AUSTRALIAN PAYROLL ASSOCIATION

LEADING PAYROLL

MEMBERS UPDATE

MARCH 2024

© 2024 Australian Payroll Association. All rights reserved.

Welcome to the March 2024 member's update

In this month's members update we look at:

- Stage 3 tax cuts
- Closing the Loopholes 2
- Age group descriptions change
- Can I deduct notice from my employee's final pay?

We are so excited about our upcoming Payroll Summit in Brisbane on Friday 15th March. We hope to see you there, if not in person, then via our virtual platform. It's not too late to get your ***virtual tickets here***

 © 2024 Australian Payroll Association. All rights reserved.

Stage 3 tax cuts

The stage 3 tax cuts have now been passed by both houses of parliament. Effective the start of the next financial year, **1st July 2024** there will be an update to the Tax tables. Under the recently passed legislation, the tax brackets will be:

Earn up to $18,200 – pay no tax

Pay a 16 per cent tax rate on each dollar earned between $18,201-$45,000

Pay a 30 per cent tax rate on each dollar earned between $45,001-$135,000

Pay a 37 per cent tax rate on each dollar earned between $135,001 — $190,000

Pay a 45 per cent tax rate on each dollar earned above $190,000

**Does not include Medicare levy*

Closing Loopholes No. 2

The second tranche of the Government's closing loopholes legislation has now been passed by Parliament and gained royal ascent on 26th February 2024. There are again numerous amendments for employers to familiarise themselves with – including the right to disconnect and changes to the definition and workplace rights of casual employees.

Effective 26th August 2024 there will be a new definition of 'casual employee' based on 'the real substance, practical reality and true nature of the employment relationship', and taking into account a range of factors. Casual employees will also be able to change to permanent employment under a new 'employee choice' process, which will replace the existing provisions regarding employer offers and employee requests for casual conversion.

New definition of a casual employee

Section 15A of the Fair Work Act

General rule

(1) An employee is a casual employee of an employer only if:

(a) the employment relationship is characterised by an absence of a firm advance commitment to continuing and indefinite work; and

(b) the employee would be entitled to a casual loading or a specific rate of pay for casual employees under the terms of a fair work instrument if the employee were a casual employee, or the employee is entitled to such a loading or rate of pay under the contract of employment.

(2) For the purposes of paragraph (1) (a), whether the employment relationship is characterised by an absence of a firm advance commitment to continuing and indefinite work is to be assessed:

(a) on the basis of the real substance, practical reality and true nature of the employment relationship; and

(b) on the basis that a firm advance commitment can be in the form of the contract of employment or, in addition to the terms of that contract, in the form of a mutual understanding or expectation between the employer and employee not rising to the level of a term of that contract (or to a variation of any such term); and

(c) having regard to, but not limited to, the following considerations (which may indicate the presence, rather than an absence, of such a commitment):

(i) whether there is an inability of the employer to elect to offer, or not offer, work or an inability of the employee to elect to accept or reject work (and whether this occurs in practice);

(ii) whether, having regard to the nature of the employer's enterprise, it is reasonably likely that there will be future availability of continuing work in that enterprise of the kind usually performed by the employee;

(iii) whether there are full-time employees or part-time employees performing the same kind of work in the employer's enterprise that is usually performed by the employee;

(iv) whether there is a regular pattern of work for the employee.

Note: A regular pattern of work does not of itself indicate a firm advance commitment to continuing and indefinite work. An employee who has a regular pattern of work may still be a casual employee if there is no firm advance commitment to continuing and indefinite work.

Changes to Casual Conversion

Under the new legislation a new 'employee choice' model will be introduced from 26th August 2024. The new model will run alongside the current casual conversion requirements.

This will give a casual employee the entitlement to request conversion from casual to permanent employment after 6 months of employment (12 months for small business employers) if they believe their casual employment no longer meets the requirements of the new definition under section 15A.

