



Powerful People Performance

BRAINBOX

Industrial Relations 2023





What's on the Agenda?

The busiest period of workplace reform - ever

Enterprise Bargaining

Minimum Wage Increase

Pay Secrecy

Fixed Term Agreements

Psychosocial Hazards

Workplace Flexibility

New Regulatory Powers

Same Job Same Pay

Sexual Harassment

Need to know

Expansion of union rights to require employers to engage in “multi-employer bargaining”

Expansion of union rights to coordinate industrial action across workforces in support of this

Scope for unions to obtain orders from the FWC extending the coverage of such agreements to employers that had not been a party to negotiating them, even if the employer opposes it

Pathway for unions, or employers, to get the FWC to arbitrate intractable bargaining disputes

Exclusion for small employers, but will not save them from the industry impact

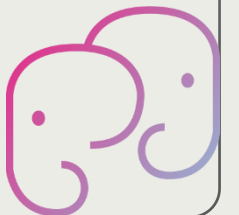
Exclusion where there is a current agreement or expired within 6-months

Need to do

Work hard on culture as the best defence

Understand right of entry obligations

Think about how to manage the risk of protected industrial action, particularly in the context of multi-enterprise bargaining.



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Rates decision handed down 02 June 2023.

5.75% increase to minimum wage.

5.75% base increase to Award rates, but eg: Aged Care was 15%.

Less than inflation, so expect pay claims.

Need to do

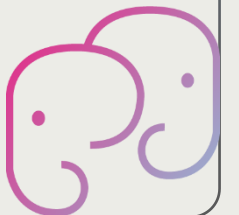
Check payroll for staff on minimum or Award wage.

Increase pay from first full pay 01 July 2023 for minimum wage workers

Check Award Pay Guides to determine when they increase and by how much

note: check pay and conditions to ensure BOOT compliance

Consider how to respond to pay claims post 01 July 2023.



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As of 7 December 2022, pay secrecy clauses in existing contracts have no effect.

Unlawful to offer new contracts which contain pay secrecy clauses.

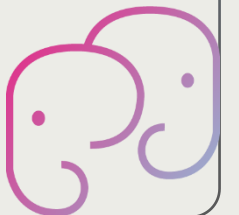
Need to do

Review contract templates to remove pay secrecy provisions.

Remove pay secrecy provisions during any contract variations.

Brief all managers not to sanction staff for discussing pay.

Develop a strategy to respond to pay variance queries.



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“The number of workers on fixed term contracts has increased by over 50% since 1998.

**More than half of all employees engaged on fixed term contracts are women; and more than 40% of fixed term employees have been with their employer for two or more years.”
(Tony Burke)**

Amendments to the Fair Work Act limit the use of fixed-term contracts for the same role beyond two years or two consecutive contracts – whichever shorter.

Applies to contract renewals.

Covers fixed term, maximum term, outer-limit term and all variants.

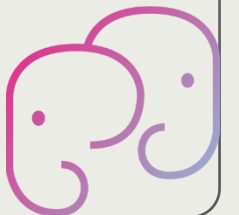
Where a fixed-term contract is made in breach of the new laws, the employee will be considered a permanent employee.

Need to do

Review all fixed term contracts to consider impact of new requirements

Develop timeline of all renewing fixed contracts to review compliance

Issue Fixed Term Contract Information Statement to Contractors



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As with physical risks, employers are required to implement and follow a risk management process for the management of psychosocial risks.

Psychosocial hazards include violence and aggression, bullying, harassment, including sexual harassment, and conflict or poor workplace relationships and interactions plus job demands, low job control, poor support, lack of role clarity, poor organisational change management, inadequate reward and recognition, poor organisational justice, traumatic events or material, remote or isolated work, poor physical environment.

Need to do

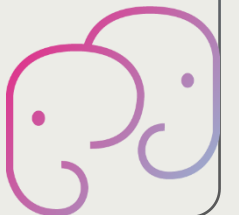
Review safety policies and procedures to include psychosocial hazard.

Consider and identify reasonably foreseeable hazards that could give rise to psychosocial risks (document this).

Eliminate risks, so far as is reasonably practicable.

Minimise the risks so far as is reasonably practicable (if it is not reasonably practicable to eliminate the risks).

Maintain, review and revise control measures at least annually as part of a defined process.



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From 07 June 2023, employers will be required to genuinely try to reach an agreement with employees about requests.

Where an agreement cannot be reached, the FWC will be empowered to determine the matter, including through non-voluntary arbitration.

Anticipate union involvement in pushing for better pay and conditions via flexibility arrangements.

Pregnancy and family/domestic violence bring implied right to flexibility.

Note: it is not carte-blanche right, and does have defined limitations.

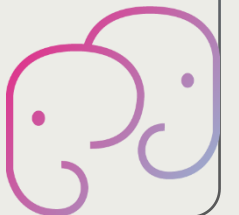
Need to do

Consider the impact on the business of increased flexibility requests.

Define a policy and process for responding to flexibility requests.

Define specific pre-determined parameters for flexibility requests.

Brief all managers regarding responding to flexibility requests.



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FWC will have greater powers to resolve bargaining disputes, including by issuing intractable bargaining declarations, after which the FWC can effectively arbitrate.

The FWC can make an intractable bargaining workplace determination if the parties have been bargaining for at least nine months.

AHRC has extended the time limit for applications under the Age Discrimination Act 2004 (Cth), Disability Discrimination Act 1992 (Cth) and Racial Discrimination 1975 (Cth) from six (6) months to 24 months

ABCC abolished.

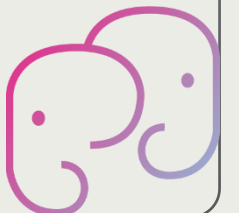
The National Construction Industry Forum will be established.

