

A VISION IN THE WORKPLACE

Our April edition of Vision includes:

- Enhancing Support for Working Families: Changes to Paid Parental Leave in Australia;
- Enforcing Restraints of Trade: Delay of Three Months Fatal for Employer's Case; and
- Worker Sacked for Offensive Posts.



Enhancing Support for Working Families: Changes to Paid Parental Leave in Australia

Paid parental leave is set to undergo significant changes starting from July 2024, offering increased support for working families across Australia. The passage of the *Paid Parental Leave Amendment (More Support for Working Families) Bill 2023*, unamended by the Senate on 18 March

2024, marks a pivotal moment in bolstering parental benefits nationwide.

Under the new legislation, federally-funded paid parental leave will be extended by an additional two weeks this year, elevating the entitlement from the existing 20 weeks to 22 weeks, effective from 1 July. This enhancement signifies a tangible commitment to assisting parents in balancing their work and family responsibilities more effectively.

Moreover, this trajectory of support is set to continue in the coming years. From July 2025, the entitlement will further increase to 24 weeks, followed by a subsequent rise to 26 weeks from July 2026. These incremental expansions reflect a concerted effort to adapt to the evolving needs of modern families and acknowledge the vital role that parental leave plays in fostering healthy family dynamics.

In tandem with the extension of leave duration, there are notable adjustments to the allocation of parental leave between parents. Commencing July 2025, the period of leave reserved for one parent will increase by one week, followed by another week's increment in July 2026. This progression culminates in a total leave

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requirement of four weeks for one parent from July 2026, ensuring a more equitable distribution of caregiving responsibilities.

Simultaneously, the period of leave available for concurrent uptake by both parents will also see an expansion. Formerly capped at two weeks, this allowance will double to four weeks, affording greater flexibility for families to navigate the early stages of parenthood together.

Crucially, these reforms extend support to single parents, who are entitled to the entirety of the allocated parental leave period. By recognising the diverse family structures present in contemporary society, this inclusive approach seeks to provide a safety net for all caregivers, irrespective of their familial circumstances.

The decision to fortify paid parental leave underscores the government's commitment to fostering an inclusive and supportive environment for working families. By acknowledging the challenges faced by parents in balancing career aspirations with caregiving responsibilities, these reforms aim to alleviate financial burdens and promote greater work-life balance.

Furthermore, these initiatives are poised to yield broader societal benefits, including improved gender equality in the workplace and enhanced child development outcomes. By facilitating greater parental involvement during the formative early months of a child's life, paid parental leave serves as a cornerstone for building stronger, more resilient families.

The forthcoming changes to paid parental leave represent a significant stride towards fostering a more compassionate and family-friendly society. As we embark on this journey towards greater support for working families, it is imperative to recognise the pivotal role that paid parental leave plays in nurturing the well-being of both parents and children alike. With these reforms, Australia reaffirms its commitment to championing the rights and needs of every family, laying the groundwork for a brighter and more inclusive future for generations to come.

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Enforcing Restraints of Trade: Delay of Three Months Fatal for Employer's Case

A recent notable ruling has underscored the critical importance of prompt action for employers aiming to enforce restraint of trade clauses against former employees. A delay of just three months in initiating legal proceedings proved detrimental, leading to the dismissal of an employer's application for interim relief.

Scyne Advisory Business Services Pty Ltd v Heaney [2024] NSWSC 275

The case involved Scyne Advisory Business Services Pty Ltd (Scyne), an emerging consulting firm resulting from PwC's divestiture of its public sector advisory arm, and Ms Connie Heaney, formerly a

partner at PwC since July 2022, who transitioned to Scyne's employment on 9 November 2023.

On 29 November 2023, Ms Heaney tendered her resignation, disclosing her intention to join Downer Group, a direct competitor of Scyne.

Subsequently, on 7 December 2023, Scyne placed Ms Heaney on gardening leave, stipulating her last working day as 29 February 2024. Correspondence during this period reiterated the presence of restraint of trade provisions in Ms Heaney's employment contract and sought assurances of compliance.

Ms Heaney acknowledged the existence of these provisions on 13 December 2023 but declined to sign the undertakings, maintaining her stance that her new role at Downer would not contravene the restraints.

Further correspondence ensued until Ms Heaney's departure from Scyne on 29 February 2024.

On 4 March 2024, the same day Ms Heaney commenced her employment with Downer, Scyne initiated legal action in the NSW Supreme Court, seeking to restrain Ms Heaney from breaching the non-compete clauses in her contract.