The employer has 21 days to respond to the request, and can only decline the request if:

- The employee's current employment still meets the definition in section 15A, or
- accepting the request would be impractical, because substantial changes to the employee's terms and conditions would be necessary to comply with a modern award or enterprise agreement; or
- accepting the notification would result in the employer not complying with a recruitment or selection process required by or under a relevant law (typically only applies in the public sector)

In preparation for the changes, employers should:

- review the current use of casual employees to assess the likelihood they would be considered permanent employees under the new definition;
- review any template contracts used to engage casual employees and update to ensure they reflect the recent changes to the law; and
- consider whether internal process changes (including casual conversion processes) are required to comply with the new laws.
- Seek legal advice regarding their casual workforce

The legislation introduced other changes to the Fair Work Act, including regarding independent contractors, right of entry, maximum penalties, intractable bargaining workplace determinations, gig workers and road transport contractors.

Find out more here.

Age group descriptions change

The Fair Work Commission (the Commission) has made changes to the age group descriptions for junior employees in 34 awards.

These changes took effect from the first pay period starting on or after 31 December 2023.

There are no changes to junior rates in the awards. The Commission wanted to make the age descriptions clearer and more consistent.

By deleting the words "15 years of age and under" appearing in the table in clause 15.2 and inserting the words "Under 16 years of age".

https://www.fairwork.gov.au/newsroom/news/changes-age-group-descriptions-34-awards

Can I deduct notice from my employee's final pay?

An employee may need to give notice under their award, registered agreement or employment contract when ending their employment. Employees can give notice verbally or in writing. However, what do we do if they do not provide the required notice?

1. Check if and how an employee needs to give notice

Check the award or registered agreement for information about whether your employee needs to give notice. Find your award on the Fair Work List of awards or use the Find my award if you're not sure which award applies.

Read the award or registered agreement to confirm what notice period an employee needs to give, if any, when they resign.

If no notice period applies then you can try to talk to your employee about giving you some notice so you have time to find someone else. You have to pay them all of their entitlements and can't force them to give you notice.

2. Check if you can deduct an amount for notice not given from final pay

Check the award or registered agreement for information about withholding pay when minimum notice isn't given. Deductions from an employee's pay can only be made under certain conditions. If the award or registered agreement doesn't allow deduction of pay when the minimum amount of notice isn't given, you have to pay them all of their entitlements.

Make sure you know the correct deduction, if you can make one at all. If the award allows you to deduct pay for notice that was not given, you can only deduct money from wages. You can't deduct from other entitlements, such as accumulated leave.

Any deduction made must be reasonable.

3. Pay the employee's final pay

Check the Final pay page to see what needs to be included in the final pay.

Pay the final pay owed to the employee. The employee's award will set out when final pay needs to be paid by.

If there are any allowable deductions, they must be clearly recorded on the final pay slip.

 © 2024 Australian Payroll Association. All rights reserved.

Example: Employee failed to show up for work - not required to give notice

William was a Bar tender at an Italian restaurant. He started there soon after he turned 19 years old and had worked 9 months. One day he didn't show up for his shift. The restaurant manager, Olivia, phoned him to find out where he was. William said he wasn't coming back because he'd found another job.

Olivia checked the award for what obligations William had for giving notice. She found that, as a casual under the Restaurant Award, William did not have to give any notice.

Olivia wanted to know if she could withhold wages from William's final pay for not giving notice. Since he didn't have to give notice, the Restaurant Award did not allow her to deduct any wages from his final pay.

FAQ

Q. Can I roster an employee to work on a Public Holiday?

A. Not automatically. Employers must first request the employee to work the public holiday and if agreed then they can roster them. Employers must ask workers if they want to work public holidays and cannot just automatically roster an employee on, according to a landmark court ruling that will apply to all workplaces regardless of what is in contracts or agreements.

In a judgment delivered just days before the Easter holidays 2023, a full bench of the Federal Court held that BHP's internal labour hire outfit, Operations Services, breached the Fair Work Act by requiring miners to work on Christmas Day and Boxing Day. The court affirmed the national employment standards (NES), which override contracts, awards or enterprise agreements, mandate that employers make reasonable requests to work public holidays. A roster or contractual requirement did not count as a request. An employer could still require the employee to work on a public holiday if the employee's refusal was unreasonable given the nature of the work, reasonable employer expectations, the type of employment and the level of pay. ***https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2023/2023fcafc0051***

MEMBERS WEBINAR

Our February webinar will be held on Tuesday **26th March** at **1pm (Sydney time)** where we will be discussing **Purchased leave arrangements**

 | © 2024 Australian Payroll Association. All rights reserved.