



Secure Jobs, Better Pay – changes to Australian workplace law

In 2022, the Australian Government passed legislation to amend the *Fair Work Act*. Under this amendment, changes were made to some existing rules and a number of new workplace laws were introduced. Some of these changes are already in force, while others will be introduced progressively throughout 2023. A calendar of these amendments can be found [here](#).

Notable changes are outlined below.

Prohibition of Pay Secrecy

Employees now have a protected right to share - or not share - information about their pay and the terms and conditions of their work with their colleagues. While an employee cannot be forced to give this information to another employee, they have the right to discuss their pay if they want to, and to ask other employees about their pay and work conditions.

This right does not apply to employees with an existing contract that includes a pay secrecy clause. However, new employment contracts (including renewals or amendments of existing agreements) cannot include pay secrecy clauses. If such a clause is included, it will have no effect.

Prohibition on Job Ads Including Unlawful Pay Rates

Job advertisements must not include pay rates that breach the *Fair Work Act* or a fair work instrument (such as an enterprise agreement). Members of the public can make an anonymous complaint to Fair Work if an advertisement includes a pay rate that is less than the minimum for the position.

In addition, advertisements for pieceworker positions where an employee is entitled to a periodic rate of pay must specify the pay rate that applies or state that a periodic pay rate will apply.

Increased Rights to Access Flexible Working Arrangements

From 6 June 2023, workers will have the right to request flexible working arrangements if they are pregnant, or if they (or a member of their family or household) experience family violence. Employers can only refuse such a request in certain circumstances. First, an employer must discuss the request with the

employee and make a genuine effort to accommodate it. The employer must also consider the consequences of refusal for the employee.

If the request is refused, a written response must be provided that explains the grounds for the refusal, any other changes the employer will make to accommodate the employee's circumstances, and information about referring the dispute to the Fair Work Commission. If an employer and employee agree to make changes that differ from the terms originally requested by the employee, the employer needs to confirm these agreed changes in writing within 21 days of the request.

The Commission can hear and make orders about disputes over flexible working arrangements requests if the parties can't resolve the dispute at the workplace level. For example, if an employer refuses an employee's request, or does not respond to a request within 21 days, the employee can apply to the Commission for redress.

New Gender Equality Measures

Following the amendments, job security and gender equality are now included in the objectives of the *Fair Work Act*. In addition, job security and gender equality have been made part of the objectives of modern awards and are two of the principles to be considered when setting minimum wages. This means that when interpreting the legislation, or setting awards or minimum wages, the Commission must strive to promote job security and gender equality. The Commission will also take steps to promote equal remuneration.

The amendments to the *Fair Work Act* also introduce breastfeeding, gender identity and intersex status as protected attributes. This means employers are prohibited from taking adverse action against current or future employees because of these attributes.

Prohibition of Long Fixed-Term Contracts

From 6 December 2023, changes will come into effect to prevent workers being engaged on long contracts, or successive contracts, rather than as a permanent employee. From this date, employers will have to give employees engaged on new fixed term contracts a "Fixed Term Contract Information Statement" (which will be available on the Fair Work website).

Under these changes, employers can no longer employ someone on a fixed-term contract that is more than two years in duration (including extensions) or issue successive contracts to the same worker performing the same role. In addition, the amendments prohibit contracts that can be extended more than once. In effect, this means that employees can only be engaged on contracts for less than two years.

Employers are prohibited from taking actions to avoid the new restrictions, such as delaying re-engagement of the same employee or engaging someone else on a contract to perform the same role as someone previously on a contract.

Some exceptions apply, such as if the fixed term contract is for a training arrangement, or the employee is covered by an award that allows fixed term contracts.

Enterprise Agreements and Enterprise Bargaining

A number of changes have been made to how industrial instruments and enterprise bargains must be commenced and terminated, and what happens if there are errors in these documents.

Notably, all agreements made before the commencement of the *Fair Work Act* that are still in operation will automatically terminate on 7 December 2023, although parties to an agreement can apply to extend the agreement for up to 4 years at a time.

Abolition of ABCC and ROC

The Australian Building and Construction Commission (ABCC), the former workplace regulator of the commercial building and construction industry, has been abolished. Its function has been taken up by the Fair Work Commission. The Commission will also now conduct the work of the abolished Registered Organisations Commission (ROC), the former regulator of unions and employer groups.

Conclusion

The Secure Jobs Better Pay reforms are likely to have far-reaching effect. It is important for employers to understand their obligations under these laws and to implement systems, as necessary, to deal with them.

If you or someone you know wants more information or needs help or advice, please contact us on (03) 9600 2768 or email enquiry@archerthompson.com.au.