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June, 2013

Employment Law Round Up and Changes for 2013-14

The year so far....

The major changes to employment legislation that have come into effect this year include:

Fair Work Australia is now known as the Fair Work Commission

Since 1 January 2013, Fair Work Australia has changed its name and is now called the Fair Work Commission (FWC). It is still in the process of changing all of its forms to reflect the new title. It has also acquired the website fwc.gov.au, but fwa.gov.au still works.

Unfair dismissal time limit is now 21 days

Also part of the same legislative amendments as the name change, the time limit for applications for unfair dismissal application has been extended from 14 to 21 days. Applications for an extension of time will still be possible where there are extenuating circumstances.

General protections time limit reduced to 21 days

The general protections provisions, including claims of adverse action, are complex provisions that ultimately end up in the Federal Court or Federal Magistrates Court if they are pursued. What the FWC has experienced over the last few years was that because the time limit for general protections applications was 60 days, employees who missed the unfair dismissal cut off were inappropriately attempting a general protections claim. To reduce the incidence of this and ensure a consistent time limitation, the time limit for general protections applications is now 21 days.

This may also have a consequence of reducing the number of general protections applications.

Gender diversity reporting

Reporting figures are steadily emerging as a result of the 1 January 2011 requirement that publically listed companies set gender diversity targets, and report on these targets or provide an explanation about why they are not in place. Annual reporting is to include achievements against gender objectives set by the board, and the proportion of women in senior management and wider company roles.

It appears that just this accountability measure has had a positive influence on female board appointments. Towards the end of 2012, a KPMG study of 211 ASX listed companies found that within that sample, 129 companies disclosed they had established a diversity policy, and 76 of them reported having established measureable objectives for achieving gender diversity.

Most companies in the sample disclosed statistics on women appointments, including senior-level and board representation. Those that had not adopted the ASX diversity recommendations commonly said it was because of their "size and stage".

1 July 2013 - are you ready?

Superannuation

Are you prepared for the first of several periodic increases to the rate of superannuation payable on employee income? If your employees are on a super inclusive package, we recommend that you review the terms of their employment and in particular, the way in which superannuation was expressed, as this may effect whether the increase is payable in addition to the amount earned.

This is also an opportune time to review your employment contracts in general.

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Employment Law Round Up and Changes for 2013-14 cont.

For most employers, it will be a simple matter of increasing the rate of superannuation from 1 July 2013, when it becomes 9.25%. The superannuation increases over time are as follows:

Period	Super guarantee rate (charge percentage)
1 July 2003 - 30 June 2013	9%
1 July 2013 - 30 June 2014	9.25%
1 July 2014 - 30 June 2015	9.5%
1 July 2015 - 30 June 2016	10%
1 July 2016 - 30 June 2017	10.5%
1 July 2017 - 30 June 2018	11%
1 July 2018 - 30 June 2019	11.5%
1 July 2019 - 30 June 2020 and onwards	12%

457 Visas

Please see our article regarding changes to 457 visa requirements for employers, particularly satisfying the genuine needs requirement. From 1 July 2013, the Fair Work Ombudsman (FWO) will be checking compliance to ensure that 457 visa holders are being paid at the market rates specified in the employer's approved nomination application and that the job being done by the 457 visa holder matches the job title and description approved in the nomination and visa application.

For more information contact our Employment Law and Business Migration Team on 02 9635 6422.

Tackling Workplace Bullying and Other Fair Work Changes Trend for 2013

The Federal Government has responded to the House of Representatives Standing Commission on Education and Employment Inquiry Report Workplace Bullying "We just want it to stop" by introducing changes to the Fair Work Act (FW Act) in the Fair Work Amendment Bill 2013, which was passed on 6 June 2013, but is still awaiting Royal Assent and a Proclamation date. The changes that relate to bullying and harassment will enable a worker who reasonably believes that they have been bullied at work to apply to the Fair Work Commission (FWC) for an order to stop the bullying. The dates relating to the bullying and harassment changes are to be fixed by proclamation, which is interesting, because some of the other changes do not take effect until 1 January 2014.

Currently the health and safety laws in each state and territory give work health safety regulators the power to investigate serious bullying complaints. Also, it is not uncommon for allegations of bullying to be raised as issues in other proceedings under general protections legislation and anti discrimination laws.

The changes amend the FW Act by defining workplace bullying as repeated, unreasonable behaviours that are directed towards a worker or group of workers, that creates a risk to health and safety. A new subsection will be included in the FW Act to clarify that reasonable management action, when carried out in a reasonable manner, will not result in a person being 'bullied at work'.

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Tackling Workplace Bullying and Other Fair Work Changes Trend for 2013 cont.

