



Effective Workplace Solutions

# WORKPLACE MATTERS

## MARCH/APRIL 2014

### To All of My Valued Clients

Welcome to the March/April Edition of *Workplace Matters*. There has been much happening on the workplace relations front. The Fair Work Commission has commenced dealing with the bullying claims and proceedings have commenced in the Federal Minimum Wage determination, and the Abbott Government looks to make less than significant changes to the *Fair Work Act*.

I hope you all have a great Easter.

**Greg Arnold**

**Principal Consultant**

**FWC starts dealing  
with Bullying Claims**

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**Annual Minimum  
Wage Case  
Commences**

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**Website Up and  
Running**

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**Changes to the Fair  
Work Act**

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## Fair Work Commission Starts to Deal with Bullying Claims

In the last issue of *Workplace Matters* we reported the new Bullying and Harassment laws that had been introduced into the *Fair Work Act* from 1 January 2014. The Fair Work Commission (FWC) has now started dealing with those matters. FWC had anticipated about 70 applications per month to deal with, however it appears that the number of claims being made is falling short of that expectation.

There have only been 3 reported decisions thus far from the FWC. The first reported case was dismissed due to a lack of evidence and a failure on the Applicant's part to provide the required evidentiary material to the FWC.

The second matter was dealt with by way of Orders which basically required the Respondent (the alleged bully) to stay away from the Claimant. In the case that is simply known as *Applicant v Respondent (AB2014/1052)*, we do not know much of the detail of the matter because of the sensitivity of the matter, however the Orders were that the person who was the subject of the claims (the alleged bully) shall comply with the following:

- complete any exercise at the employer's premises before 8am
- have no contact with the applicant alone
- make no comment about the applicant's clothes or appearance
- not send any emails or texts to the applicant except in emergency circumstances
- not raise any work issues without notifying the chief operating officer of the respondent, or his subordinate, beforehand.

And the Applicant has been ordered not to arrive at work before 8.15 am.

What can we learn from the outcome of this matter? The matter provides guidance on the nature of the orders that the FWC will contemplate as part of its requirement to eliminate workplace bullying. It is apparent that the FWC is willing to exercise its powers to ensure that contact is avoided between individuals alleging bullying against each other (including by electronic means); that where possible an individual (or group of individuals) may not attend the workplace at particular times; and that an individual (or group of individuals) follow management protocols before they communicate to the aggrieved party.

The third matter was dismissed for jurisdictional reasons – the employer was not a constitutional corporation and therefore not covered by the *Fair Work Act 2009* (Cth)

Anecdotally, at this stage, it appears that the FWC is taking a sensible and pragmatic approach (e.g. Workers encouraged to first raise a complaint at the workplace level – this is not required under the Act)

## 2014 Annual Minimum Wage Case is Now Underway

The FWC has now commenced taking submissions on the increase to the Federal Minimum Wage (FMW) for this year.

In their initial submissions, the ACTU has called for a \$27 per week increase, whilst the major Employer groups have submitted that any increase beyond \$8.50 per week is unaffordable. The Federal Government has urged the FWC to be cautious in its granting of any increases, citing the current "soft" economic conditions and unemployment figures are 1% higher than the last time the FMW was increased.

Currently the FMW sits at \$622 per week, and as is always the case the position taken both the two opposing parties is an "ambit claim".

Traditionally the FWC has always taken a line in the sand in between the 2 ambit claims. In the current climate, I would hazard and guess and suggest that we can expect an increase of about 2% or slightly more. A decision is likely in early June to apply from the first pay period on or after 1 July.

In most cases the increase will be applied to all Award classifications, however if you have an Enterprise Agreement in place you may not have to apply the increase, depending on the terms of that EA. If you have employees on over-Award payments, the terms of that over-Award arrangement will need to be examined to determine whether or not you are able to absorb these increases. If you are in any doubt, please do not hesitate to call EWS for advice.

## END OF FINANCIAL YEAR OBLIGATIONS

### WAGES AND PAYROLL AUDITS

AND

### WORKPLACE HEALTH AND SAFETY AUDITS

The end of the financial year is fast approaching and it's time to start thinking about payroll.

- Does it comply with the Award and the legislation?
- Are you paying in accordance with the Award?
- Are all of your employment contracts in place and compliant?
- Do you want to put IFAs in place before the Federal Government starts changing the goal posts?

It's also time to start thinking about the health and safety of your workplace

- Does your workplace comply with the WH&S Act and Regs and Codes of Practice?
- Are all of your safety management systems in place and compliant?
- Are you meeting your due diligence requirements?

***Effective Workplace Solutions*** can assist with Payroll and WH&S Audits. These Audits provide peace of mind for a small fee, knowing that you are compliant (for some retained clients basic Audits are included in your retainer).

If you would like to make an appointment for an Audit, please contact *Effective Workplace Solutions* on 1300 749 001

# WEBSITE:

*Effective Workplace Solutions* website is now up and running. Please take to time to have a look at the website and gain a better understanding as to the types of service EWS can provide.

Go to [www.ewsolutions.com.au](http://www.ewsolutions.com.au) and let me know your views of the new website.

## Federal Government Tinkering at the Edges of Fair Work Act

In February, the Abbott Government introduced the Fair Work Amendment Bill into the Parliament. The amendments implement the Government's response to a number of outstanding recommendations of the June 2012 report of the Fair Work Review Panel. The previous Labor Government had been heavily criticised for failing to implement these recommendations.

However, the proposed amendments are far from substantive and one could argue do little more than "tinker at the edges" of the current legislation. There is little doubt that the current Government is unlikely to implement any wholesale changes to IR legislation, particularly in its first term, for fear of the Unions and Opposition propaganda labelling of any major changes as a "return to WorkChoices".

The key items of the Bill are as follows:

- **Individual Flexibility Agreements (IFAs)** in Enterprise Agreements must include flexibility about when work is performed, overtime rates, penalty rates, allowances and leave loading.
- Minimum notice period for terminating **Individual Flexibility Arrangements** will be extended from 28 days to 13 weeks.
- The Better Of Overall Test '**BOOT**' will take non-monetary benefits into account when determining whether an employee is better off overall under an Individual Flexibility Agreement
- **IFAs** will include statement by employee setting out why he or she believes it meets their genuine needs and is better off overall
- Defence against contravention of a flexibility term if they reasonably believed the requirements of the term were complied with at the time of agreeing to a particular IFA.

- Extending unpaid parental leave: Request for extended unpaid parental leave must not be refused unless the employer has given the employee a reasonable opportunity to discuss the request
- Accruing/taking leave on workers compensation: Employees will not be able to take or accrue leave during a period in which they are absent from work and in receipt of workers" compensation
  
- Right of entry: Transport and accommodation arrangements no longer required in remote locations. Entry for discussions conditional on organisation and union covered by an enterprise agreement. If union not covered by the enterprise agreement, then may enter the premises for the purposes of holding discussions if invited by the workers. Reasonable request to hold discussions in a particular room.
  
- Annual leave loading: Only payable on termination of employment if it's contained in an agreement or award.
  
- Transfer of Business: No transfer of business where employee voluntarily moves between associated employers.
  
- Unfair Dismissal: FWC has greater discretion to dismiss unfair dismissal applications without holding a hearing if failure to attend or comply by applicant, or there is no reasonable prospect of success.

