



CASUAL EMPLOYMENT

A new casual employment definition:

- Absence of a firm advance commitment to continuing and indefinite work
- An entitlement to a casual loading
- The real substance, practical reality and true nature of the employment relationship.



EMPLOYEE CASUAL 'CHOICE'

Casual employees will be able to issue a 'notification' to apply for conversion to permanent status where they no longer satisfy the definition.

Fair Work Commission (FWC) to arbitrate disputes on employee choice provisions and the existing casual conversion provisions.



DEFINITION OF EMPLOYMENT

A new ordinary meaning of employee and employer.

The real substance, practical reality and true nature of the relationship.

The return of the multi-factorial test.



UNFAIR CONTRACT TERMS

Contractors earning below the contractor high income threshold will be able to apply to vary unfair contract terms.

Remedies do not include compensation but the FWC will be able to set aside, void, amend or vary services contracts.



EMPLOYEE-LIKE WORKERS

Digital labour platform operators to make consent-based collective agreements with registered employee organisations.

FWC to make minimum standard orders re: terms and conditions of 'employee-like' workers engaged by digital labour platform operators.

'Employee-like' workers can bring unfair deactivation disputes.



SHAM CONTRACTING

Changes to the sham contracting defence that will require an employer to prove that the employer reasonably believed that the parties had an independent contractor arrangement.



ROAD TRANSPORT CONTRACTORS

The FWC will be empowered to ratify collective agreements, arbitrate unfair terminations and make specific minimum standard orders for Road Transport Workers.

Creation of a Road Transport Expert Panel and Road Transport Advisory Group.

The Minister granted an extremely broad regulation making power re: the 'road transport industry contractual chain'.



'SAME JOB SAME PAY' ORDERS

On application, the FWC can make orders that an employee providing work to a 'host', be paid the rate required by a 'host' enterprise agreement.

Test is where order is 'fair and reasonable'.

Scope of covered arrangements is very broad inclusive of employees supplied directly or indirectly to a host including contracts for the provision of service.



'SAME JOB SAME PAY' FOR CONTRACTS OF SERVICE

Where the workers are provided under a contract for the provision of service, consider:

- Who is directing, supervising and controlling the work?
- Who owns the equipment and systems used?
- Whether the work requires specialist expertise?
- Does/has the host employ(ed) similar workers?



WAGE THEFT

New criminal offences for employers who intentionally underpay employees.

A voluntary small business wage compliance code intended to assure small businesses that compliance will prevent them being referred for criminal prosecution.

Penalties for all underpayments will be increased.



UNION RIGHT OF ENTRY IN UNDERPAYMENTS

Unions will be able to obtain exemption certificate to enter an employer premises without notice to investigate a suspected underpayment.



DELEGATE RIGHTS

For employers of 15+ employees, workplace delegates will have the right to reasonable access to paid time off to attend training related to workplace delegate duties.

Delegates entitled to represent the industrial interests of members (and anyone eligible to be) in industrial disputes.

Model terms will be inserted into modern awards by the FWC.



BARGAINING

An employer in an unexpired multi-employer agreement can obtain written consent of relevant unions before putting a replacement single agreement to vote.

Amend the existing bargaining framework to enable multiple franchisees of the same franchisor to bargain for a single agreement.



MODEL TERMS

The FWC, not the Minister will now determine flexibility, consultation and disputes model terms.

These changes have not taken effect and are not currently laws. The force of these provisions will depend on the passage of the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 through both Houses of Parliament. Copyright Australian Business Lawyers & Advisors 2023.