The FWC will have an obligation to deal with an application within 14 days after the application is made. The FWC will also have the power to make any order it considers appropriate to prevent a worker from being bullied at work. Examples of the orders that the FWC can make include an order requiring the individuals or group of individuals to stop the specified behaviour, regular monitoring of behaviours by an employer, compliance or review of the employer's workplace bullying policy, and the provision of information and additional support and training to workers. An order by the FWC cannot extend to ordering reinstatement or the payment of compensation. However a failure to comply with an order of the FWC may attract a civil penalty of up to $33,000.

At this stage it is difficult to assess the impact of the proposed changes. However one of the key issues identified by the Government is the need for an individual right of recourse for persons who are bullied at work to help resolve the matter quickly and inexpensively. Alternatively some employer groups are concerned that the proposed changes will give employees an avenue to pursue speculative claims which are already governed by the health and safety regulators.

In light of the proposed amendments, it would be prudent for employers to reassess their internal policies and procedures related to workplace bullying, to ensure compliance with the proposed legislative framework and promote a workplace which is free from bullying.

Other changes arising from the Fair Work Amendment Bill 2013

The other changes that arise from this amendment will be the subject of newsletters as they become an issue for employers, and include the following changes:

- provide that any period of unpaid special maternity leave taken by an eligible employee does not reduce that employee's entitlement to unpaid parental leave;
- increase the maximum period of concurrent (both parents) unpaid parental leave from three to eight weeks;
- allow that leave to be taken in separate periods within the first 12 months of the birth or adoption of a child;
- expand access to the right to request flexible working arrangements;
- require employers to consult with employees about changes to regular rosters or ordinary work hours;
- enable pregnant employees to transfer to a safe job regardless of their period of service;
- requires the FWC to take into account the need to provide additional remuneration for certain employees;
- establish a framework under which permit holders may enter premises for investigation and discussion purposes;
- expressly confers on the FWC the function of promoting cooperative and productive workplace relations and preventing disputes.

Coleman Greig's experienced lawyers can assist you with policy development or review, advice on policy development and compliance, and can provide tailored training on appropriate workplace behaviour. For more information on these services, please contact our Employment Law and Business Migration team on 02 9635 6422.

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457 Visa Program - Stricter Requirements from July 2013

Reforms to be introduced to the Subclass 457 Program mean that Standard Business Sponsors (SBS) will be required to prepare supporting documents at least 1 - 2 months in advance to fulfil stricter Subclass 457 Program requirements.

The 457 visa program is the most commonly used program to enable Australian employers to fill skill shortages by recruiting skilled overseas workers where they cannot find suitable Australian workers.

The changes to be introduced on the 1 July 2013 include:

- The department of Immigration and Citizenship (DIAC) will be introducing a requirement for the nominated position to be a genuine vacancy within the business. DIAC are concerned that positions may have been created purposely to secure a 457 visa without consideration of whether there is a suitable skilled Australian worker available.

  Tip: Business's should first demonstrate that they have been actively seeking to employ an Australian worker to fulfil positions within their business (for example advertising the position locally). If the business is not able to find a suitable Australian candidate for the position after searching for a reasonable period of time, the activity of advertising for the position will be considered as demonstrating a genuine need for the business to employ a skilled overseas worker.

- The market salary exemption threshold will be increased from $180 000 to $250 000 to ensure that higher paid salary workers are not able to be undercut through the employment of overseas labour at a cheaper rate.

  Tip: SBS's will be required to demonstrate market salary data for all nominees being offered a salary less than $250,000.

- DIAC will be strengthening the English language requirements by removing exemptions for nominees from non-English speaking backgrounds who are nominated with a salary less than $92 000. The definition of English language will be better aligned with the permanent Employer Sponsored.

- 457 nominees are to be engaged on an employment contract (as opposed to a business contract for services) and not on-hired to an unrelated entity unless they are sponsored under a labour agreement, or in an exempt occupation.

- DIAC will be reinforcing the existing obligation regarding recovery of costs to ensure that sponsors are exclusively responsible for certain costs.

- DIAC will be strengthening the requirement for sponsors to train Australians by introducing an ongoing and binding requirement to meet the existing current training requirements for the duration of their approved sponsorship.

  Tip: Businesses that have been in operation for less than 12 months, and all businesses that will be newly approved as a SBS, will most likely be subject to sponsorship monitoring by DIAC. In particular businesses will be monitored on their on-going commitment to meet the training requirements as per the training details they have submitted with their SBS application.

If you have any questions concerning the 457 Visa program, contact our Business Migration Agents at Coleman Greig on ph: 02 9635 6422 for advice and assistance.

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