Q3 2015

BUSINESS MATTERS

Strategies for managing your business

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Annual leave overhaul

The Full Bench of the Fair Work Commission reached a crucial verdict for employees covered by modern awards that will change annual leave entitlements.

The ruling will be inserted into all modern awards, giving employers important new rights and more flexible leave arrangements with their employees.

Annual leave overview

All full-time and part-time employees are entitled to four weeks of annual leave in a 12 month cycle. Accrued annual leave is based on their ordinary hours of work during the year. Because there is no minimum or maximum amount of annual leave that can be taken at a time, employees can hoard their leave entitlements.

Direction to take leave

Under the new rule, businesses with employees covered by modern awards can now direct their staff to take time off from work once they have accumulated eight weeks of leave. The decision provides welcome relief to employers who have long dealt with the detrimental effects of accrued annual leave.

Before making a direction, the employer and the employee must reach an agreement on how to reduce or eliminate excessive annual leave. In situations where both parties cannot find a suitable solution, an employer can give their employee a written direction to take leave.

The direction must be in writing, and meet the following requirements:

- The direction must not leave the employee with less than six weeks of paid annual leave after the directed annual leave is taken.
- The employee cannot be directed to take off a period of leave of less than one week.
- The employee cannot be directed to take leave less than eight weeks, or more than one year after the date of the direction.
- The direction cannot be contradictory to any leave arrangements already in place.

Cashing out of annual leave

A further ruling enables employees covered by modern awards to cash out a portion of their annual leave, rather than taking their leave. Employees who elect to receive cash instead of taking leave, should their employer agree, must satisfy the following conditions:

- The cash-out agreement must be in writing and signed by both parties.The agreement must be retained by the employer.
- The agreement must state the amount of leave to be cashed out, the payment to be made to the employee, and when it will be made.
- Annual leave cannot be cashed out if it results in the employee's remaining entitlement being less than four weeks.
- Employees are not allowed to cash out more than two weeks of accrued annual leave in a 12 month period.

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Be careful of automatic renewals in contracts

Businesses should remain vigilant when entering contracts that contain automatic renewal clauses.

An automatic renewal clause can lock a business into an unsatisfactory service arrangement. Any attempt to terminate the agreement during a renewed term can make the business liable to a claim for damages for breach of contract. For purchasers, the termination can be both challenging and costly.

While the most appropriate solution would be to remove the clause or to avoid entering into a contract that contains a self-renewal clause, this is not always possible. When businesses cannot reach an agreement to erase the clause or it is in the purchaser's best interest to enter a long-term service contract, they should:

- enquire about getting the renewal term reduced.
- request that a condition be inserted into the clause that requires a written notification of the upcoming termination window.
- record the key renewal dates.

It is important for businesses locked into existing contracts with automatic renewal clauses to be aware of their rights and obligations.

Businesses should ensure they have appropriate notification processes in place to alert them of any upcoming renewal dates.

Update on employment laws

The start of the new financial year has brought about some important changes to employment laws.

All employers have a responsibility to remain up to date and aware of any amendments made to employment laws, to ensure that they remain compliant and continue to meet their obligations.

Below are four important changes that took effect from 1 July 2015:

Salary cap for unfair dismissal

The high income threshold increased from $133,000 to $136,700 per annum. Because the threshold includes allowances and benefits, employees and employers should remain aware of how salary packaging can affect their eligibility to meet the new requirements.

Recent unfair dismissal cases have demonstrated that even though an employee's base salary may be below the high income threshold, any additional benefits can be classified as "earnings". These earnings can push an employee's base salary over the threshold, making them ineligible for unfair dismissal remedies (if they are not covered by an enterprise agreement or modern award).

Before dismissing a high income employee, employers need to be aware that employees who earn over the threshold may still have other legal avenues to challenge dismissals. These options include anti-discrimination laws and the Fair Work Act's general protections provisions. Therefore, to protect themselves against any type of challenge, employers should take the necessary steps to understand their position before dismissing an employee.

Minimum wages

The modern award minimum wage rates rose 2.5 per cent, and the National Minimum Wage increased to $656.90 per week (or $17.29 per hour) for employees who are not covered by an award or agreement. However, employers who employ staff that are not covered by any age or disability percentage rate are exempt from the change, and may pay less than the National Minimum Wage.