Key Issues

In considering Scyne's application for interim relief, the Court examined:

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1. Whether there existed a substantial legal question warranting judicial review, particularly concerning the likelihood of Ms Heaney violating her contractual obligations upon joining Downer.
2. The balance of inconvenience between the parties, evaluating whether granting relief to Scyne would disproportionately disadvantage Ms Heaney.
3. The timeliness of Scyne's legal recourse, focusing on the three-month gap between Ms Heaney's resignation and the commencement of proceedings.

Judicial Ruling

1. **Substantial Legal Question:** The Court acknowledged the validity of Scyne's concerns regarding Ms Heaney's potential breach of contractual obligations. Despite Ms Heaney's assertion of an internal role at Downer, evidence presented by Scyne indicated the risk of divulging confidential information and its detrimental impact.
2. **Balance of Inconvenience:** Considering the circumstances, the Court found no undue

hardship on Ms Heaney if interim relief were granted to Scyne.

3. **Timeliness:** Notably, the Court emphasised the importance of prompt legal action in cases of potential breaches of contractual obligations. Scyne's delay in initiating proceedings after becoming aware of Ms Heaney's intentions was deemed unreasonable and fatal to its application for interim relief.

Verdict

In light of the delay and the pre-existing knowledge of the potential breach, the Court declined Scyne's plea for interim relief, deeming it unjust to impede Ms Heaney's employment with Downer.

Key Lesson for Employers

Employers must promptly initiate legal action upon becoming aware of potential breaches of contractual obligations by former employees. Waiting until after employment ceases may lead to significant delays and weaken the employer's position. Therefore, swift and decisive action is imperative to protect the employer's interests effectively.

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Court Denies Costs in Adverse Actions as Judge Deems Settlement Offers Unalluring

Background

In a recent legal development, a court has declined to order costs against a former sales representative who rejected multiple settlement offers before losing her adverse action case against tools manufacturer Makita (“**the Company**”). The court found “nothing especially alluring” about the settlement offers, ultimately leading to the dismissal of the respondents’ application for costs.

Facts

The former sales representative, based in Victoria, alleged that the Company terminated her employment in late 2020 following her complaint about the behaviour of the Company’s State manager. Seeking \$3,480 in lost bonuses and super, along with \$1,500 in damages and penalties, she targeted the Company, its Sydney-based HR advisor, the Victoria state manager, and the Brisbane-based national sales manager involved in her dismissal.

In an interim decision in February 2022, the court rejected her request for a face-to-face hearing, affirming the Company’s position that the dismissal was unrelated to her complaints and resulted from serious misconduct. In August, the court ruled in favour of the Company, satisfying the burden of proving that the dismissal decision wasn’t motivated by the sales representative’s exercise of a workplace right, thereby absolving the other respondents of accessory liability.

Following the court’s dismissal of the case, the respondents sought costs under section 570 of the *Fair Work Act*, arguing that the sales representative unreasonably rejected a series of reasonable settlement offers made before the trial.

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Decision

In the recent ruling, Federal Circuit and Family Court Judge Catherine Symons revealed that the respondents had initiated settlement offers ranging from \$10,120.10 to \$25,000 before the trial commenced. Judge Symons acknowledged that each offer demonstrated a genuine compromise, progressively increasing based on the sales representative's counteroffers.

However, the court rejected the application for costs, noting that the sales representative's refusal of the settlement offers did not constitute an unreasonable act or omission. Judge Symons emphasised that there was "nothing especially alluring" about the offers when considering the stage of the proceeding, the extent of compromise, and the sales representative's prospects of success.

Key Takeaways

1. **Assessment of Offers:** The court scrutinised the timing, compromise extent, and the sales representative's prospects when evaluating the settlement offers, deeming them unalluring.
2. **Rejection:** The judge emphasised that the sales representative's refusal was not

unreasonable, considering the circumstances and the evolving nature of the case.

3. **Standard:** The decision highlights the court's reluctance to depart from the usual order on costs, emphasising the need for a clear case to justify such a departure in this jurisdiction.

In conclusion, the case underscores the nuanced evaluation of settlement dynamics in legal proceedings, with the court ultimately siding with the former sales representative in her decision to reject the offered settlements. If you have any questions about this case and what the decision could mean for you, please do not hesitate to contact Nick Stevens, Peter Hindeleh, Josh Hoggett or Evelyn Rivera.

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