refuse the leave request if evidence does not satisfy the need
- ❑ Remembering this leave is a workplace right so refusal needs to be carefully thought through
- ❑ Businesses:
  - cannot detail the leave on the payslip
  - need to consider how requests will be made, who will maintain the records and how this can be limited to maintain employee confidentiality
  - must be compliant from 6 June 2023

# PSYCHOSOCIAL CODE OF PRACTICE (QLD)

## What is a psychosocial hazard – e.g.

- High/or low job demands
- Low job control
- Poor support
- Low role clarity
- Poor change management
- Low reward / recognition
- Remote or isolated work
- Traumatic events
- Violence and aggression

## When is it effective from:

- 1 April 2023

## Who does it apply to:

- All workplaces covered by WH&S

## What employers need to do:

- Identify hazards
- Assess risk
- Based on risk management control – i.e. eliminate, minimise, substitute, isolate, administrative control
- Control the risks
- Review controls

# CLOSING THE LOOPHOLE

## 27 February 2024

- ✓ Penalties for certain contraventions by companies increase (doesn't apply to small business employers)
- ✓ Penalties for failing to comply with a compliance notice double
- ✓ New threshold for serious contraventions
- ✓ Changes to enterprise bargaining rules
- ✓ Changes to the defence for sham contracting
- ✓ New compliance notice measures
- ✓ Changes to rules about demergers of amalgamated registered organisations

## 26 August 2024

or an earlier date set by the Australian Government

- ✓ New definitions of 'employee' and 'employer'
- ✓ New minimum standards and protections for 'employee-like workers' in the gig economy and contractors in the road transport industry (regulated workers)
- ✓ Additional rights for workplace delegates who are regulated workers

2024

## 1 July 2024

- ✓ Changes about notice requirements for entry to investigate underpayments
- ✓ Criminal offence of industrial manslaughter added to the Work Health and Safety Act and increases to other penalties

## 26 August 2024

- ✓ Changes to casual employment
- ✓ Eligible employees will be given a right to disconnect (doesn't apply to small business employers yet)

## 1 November 2024

- ✓ Labour hire orders made by the Commission can start



## ❑ Sham contracting

- Did you know that, as an employer, you may be penalised for sham contracting if you incorrectly classify an employee as an independent contractor – i.e. unless you can prove the amended sham contracting defence applies.
- Prior to the reforms which came into effect on 27 February 2024, you only needed to prove you did not know and were not reckless as to whether the contract was an employment contract rather than one for services.
- The new narrowed defence means you have not breached the sham contracting provisions if, at the time of the engaging the worker, you “reasonably believed” the contract of employment was a contract for services.
- In determining whether your belief was reasonable, the Courts will be required to consider the size and nature of your business and will have discretion to consider any other relevant matters.

## ❑ **Changes to definition of casual employment**

- From 26 August 2024, casual employment will be defined as:
  - the employment relationship being characterised by an absence of a firm advance commitment to continuing and indefinite work; and
  - the employee being entitled to a casual loading or specific rate of pay for casual employees under the terms of a fair work instrument or contract of employment.
- Factors that are to be considered include:
  - whether there is an inability of the employer to elect to offer / not offer work or an inability of the employee to elect to accept / reject work.
  - if it is reasonably likely there will be future availability of continuing work, given the nature of the business.
  - whether there are FT / PT employees doing similar work.
  - whether there is a regular pattern of work for the employee.

## ❑ Changes to casual conversion

- From 26 August 2024, employees will be able to initiate the transition to permanent employment after six months of ongoing employment (or 12 months in the case of small businesses).
- The employer may refuse the employee's request if:
  - the employee meets the definition of a casual employee;
  - there are fair and reasonable operational grounds for not accepting the notification; or
  - accepting the notification would result in the employer not complying with recruitment or selection processes required by Commonwealth, State or Territory laws.
- An employer is required to consult with a casual employee before making a decision in respect of a request.

## ❑ Changes to casual conversion

- There are also important changes to employer's obligation to provide a Casual Employment Information Statement (the "CEIS").
- Once the changes are in force employers will need to provide a casual employee with a CEIS:
  - before or as soon as possible after the employment commences.
  - again, as soon as practicable after 6 months of employment.
  - again, as soon as practicable after 12 months of employment.
  - again, as soon as practicable after each further 12 months of employment.

# CLOSING THE LOOPHOLE

No earlier than

**1 January 2025**

- ✓ New rules criminalising intentional wage underpayments start
- ✓ Changes to maximum civil penalties for underpayments (doesn't apply to small business employers)

**26 August 2025**

- ✓ New right to disconnect rules start for small business employers

**2025**

**26 February 2025**

or an earlier date set by the Australian Government

- ✓ Changes to how enterprise agreement model terms are set

## ❑ On the spot fines

- Fair Work Inspectors may issue on the spot infringement notices where they reasonably believe an employer has contravened the record-keeping and pay slip obligations contained in the Fair Work Act and regulations.
- The maximum fines for an infringement notice are
  - \$630 per contravention for an individual
  - \$3150 per contravention for a body corporate.
- Last financial year, Fair Work Inspectors issued almost \$500,000 in on-the-spot fines.

## ❑ Sham contracting

- Civil penalties <\$93,900 for corporations and <\$18,870 for individuals can be imposed for each breach of the sham contracting provisions.
- A person can also make a claim under the general protection provisions of Fair Work Act 2009 alleging sham contracting and the same civil penalties apply.
- When sham contracting is proven, the employer would be required to back pay all employee entitlements + superannuation + civil penalties.

## □ Court ordered penalties

- Fair Work Inspectors can also recommend taking matters to court. If litigation is successful, employers may face court orders, including:
  - <\$12,600 per contravention for an individual
  - <\$63,000 per contravention for a body corporate
  - orders to pay employee what's owed (+ interest)
  - orders granting an injunction or interim injunction
  - orders awarding employee compensation for loss suffered
  - orders to reinstate an employee, which may mean the employee must be given their job back
  - orders to correct the discrimination..
- Last financial year, the Fair Work Ombudsman secured over \$4.4 million in court-ordered penalties.

## WHAT SHOULD EMPLOYERS DO

- Check your HR policies and procedures are compliant
- Check your employment agreements are compliant
- Ensure your new permanent employees are given a copy of the Fair Work Information Statement (FWIS).
- Ensure new casual employees are given a copy of the Casual Employment Information Statement as well as the FWIS.
- Ensure any fixed/maximum term employees are given a copy of the Fixed Term Information Statement as well as the FWIS.
- Check your wages are compliant with the relevant Award (including salaried employees).
- Check that your payroll system itself is loaded correctly
- Ensure your payroll and record keeping is accurate and keep them for seven years
- Contact a HR Professional if you are unsure of your responsibilities as an employer,





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