

A VISION IN THE WORKPLACE

Our September edition of Vision includes:

- \$197,000 in penalties ordered against a company for 'sham contracting' involving workers with disabilities;
- The Fair Work Commission seeks feedback on three test cases following the new 'Closing Loopholes' legislation introduced last month; and
- The Health Services Union wins 12 days of 'reproductive leave' for disability workers in Victoria.



\$197,000 in Penalties Ordered Against Company for 'Sham Contracting'

The Fair Work Ombudsman (**the FWO**) has secured \$197,000 in court-ordered penalties against Doll House Training Pty Ltd (**the Company**), a Sydney-based health and wellness research company, for engaging in sham contracting involving workers with disabilities. The Federal Court found the company guilty of misrepresenting employment contracts as independent contractor agreements (**ICAs**) and failing to comply with the *Fair Work Act 2009* (Cth) (**the FW Act**).

Background

The Company operated in the field of robotics, coding and artificial intelligence applications for health and wellness. Between August and October 2020, the Company engaged three workers with disabilities through an employment services provider (**the Workers**). In October 2020, the Company attempted to reclassify the Workers as independent contractors by issuing them ICAs, which contained terms indicative of employment contracts. This led to the FWO's investigation following complaints by the Workers.

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Summary of the Decision

Justice Scott Goodman ruled that the ICAs were effectively employment contracts for several reasons, including the nature of the "rights and obligations" which suggested that the Workers were contracted to work for the Company's business rather on an independent basis. He found that there was a significant power imbalance, particularly for two of the Workers who felt they had no choice but to sign the ICAs to avoid unemployment.

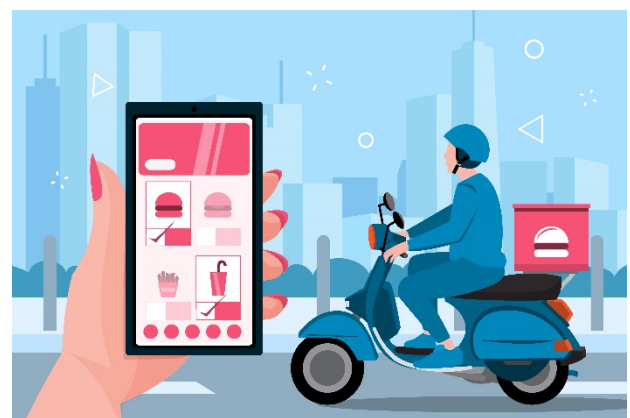
The Court also noted that the Company failed to pay the Workers their full wages on a monthly basis, as required by law, and did not comply with a Notice to Produce issued by a Fair Work Inspector. This Notice demanded specific records and documents related to the terms of engagement and duties performed by the Workers, which the company failed to provide. Justice Goodman emphasised the adverse impact on the Workers, who were already vulnerable due to their disabilities and financial struggles, including one Worker who had to borrow money from a short-term lender due to the Company's non-payment.

Furthermore, the Decision highlights the Company's complete disregard for the legal process and lack of contrition, which aggravated the severity of the penalties. The imposed penalties aim to serve both as a specific deterrent

to the Company and a general deterrent to other employers considering similar practices.

Fair Work Ombudsman, Anna Booth, reinforced that sham contracting is a serious offence that undermines employee rights and entitlements. Ms Booth emphasised that the FWO will continue to pursue employers who exploit their power over vulnerable workers, including the rectification of underpayments and protecting employees from unlawful employment practices. Ms Booth also encouraged employees and employers with concerns about their rights and obligations to seek assistance from the FWO.

If you have any questions about ICAs and what they could mean for you or your business, please do not hesitate to contact Nick Stevens, Josh Hoggett, Evelyn Rivera or Ayla Hutchison.



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“Shake-up” test cases

Background

President Adam Hatcher of the Fair Work Commission (**the FWC**) is seeking feedback on three key test cases brought forward by the Transport Workers Union (**the TWU**) following the Albanese Government's "Closing Loopholes 2" legislation. The TWU's three applications are seeking to establish minimum standards and regulate working conditions for employee-like gig workers in the "last mile" delivery sector and owner drivers who operate independently but are engaged by larger delivery companies. This initiative demonstrates a significant development in the regulation of gig economy workers, a sector which has long operated without the protections afforded to traditional employees.

Impact on Gig Economy and Transport Industry

If these cases are successful, a road transport expert panel within the FWC, informed by advice from the Road Transport Advisory Group (**the RTAG**), will determine minimum standards for these gig workers. The RTAG consists of significant stakeholders in the Transport Sector. The goal is to create a more safe and fair working environment for food delivery workers using platforms like UberEats, and parcel and goods delivery drivers working with companies like Amazon Flex.

The outcome of these cases could reshape the way gig workers and owner drivers are treated and could offer them greater rights and protections including fair pay and working conditions. The FWC's approach to setting these standards will be watched closely by industry, unions and gig workers alike, as it may set a precedent for other sectors within the gig economy.

If you have any questions about these “shake-up” test cases and what they could mean for you or your business, please do not hesitate to contact Nick Stevens, Josh Hoggett, Evelyn Rivera or Ayla Hutchison.



Reproductive Leave

Overview

One of Australia's largest not-for-profit disability service providers is among the first employers to provide 12 days of 'reproductive leave' to its

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16,000 disability service workers. Following negotiations between the Health Services Union (**the HSU**) in Victoria and Scope (Aust) Ltd (**Scope**), full-time and part-time workers are eligible. They can use the reproductive leave to attend and recover from specialist medical appointments and treatments. The HSU are currently bargaining to entrench the entitlement into a further five agreements in the disability services sector.

What is 'reproductive leave'?

Reproductive leave provides for paid leave from work for employees experiencing reproductive issues that require "specialist medical intervention" (in addition to personal leave), including IVF, severe menstrual pain, endometriosis, menopause, gender-transitioning therapies, vasectomies and other reproductive health issues (**the Leave**). Employees may utilise the Leave to attend and recover from specialty appointments and treatments arising from reproductive issues. A medical certificate will be required from the treating specialist. The HSU states that the Leave will enable women to remain in the workforce for longer and continue to earn superannuation.

Future developments

Following these developments, union representatives are campaigning to secure 10-12 days of the Leave nationally as part of Australia's National Employment Standards, with representatives from the HSU meeting with politicians including Workplace Relations Minister Murray Watt earlier in September. While the Government has not yet committed to legislating the Leave, unions remain hopeful. The HSU and other organisations have commissioned a study from Curtin University's Bankwest Curtin Economics Centre to assess the costs and benefits of the Leave. This study, expected to report later this year, could provide the necessary evidence to bolster their case for legislative action.

If you have any questions about reproductive leave and what it could mean for you or your business, please do not hesitate to contact Nick Stevens, Josh Hoggett, Evelyn Rivera or Ayla Hutchison.

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