MEMBERS UPDATE

SEPTEMBER 2023

Welcome to the September 2023 member's update

In this month's members update we look at:

- Fixed term contracts changes
- Authorised employee deductions
- Daylight Saving Time change

Spring is in the air and our Melbourne Conference is just around the corner. We are looking forward to seeing some of our Melbourne members while we are down there. We have a great round up of speakers to empower you to solve future challenges in collaboration with your peers, Industry leaders and technical experts. For further information click here ***https://www.austpayroll.com.au/australian-payroll-summit/***

Fixed term contracts

The Secure Jobs, Better Pay Act amends the FW Act to include new obligations in respect of fixed-term employment contracts. Generally speaking, the new provisions limit the use of fixed-term contracts to a period of two years (with some exceptions).

From 6 December 2023, employers can no longer employ an employee on a fixed term contract that:

- is for 2 or more years (including extensions)
- may be extended more than once, or
- is a new contract:
- that is for the same or a substantially similar role as previous contracts
- with substantial continuity of the employment relationship between the end of the previous contract and the new contract, and either:
  - ◊ the total period of the contracts is 2 or more years,
  - ◊ the new contract can be renewed or extended, or
  - ◊ a previous contract was extended.

Some exceptions apply. The new restrictions will not apply where a fixed-term contract:

- is for the performance only of a distinct and identifiable task using specialised skills;
- relates to a training agreement (ie. apprenticeship or traineeship);
- relates to an employee earning more than the high-income threshold (currently $167,500 per annum full-time);
- is for the undertaking of essential work during a peak demand period;
- is for the undertaking of work during emergency circumstances or during a temporary absence of another employee (e.g. a parental leave backfill);
- falls under prescribed government funding exceptions;
- relates to a governance position that has a time limit under the governing rules of a corporation or association of persons; or
- where a modern award permits the term.

Employers will also be required to provide to new employees before, or as soon as practicable after, entering into a fixed-term contract a new Fixed Term Contract Information Statement, to be drafted by the Fair Work Ombudsman.

The Fair Work Commission will have the ability to conciliate or, if both parties agree, arbitrate disputes in relation to fixed-term contracts.

Employers who fail to comply with these new obligations may be required to pay penalties.

Action items

- ☐ Review your system of any fixed term contracts
- ☐ Speak with your HR/Business team to review the manner in which they are utilising fixed-term employees.

Authorised employee deductions

The Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023 provides greater clarity and flexibility and additional safeguards for employee authorised deductions.

Deductions for the employee's benefit

The amendments allow employees to authorise their employers to make salary deductions that are recurring and are for amounts that vary from time to time. These deductions will only be allowed if they are principally for the employee's benefit. This amendment eases the administrative burden on employees and employers. Previous provisions did not allow for varying deductions and required a new written authorisation each time the deduction amount changes.

The changes provide greater flexibility for employers and employees to manage deductions. Offering variable deductions and authorising them remains optional for both employers and employees. Employees may continue to authorise deductions for specified amounts only.

The amendments protect employees by requiring any written authorisation for a deduction to include any information prescribed by the regulations. Varying deductions are prohibited if the deduction directly or indirectly benefits the employer or a party related to the employer, with limited exceptions. Employees can also specify an upper limit when authorising a deduction that may vary from time to time.

A new written authorisation will only be required to vary the amount of an existing deduction where the initial authorisation specifies the amount of the deduction. Existing deduction arrangements may continue if they meet the requirements of the amendments.

What do these changes mean?

The amendments clarify the circumstances in which employees can validly authorise salary deductions. The changes provide increased certainty for employers and employees as to when a new written authorisation is required for deductions to continue. These provisions also empower employees and employers to make agreements about deductions which are principally for the employee's benefit.

The amendments also recognise the validity of existing authorisations that comply with the provisions (for example, that specifically authorise employers to deduct amounts that vary from time to time). Unless they are withdrawn, these authorisations will continue to operate as though they were validly made. This respects the employees' ability to choose to authorise deductions that are principally for their benefit.

When will these changes come into effect?

The amendments commence on 30 December 2023

Action items

- [ ] Review and update your payroll processes to ensure compliance with these new Fair Work Act changes.
- [ ] Familiarise yourself with the details of the legislation and seek professional advice if needed.

Daylight Saving Time change

Daylight saving time will end on Sunday 1 October 2023. Clocks go forward one hour at 2am to 3am in:

- Australian Capital Territory
- New South Wales

- South Australia
- Tasmania
- Victoria.

There is no change to the time in:

- Northern Territory
- Queensland
- Western Australia.

What employees are paid if they work when daylight saving time ends

Employees should check their award or enterprise agreement for terms about daylight saving. If there is nothing in them about daylight saving, payment is made 'by the clock'.

Daylight saving time starts with rolling the clock forward from 2am to 3am. This means that employees working an overnight shift will work one hour less but are paid for that extra hour.

Example: Working through the night when daylight saving time ends

Dave's usual shift is 8.30 pm – 5 am. He works an 8 hour shift with a 30 minute unpaid break. Dave doesn't have an award or registered agreement that says anything about daylight saving.

During his Sunday night shift, daylight saving starts and the clock moved forward one hour. This means that while Dave works for 7 hours, he is paid for 8 hours of work 'by the clock'. Earlier in the year, Dave worked when daylight saving started, he worked 9 hours but got paid for 8 hours.

FAQ

Q. Can I deduct Notice from Leave paid out on termination?

A. Sometimes we have employees that resign without giving notice. Fair Work states;

> Most awards say that an employer can deduct up to one week's wages from an employee's pay if:
>
> - the employee is over 18
> - the employee hasn't given the right amount of notice under their award
> - the deduction isn't unreasonable.
>
> However, employers can only deduct from wages owed under the award. They can't deduct from other entitlements owed to the employee, such as accumulated leave or other over award payments. As a result, if you have an employee that has not given notice and they have no wages to deduct from, you cannot deduct it from Annual Leave paid out on termination.

MEMBERS WEBINAR

Our September webinar will be held on **26th September** at **1pm (Sydney time)** where we will be looking at **Annual leave Requirements.**