The changes bring about the need for employers to make sure that their rates do not fall below the new minimum wages rates. Even if their employees are already paid above the minimum wage or modern award rates, employers should review their rates nonetheless.

The same goes for any employees who are employed under an enterprise agreement. Employers should check that the base rates in their agreement remain at least equal to the new minimum Modern Award rates.

Employees should also check what their current pay rates are, and ensure that any applicable increases have been applied to their first full payslip for the period on or after July 1, 2015.

Superannuation Guarantee

The maximum cap for superannuation contributions increased to $203,240 per annum. However, the Superannuation Guarantee rate will remain at 9.5 per cent until 30 June 2021, and will increase to 12 per cent by 1 July 2025.

The delay in an increase has significant financial implications for those expecting to remain in the workforce for more than 12 years. This is because the 3 per cent increase will take effect from the start of the 2025-26 year (in 12 years time (under the new laws), rather than in five years time (under former SG laws).)

Redundancy tax concessions

The tax free threshold that applies to genuine redundancy payments will increase, affecting employers with employees who are entitled to a redundancy payment. From 1 July 2015, the tax free base limit in a valid redundancy payment will increase to $9,780, and the tax free limit per year of service will increase to $4,891.

Delivering quality customer service

Every business has a basic obligation to provide customers with quality goods or services. That is, quality in the sense of delivering on a promise to a customer.

It is the responsibility of a business to ensure they are not selling shoddy or unsafe products or services. However, whilst they would like every customer to be fully satisfied with their products or services, the reality is that sooner or later every business is going to have some unhappy customers.

It is sometimes easy to dismiss unhappy customers as chronic complainers. Try to think of any complaint or question as an opportunity to improve products, services, and/or performance. By developing a customer feedback and complaint-handling procedure, businesses can turn negative situations into opportunities and build customers for life. In any feedback program, incorporate some or all of the following principles:

Acknowledge

As an initial step acknowledge customer concerns. Regardless of how a problem has arisen, simple recognition of a concern will make the resolution process far more effective.

Apologise

Saying "sorry" to customers is an important first step in letting them know their problem is taken seriously and will be dealt with.

Do not blame the customer

When a customer is blamed they often view it as a personal attack. Misunderstandings can occur due to a business creating false expectations in the minds of their customer.

Admit your errors and solve the problem

Every business makes mistakes. Be determined to get to the root of the problem, make it better for the customer, and prevent the problem occurring again.

Don't use the 'company policy' excuse

No phrase is more dismissive than 'it is the company's policy.' It makes the customer feel powerless and intimidated. The first step in any resolution is to ensure that customers feel they are on equal ground.

Empower employees to solve problems

When businesses do this they generally find they have happier staff, and save customers a bureaucratic nightmare.

Encourage feedback

Make it easy for customers to give feedback about how they feel. Providing feedback cards allow customers to rate products or services of a business. It also gives them a chance to provide positive feedback.

Do not win the battle and lose the war

Trying to save a few dollars but losing a customer is penny wise and pound foolish.

There may be a small percentage of customers who will take advantage of a business, but the majority will be loyal if they know the problem will be fixed.

ACCC cracks down on franchises

Franchisors need to be aware of their new legal rights and disclosure obligations under the new Franchising Code of Conduct to eliminate the risk of non-compliance.

The Australian Competition and Consumer Commission (ACCC) announced this year that it would be cracking down on breaches of the Franchising Code. Currently, the maximum fine a court may order is $51,000 per breach. Under the Australian Consumer Law, the ACCC can take enforcement action against franchisors who fail to comply.

Good faith obligations

The New Code requires the parties of a franchise agreement to deal with each other in good faith. While this implies the need for the parties to act honestly and fairly, the exact meaning of good faith can quite easily be interpreted differently. Franchisors should also consider the legitimate business interests of the other party to ensure they meet their good faith obligations and stay compliant.

Disclosure requirements

The short-form disclosure document has been removed. Franchisors must compose a new disclosure document using a prescribed format outlined in the new Code, and update their existing disclosure documents by 31 October 2015.

