



MEMBERS UPDATE

————— JANUARY 2024 —————

Welcome to the January 2024 member's update

In this month's members update we look at:

- South Australia Public Holiday Changes
- Closing the Loopholes Bill
- New ATO ruling TR 2023/4
- New ATO compliance guideline PCG 2023/2
- Super as a NES
- Employee Deductions update

Happy New Year and welcome to 2024!



South Australia Public Holiday Changes

The Public Holidays Act 2023 replaces the Holidays Act 1910 and came into effect on 1 January 2024. The key changes to the Act include:

- When Christmas Day falls on a Saturday, both the Saturday and the following Monday will be Public Holidays. Previously only the following Monday would have been a Public Holiday, meaning the actual Christmas Day was not.
- Easter Sunday has now been declared a Public Holiday, aligning South Australia with most other Australian states and territories.

You can find further information [here](#).

Closing the Loopholes Bill passed

The *Fair Work Legislative Amendment (Closing Loopholes) Bill 2023* was split into two tranches, with the first tranche passed and receiving Royal Assent on 15th December 2023. The following has now been legislated:

Wage Theft Criminalisation

The wage theft legislation criminalises intentional wage theft and non-payment of superannuation. This change will not commence prior to 1 January 2025.

The legislation introduced provisions for a new offence of intentional conduct when it comes to wage theft and will be incorporated into the Commonwealth Criminal Code. This will allow the Fair Work Ombudsman to investigate suspected underpayment crimes and related offences.

A 'Voluntary Small Business Wage Compliance Code' will be also be introduced and available to small business employers

Same Job Same Pay for Labour Hire companies

This change commenced on 15 December 2023.

Under the new provisions, the Fair Work Commission will have the ability to make an order (Regulated Labour Hire Arrangement Order) that employees under a labour hire arrangement are paid no less than employees employed directly by the host company. For example, a host company may have an Enterprise Agreement which provides for higher rates of pay than the applicable modern award for their employees. Under an Order, the labour hire employees would also need to be paid no less than the Enterprise Agreement, instead of being paid the lower rates in the modern award.

This will not impact labour hire workers who are already paid more than the host companies employees.

Changes to the redundancy exemption for small business

This change commenced on 15 December 2023.

This change closed the 'loophole' where large business employers were claiming the small business redundancy exemption when they had decreased the size of their workforce incrementally. When a company has less than 15 employees they do not have to pay redundancy.

For example, when a company has gone bankrupt or insolvent, they may dismiss their employees due to redundancy and retain their payroll team to process the redundancy payments. By the time the payroll team is terminated, the employer may now have less than 15 employees, and were not required

to pay redundancy pay to the payroll team as they now had less than 15 employees at the time of the terminations.

The amendment does not allow employers to use this exemption if the employer is subject to a winding up order or is downsizing employees pursuant to the operation of the Bankruptcy Act.

Who is an employee for PAYG Withholding Purposes

A new Taxation Ruling (TR 2023/4) was introduced on the 6th December, clarifying who an employee is for the purposes of PAYG Withholding. You can read the ruling [here](#)

Practical Compliance Guideline – Employee v Independent Contractor

The ATO has released its Practical Compliance Guideline (PCG 2023/2) advising of their compliance approach for classifying workers as employees or independent contractors.

You can read the guideline [here](#)

Reminders

Superannuation as a National Employment Standard (NES)

Superannuation as a NES came into effect from 1 January 2024. You can read the [Fact Sheet here](#)

Under the new NES, the Fair Work Ombudsman will have the ability to pursue unpaid superannuation. The ATO will continue to have the primary responsibility to ensure compliance with superannuation legislation, however this new NES will allow the FWO to make referrals to the ATO and to also pursue superannuation payable under an award or agreement.

Employee Authorised Deductions

Effective 30 December 2023 employees can now authorise employers to make deductions from their pay that may vary from time to time. Previously, any time the amount of a deduction changed, the employee had to provide the employer with a new written authority to deduct.

For example, if the employees union fee deductions were going to increase, the employee would need to provide the employer with a new written authority for those increased deductions. The legislation has been amended so that employees will be able to provide a single authority to also take into account variations or increases in the deduction in the future.

FAQ

Q. How can I keep up to date with my award changes, as the award seems to be updated or amended in a regular basis?

A. In addition to ensuring that you read our monthly members updates, we also recommend that you subscribe to your relevant modern award/s with the Fair Work Ombudsman. This means that you will receive an email directly from the FWO any time there is a change to your award/s.

Subscribe here - <https://www.fairwork.gov.au/about-us/contact-us/subscribe-to-email-updates>

MEMBERS WEBINAR

Our January webinar will be held on Wednesday 31st January at 1pm (Sydney time) where we will be providing **an overview of the Closing the Loopholes Bill**