

A VISION IN THE WORKPLACE

This edition includes:

- A national minimum wage increase from the Fair Work Commission;
- An overview of the Liberal–National Coalition’s industrial relations election policies and proposals; and
- A recent case study on how to determine if abandonment of employment has occurred in your workplace.

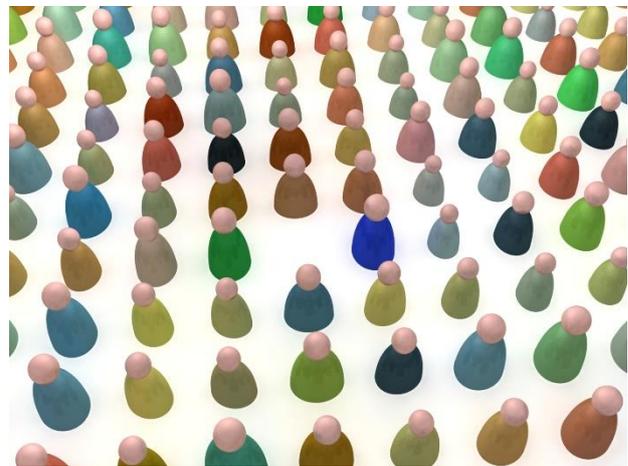
BREAKING NEWS

The national minimum wage will be increased by 3% to \$740.80 per week or an hourly rate of \$19.49.

The decision was handed down by the Fair Work Commission at 11 am this morning, Thursday, 30 May 2019. It means that workers will be better off by \$21.60 a week.

The new weekly minimum wage will be **in effect from 1 July 2019**.

It is important that employers are abreast of these changes. If you have any questions about fulfilling your obligations to employees, do not hesitate to contact Nick Stevens, Jane Murray or Angharad Owens-Strauss.



Missing in action? When has an employee abandoned their employment?

The lack of an immediate reason for an employee failing to turn up to work cannot be construed as ‘abandonment’ without being properly investigated. This message was recently enforced by the Fair Work Commission (**FWC**) who ordered Atlas Steel, a supplier of steel products, to pay \$7,000 to an employee after mistakenly assuming they had abandoned their employment.

The Company waited only three days before withdrawing its visa sponsorship of the employee, a Canadian welder, due to his unexplained absence. Whilst the Company did not hear from the employee during that time, no attempt was made by the Company to contact the employee themselves.

Was it ever reasonable for the Company to conclude that the employee no longer wanted to work for them?

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Background & Evidence

The FWC accepted the following evidence:

Within his first four months of employment with the Company, the employee had been absent for a total of 41 days as a result of a hand injury that happened at work and due to stress leave.

The most recent absence was an instance of stress leave in response to the Company's decision to not take immediate action against another worker, who kicked the employee during a recent altercation.

Being anxious and upset about the incident, the employee reported it to the police and raised it with his manager.

When the employee was advised that action would not be taken until further information was uncovered as to who was at fault, he immediately left the work site. The following day he saw a doctor and commenced stress leave.

The employee claimed he forwarded his medical certificate immediately. However, the Company claimed to have only received it 12 days after the employee's first absent day, being the day after he found out from the Department of Home Affairs that his visa was denied.

The employee also lodged a WorkCover claim during his stress leave, but again the Company claimed it was not notified of this until sometime later.

In response to the above, Commissioner Gregory stated he was:

"satisfied that the evidence indicates that rather than acting as someone who was abandoning their employment, [the employee's] actions were instead consistent with someone who was suffering at the time from work-related stress and anxiety, and required a period of leave from work as a consequence."

What did the Company get so wrong?

In applying the new approach implemented by the full bench as part of its four-yearly review of modern awards, Commissioner Gregory confirmed that "obvious steps" were foregone. At the very least, the Company should have:

1. Conducted an investigation into the altercation; and
2. Attempted to contact the employee "to ascertain why he was not at work before coming to the seemingly premature conclusion that he had abandoned his employment".

The decision – unfairly dismissed

Commissioner Gregory held that the employee had not "abandoned his employment on the basis that he has ceased to attend his place of employment without proper excuse or explanation".

Before the Company came to this conclusion, an explanation should have been sought and "if it had done so it would have found that a different scenario was unfolding."

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Having concluded that the Company didn't meet the minimum expectation of a reasonable employer under the circumstances, the employee was deemed to have been unfairly dismissed and was awarded \$7,022.40 in compensation. This included a 20% reduction that was applied due to WorkCover concluding that the employee was in fact the instigator in the altercation where he was kicked by another worker.

Beyond the basics

Abandonment of employment can put employers in some very difficult positions, even if they do follow the "obvious steps" outlined above.

- How long should you wait for an employee to return?
- What if they cannot be contacted?
- If and when should they be paid any outstanding entitlements?
- Should their departure be treated as a dismissal or a resignation?

For advice on similar scenarios, and how to determine if abandonment of employment has occurred and what to do once this has been established, please do not hesitate to contact Nick Stevens, Jane Murray and Angharad Owens-Strauss.



Election Outcome: What will the Industrial Relations landscape look like under the re-elected Liberal Government?

