

A VISION IN THE WORKPLACE

In our July 2018 edition of *Vision in the Workplace* we examine the 2018-19 Workplace updates, specifically in relation to unfair dismissal, the national minimum wage, reduction in Sunday penalty rates in several modern awards and changes to long service leave in Victoria. We also consider the introduction of the labour licensing scheme in Victoria and the delays to the South Australian scheme.



2018-19 Workplace Update

Unfair dismissal – 2018 – Updated Threshold in the Fair Work Jurisdiction

As we settle into the 2018-2019 financial year, employers need to be aware of increases to key thresholds effective from 1 July, and how these impact on employees' entitlements and unfair dismissal eligibility.

From 1 July 2018, the high-income threshold increased from \$142,000 to \$145,400 meaning that if an employee's annual earnings exceed \$145,400 and their employment is not covered by a modern award or enterprise agreement, that employee is excluded from the unfair dismissal provisions of the Fair Work Act 2009 (Cth).

The annual increase should act as a timely reminder to bear in mind employees' remuneration level when undertaking any disciplinary process or performance management that may lead to termination of employment. Notwithstanding, it is best practice to adopt a procedurally fair process regardless of an employees' eligibility for unfair dismissal.

Employees should be aware that "annual rate and earnings" for purposes of calculating the high-income threshold includes: wages; amounts applied for or dealt with on employees' behalf (e.g. salary sacrifice); and the agreed monetary value of non-monetary benefits (for example, in some circumstances, motor vehicles).

Again, it is important that employers do not conflate high income with non-award coverage – it is possible that an employee paid in excess of the high-income threshold (and accordingly paid well above modern award minimum) may still be covered by a modern award and eligible for unfair dismissal.

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From 1 July 2018 there was also a corresponding increase to the maximum cap for unfair dismissal compensation of 26 weeks' pay from \$71,000 to \$72,700

National Minimum Wage

From 1 July 2018, the previous minimum wage rate of \$18.29 per hour or \$694.90 per week was increased to \$18.93 per hour or \$719.20 per week. It is important to bear in mind the national minimum wage for employees that are not modern award covered.

Sunday Penalty Rates for Retail/Hospitality

From 1 July 2018, reduced penalty rates came into effect in a number of modern awards as per the following table:

	<i>Modern Award</i>	<i>Sunday hourly rate 1 July 2018 – 1 July 2019</i>
Retail	Full-time + Part-time	195% → 180%
	Casual employees	195% → 185%
Hospitality	Full-time + Part-time	170% → 160%
	Casual employees	No Change

Fast-food (Level 1)	Full-time + Part-time	145% → 135%
	Casual employees	170% → 160%
Pharmacy	Full-time + Part-time	195% → 180%
	Casual employees	220% → 205%

The 2018-2019 reductions form part of a broader scheme of reductions which will see the rates drop successively until 1 July 2019 (Hospitality and Fast-food) and 1 July 2020 (Pharmacy and Retail).

Changes to Long Service Leave in Victoria

In Victoria, new long service leave legislation, Long Service Leave Act 2018 (Vic) (New Act), will come into effect on 1 November 2018, repealing and replacing the Long Service Leave Act 1992 (Vic) (1992 Act). The following tables summarises the key changes:

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When is long service leave entitlement invoked?

1992 Legislation	New Legislation
10 years' continuous service with one employer.	7 years' continuous service with one employer.
7 years' continuous service with one employer – paid pro-rata in circumstances of termination.	

How can it be taken?

1992 Legislation	New Legislation
To be taken in one period, unless both parties agree to separate periods.	Employers and employees may agree for long service leave to be taken one day at a time.
Separate periods can only be taken as follows:	Request must be granted as soon as practicable unless it can be refused on reasonable business grounds.
First 13 weeks – 2 or 3 periods.	
Subsequent – 2 periods.	

How does unpaid parental leave affect long service leave?

1992 Legislation	New Legislation
Unpaid paternal leave does not count towards service for long service leave purposes.	Unpaid parental leave up to 52 weeks will count as service for long service leave purposes.
Unpaid parental leave exceeding 52 weeks breaks continuity of employment.	Unpaid parental leave exceeding 52 weeks does not break continuity of service but is not counted as service.

Changes to Working Hours

1992 Legislation	New Legislation
Where an employee changes their hours within 52 weeks immediately prior to a period of long service leave, normal weekly hours are ascertained by averaging the previous: <ul style="list-style-type: none"> • 5 years; or 12 months (whichever is greatest).	Where an employee changes their hours within 104 weeks of taking a period of long service leave, the weekly hours will be ascertained by averaging the previous: <ul style="list-style-type: none"> • 5 years; • 12 months; or The period of continuous employment (whichever is greatest).

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Penalties

1992 Legislation	New Legislation
Certain breaches attract civil penalties	<p>Certain offences under the Act now attract criminal penalties.</p> <p>Employers found guilty of an offence may receive a criminal record.</p>

The New Act will not be applied retrospectively, however, employers can do the following to prepare for its implementation:

- Update and revise payroll systems to ensure periods of parental leave are included in long service leave accruals;
- Ensure appropriate response to requests for long service leave by training managers on the updates; and
- Audit long service leave records to guarantee compliance.

If you have any questions pertaining to the impact that the 2018-19 workplace updates may have on you, please do not hesitate to contact Nick Stevens, Jane Murray or Angharad Owens-Strauss.



Labour Hire Licensing

On 19 June 2018 the Victorian Parliament passed The Labour Hire License Bill (Vic) by 21 votes to 19, minor amendments are to be returned to the lower house for endorsement.

This introduction of labour licensing legislation follows the similar legislative changes in Queensland and South Australia and may add momentum to the introduction of a national scheme. The scheme attempts to address the recent instances of mistreatment and exploitation of workers by labour hire service providers, as outlined in the Victorian Government Submission to the Commonwealth Black Economy Taskforce (the Submission). The Submission outlines the Victorian scheme’s promotion of positive change towards a fairer labour hire industry and advocates that it will challenge the “wide spectrum of legal compliance within the labour hire industry”.

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Victorian Scheme – What might it mean for providers and hosts?

Compliance obligations under the Labour Hire Licensing Act 2018 (Vic) (the Act) are expected to commence on 1 November 2019 with a transition period of six months. Providers of labour hire services will be required to obtain a license meaning businesses engaging the labour hire services will then only be able to use licensed providers. Over the next few months the Victorian Government will commence an information campaign educating the industry on the new regulations and it is expected businesses will be required to apply for a license from next year.

In order to obtain a license, labour hire companies must pass ‘a fit and proper person test’ which will involve illustrating that the business is financially viable and is capable of compliance with workplace laws, labour hire laws, and minimum accommodation standards. Fitness and propriety will need to be tangibly demonstrated by providing the Commissioner for Labour Hire Licensing with relevant documents.

The licensed labour hire companies will be listed on a public register and any companies that fail to comply or that operate unlicensed will be liable for substantial civil penalties.

Delays in South Australian Scheme

The South Australian Government has issued a statement providing that it will not enforce

compliance with its licensing program until February next year –15 months after the legislation passed in November 2017.

The purpose of the delay was to allow the government to review the “various issues” raised by stakeholders with the scheme.

If you have any questions relating to the licensing scheme’s compliance obligations and/or demonstrating fitness and propriety, please do not hesitate to contact Nick Stevens, Jane Murray or Angharad Owens-Strauss.

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