In addition to the format changes, there are some significant differences in the new disclosure document concerning the collection and use of marketing fees, the supply of goods or services to a franchisee, the ability to sell online and when capital expenditure is payable by franchisees.

Franchisors must issue an information statement with the disclosure document following a franchisee's formal expression of interest in obtaining a franchise business. The statement should outline the risks and rewards of franchising for prospective franchisors. Once they have entered into a franchise agreement, franchisors have four months to amend their disclosure documents after the end of their financial year.

Transfer of a franchise agreement

The new Code expands the process that the parties have to follow to transfer a franchise agreement. Franchisors now have to provide written consent before a transfer can occur. Where a franchisor denies consent, they must be able to provide a valid reason and facts to support the refusal.

Whilst the changes strengthen the position of franchisors in relation to franchisor conduct, it is critical that those looking to aquire a franchise are also aware of the changes and how these may affect their position.

Tax debts and payment plans

Making a request to the ATO for a repayment arrangement does not necessarily guarantee that one will be granted.

While a repayment arrangement is an efficient and cost-effective way to obtain a release from tax liabilities, the ATO should not be considered a credit provider and expects taxpayers to pay in full and on time.

Where taxpayers are having difficulty paying, the ATO will assess certain factors that help to determine the taxpayer's ability to meet their obligations (pay their debts). These factors include, but are not limited to:

- availability of access to alternate funding
- gross margin
- ability to change fixed assets to cash
- cash flow

The tax office will also consider whether the taxpayer was compliant with other tax debts and obligations to gauge whether a repayment arrangement is sustainable. They will not approve a payment arrangement where tax lodgements are not up-to-date.

Included within the assessment will be the tax payer's ability to make their repayments outlined in the proposal, as well as their willingness to enter into a direct debit arrangement and any other conditions the ATO may impose.

The determination substantially draws from whether a taxpayer is genuinely suffering from serious hardship and has exhausted all other options.

A carefully prepared submission is crucial for the approval of a payment arrangement. Taxpayers need to ensure they provide the ATO within the agreed timeframe:

- details on how the debt arose
- steps taken to alleviate the debt
- recent bank statements and annual financial statements

- a proposal to repay all debts within a short timeframe

Taxpayers must be aware that the ATO will take immediate debt recovery action if they miss a payment on their plan. Default can also cause problems with the application of future payment plans.

Workplace policy training

Employers who have trained their staff on up to date workplace policies are in a better position to defend themselves against unfair dismissal claims and other litigation.

The legal environment of a business is constantly changing. Therefore, it is essential for businesses to have well-written and up to date policies and procedures in place to reinforce the standards expected of employees and define what is acceptable workplace behaviour and conduct.

Training staff on these workplace policies promotes a stronger awareness of how and when the policies might apply and ensures employees are well-informed of their obligations. The Fair Work Commission (FWC) stresses the importance of policy training to succeed in defending unfair dismissal proceedings.

A business's workplace policies should be regularly reviewed to ensure that they are:

- consistent with the values of a business.
- compliant with current legislation.
- clearly communicated in plain English.
- easily accessible and available on request.

The FWC recently dealt with a claim that involved a business dismissing an employee for serious social media misconduct. The employee had posted offensive comments about two of his managers on his private Facebook account. However, the business did not have a clear social media policy in place to effectively inform employees on social media conduct.

Even though the comments made by the employee were foolish, the FWC determined the business had unfairly dismissed the employee and ordered his reinstatement. The case accentuates the invaluable protection that such policies provide an employer when faced with unfair dismissal complaints.

Important tax dates

AUGUST 21

July monthly activity statement- due date for lodgment and payment.

25

Quarterly activity statement, quarter 4, 2014–15 – tax agents and BAS agents – due date for lodgment and payment.

28

Superannuation guarantee charge (SCG) statement – quarterly, due date for lodgment and payment.

SEPTEMBER 21

August 2015 monthly activity statement – due date for lodgment and payment.

30

Due date for lodging the PAYG withholding payment summary annual report for payers whose registered agent (BAS agent or tax agent) helped prepare the report.

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