Brief Summary

- Changes to the Enterprise Agreement approval process;
- Increased flexibility for paid parental leave;
- Increased regulation of core labour hire industries;
- Changes to Union right of entry on work sites;
- Early superannuation access for victims fleeing domestic and family violence;
- Increased funding for the Australian Building and Construction Commission;
- Potential introduction of freedom of religion legislation;
- Crack down on Sham Contracting, Underpayments and Accessorial Liability;
- Enhanced protection of Migrant Workers; and
- Strengthening of whistleblower protection laws.

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An overview of the Liberal–National Coalition’s industrial relations election policies and proposals:

Bargaining and Industrial Action

The Coalition intends to review the current Enterprise Agreement approval process to ensure that excessive and unnecessary barriers to approval are removed, while ensuring employee safety nets are not undermined.

Paid Parental Leave

The requirement to take paid parental leave in one consecutive block of the 18-week period will be removed. Under the new system, expected to commence on 1 July 2020, parents will have the flexibility to take 6 weeks of the leave in whatever increments they wish before their child turns two.

National Labour Hire Registration Scheme

The Coalition has accepted a recommendation to form a labour hire registration scheme that seeks to reduce the exploitation of workers in labour hire industries. This scheme will target ‘at risk’ industries such as: horticulture, meat processing, cleaning and security, and will include:

- the mandatory registration of labour hire companies from ‘at risk’ industries, and the requirement for host employers to only be able to hire from registered companies; and
- The power to cancel registrations of labour hire companies that breach the relevant laws.

Union Right of Entry

From 1 July 2019, right of entry permits issued to union officials by the Fair Work Commission must include a photo and signature of the permit holder, along with any conditions on its use.

The notice of entry forms that must be given to employers will also need to clearly set out the rules that both union officials and employers must follow when rights of entry are being exercised.

Superannuation

Victims fleeing domestic and family violence will have early access to their superannuation.

Australian Building and Construction Commission

The Coalition has promised to increase funding to the ABCC by \$3.7 million over four years to promote the understanding of, and enforce compliance with, Australia’s workplace laws in the building and construction industry.

Freedom of Religion

The Coalition intends to introduce religious discrimination legislation which will make it unlawful to discriminate on the basis of an individual’s religious beliefs.

Sham Contracting, Underpayments and Accessorial Liability

The Coalition’s response to recommendations made in the Migrant Workers’ Taskforce Report (MWTR):

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Increasing Civil Penalties

The Coalition has agreed, in principle, with the MWTR's recommendation to increase civil penalties for wage exploitation breaches of the *Fair Work Act 2009* (Cth).

Criminal Penalties

The Coalition will consider introducing criminal sanctions for the most serious forms of exploitation where there is "clear, deliberate and systemic" exploitation of both local and migrant workers. Any new regime introduced to this effect would complement existing offences in the *Criminal Code 1995* (Cth).

Accessorial Liability

In response to the MWTR's recommendation that the Government explore additional options to ensure businesses and individuals are held to account for breaches of workplace law, the Coalition announced that it will consider ways to ensure employers cannot contract out of their workplace obligations, for example by extending accessorial liability to companies in appropriate circumstances.

Enhanced Fair Work Ombudsman

The Coalition has accepted the MWTR's recommendation, in principle, to give the Fair Work Ombudsman enhanced information gathering powers (similar to that of the ACCC) and to ensure the FWO is sufficiently resourced. The MWTR stated that the current "provisions in so far as they apply to the FWO's work in dealing with wage exploitation issues are unduly complex and burdensome".

Sham Contracting Unit

One "big-ticket item" is the Coalition's commitment in the 2019 budget to dedicate \$9.2 million to the Fair Work Ombudsman over four years to create a sham contracting unit, with a further \$2.3 million each year for ongoing funding.

Employers will be under increased scrutiny for misrepresenting an employee as an independent contractor. Penalties imposed will be up to \$12,600 for individuals, per contravention; and up to \$63,000 for a company, per contravention.

Protection for Temporary Migrant Workers

In a further response to the MWTR, the Coalition has stated that it will consider making it an offence for a person to knowingly pressure or coerce a temporary migrant worker to breach a visa condition.

Consideration will also be given to providing the State and Federal Courts with specific powers to make additional enforcement orders against employers who underpay migrant workers.

Whistleblowing

The Coalition has agreed in principle to 16 of the recommendations contained in the Parliamentary Joint Committee on Corporates and Financial Services report into whistleblower protections. The recommendations seek to enhance protections for whistleblowers in both the private and public sector.

The Coalition also noted, but has not yet agreed to, a recommendation in the report to introduce a

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whistleblower rewards scheme, where whistleblowers would receive a percentage of the penalties that eventuate from the wrongdoing that their information reveals. Instead, the Coalition stated that it supports a post-implementation review of the new whistleblower protections, which will provide an opportunity to assess the merits and costs of any rewards scheme once the reforms have had a reasonable time to operate.

If you have any questions about these reforms and proposals may affect you or your business, please do not hesitate to contact Nick Stevens, Jane Murray or Angharad Owens-Strauss.