Need to do

Recognise the significant scope of AHRC as a regulator and secondary (non-exclusive) avenue of prosecuting matters.

Note the change in harassment definition from “unwelcome conduct of a seriously demeaning nature” to “ ... demeaning nature”.

Plan for union engagement and potentially protected industrial action.



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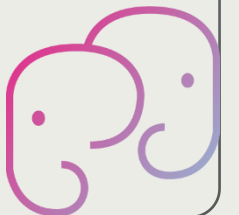
This is not yet law.

Consultation paper proposes:

- 1. Businesses should be able to access labour hire for genuine work surges and short-term needs.**
- 2. Labour hire workers should be paid at least the same as directly engaged employees doing the same work.**
- 3. Disputes about Same Job, Same Pay obligations and entitlements should be dealt with quickly, economically and fairly by the Fair Work Commission.**
- 4. Targeted anti-avoidance measures are needed to protect Same Job, Same Pay entitlements and ensure long lasting behavioural change.**

Need to do

Watch this space, it will have a massive impact on the labour-hire space.



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Need to know

As of 7 December 2022 the Act now includes gender identity, intersex status and breastfeeding in the list of attributes which are protected from discrimination.

From 7 March 2023 the Act prohibits sexual harassment in connection with work, a person who experiences sexual harassment is able to seek compensation and penalties through the FWC.

Prohibition of sexual harassment extends to workers, including contractors, subcontractors, work experience students, and volunteers,

Employers can be vicariously liable for sexual harassment that occurred in connection to the workplace, unless the employer can prove they took all reasonable steps to prevent such conduct.

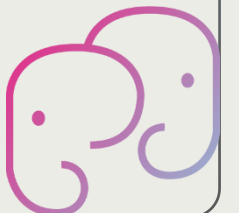
Need to do

Revise policies to include positive obligation to prevent harassment.

Revise policies to include specific mention of gender identity, intersex status and breastfeeding.

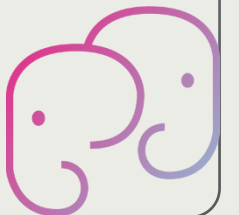
Have all managers undertake prevention of harassment training.

Identify and document controls to prevent harassment.



MENTIMETER QUIZ

1. If I am approached by a staff member to join an industry enterprise agreement, I have no choice but to agree.
2. With the new wage determination, all staff wages must increase by 5.75% from 01 July 2023.
3. If a staff member moves to a different position, then the fixed term contract restraints do not apply.
4. Lack of 'recognition' can be defined as a psychosocial hazard.
5. Dad is a relatively new employee and requests permanent WFH citing a primary aged child as the reason, but mum is a stay-at-home mum and well able to care for the child. Am I obliged to agree to the request?
6. Recently hired casual states she is pregnant and wants to start her shift later. I am obliged to agree to the request?
7. If I can't reach agreement for an EBA, then the FWC can intervene after six months.
8. A good policy is the best defence for a sexual harassment claim



MENTIMETER QUIZ

1. If I am approached by a staff member to join an industry enterprise agreement, I have no choice but to agree.
Incorrect, obligation to consider requires 50% of employees, must be >20 employee business to be compelled
2. With the new wage determination, all staff wages must increase by 5.75% from 01 July 2023.
Incorrect, 5.75% increase only applies to minimum wage employees.
3. If a staff member moves to a different position, then the fixed term contract restraints do not apply.
Correct, provisions only apply to same role renewals.
4. Lack of 'recognition' can be defined as a psychosocial hazard.
Correct, and lack of definition/precedent is a very real risk to business
5. Dad is a relatively new employee and requests permanent WFH citing a primary aged child as the reason, but mum is a stay-at-home mum and well able to care for the child. I am obliged to agree to the request?
Incorrect, because <12 months service, but if >12mths then must respond <21 days and can only be refused on reasonable business grounds. Smaller businesses have greater flexibility in interpretation of reasonable business grounds. (eg: cost)
6. Long term casual states she is pregnant and wants to start her shift later. I am obliged to agree to the request?
Incorrect, pregnancy is a protected attribute, but may be impractical to hire another employee to cover the gap, or request may result in significant impact on efficiency, productivity or customer service.
7. If I can't reach agreement for an EBA, then the FWC can intervene after six months.
Incorrect, FWC can intervene after 9 months, plan and use the time strategically.
8. A good policy is the best defence for a sexual harassment claim.
Partly correct, a good policy that has been well implemented is the best defence.

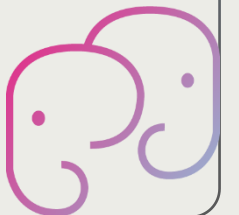


TABLE DISCUSSION

A problem shared is a problem halved – but still a problem

GROUP 1

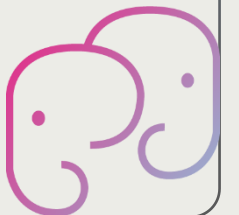
- We are a pty ltd company
- Staff are employed under multiple awards
- We provide similar services to others in the market
- We pay strictly to Award rates
- Our competitors have EBAs
- Staff are starting to make noise about pay and conditions
- What are we going to do?

GROUP 2

- We are a pty ltd company
- Multiple staff undertake similar activities
- Staff tenure ranges from probationary to >10 years
- Our Award specifies tenure-based pay increments
- Same job same pay proposes levelling these pays
- Staff are asking what will happen to their pay
- What are we going to do?

GROUP 2

- Employee >5 years tenure
- No performance issues
- Wants to remain employee with same pay/benefits
- Wants to relocate to Indonesia and work from a deck chair on a beach in Bali
- Work can theoretically be conducted remotely
- Other staff would see this request as unfair
- What are we going to do?





Thank you for your time.

BRAINBOX
GROUP

