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ProcessWorx HR Update





Recent Changes to the FairWork Act

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New Employment Law Changes – Important To You

Small Claims
Changes

Pay Secrecy
Clauses

Family and
Domestic
Violence Paid
Leave

Sexual
Harassment
(FWA)

Super Increase to
11%

Public Holiday
Changes

Pay increase
5.75%

Limitations on
Fixed Term
Contracts
6 Dec 23

Sexual
Harassment
Positive Duty
(SDA)
13 Dec 23

Authorised
Employee
Deductions
30 Dec 23

Super added
to NES
1 Jan 24

Small Claims Procedure

- There is an increase in the monetary cap from \$20,000 to \$100,000
- The number of claims will increase in this jurisdiction (as previously claims would need to go through Federal Circuit Court procedure)

What do you need to do?

- ✓ Make sure your wages are in order
- ✓ Fair Work was in the South West targeting farmers earlier this year



Prohibiting Pay Secrecy

- Employees now have a workplace right to disclose their remuneration
- Employees are now free to ask other employees about their remuneration

Prohibiting Pay Secrecy

- Employment contracts with pay secrecy clauses contravene the Fair Work Act

***Maximum penalty for contravention of Fair Work Act
by a corporation is \$66,000 (Company) \$16,000 (Director)***

What do you need to do?

- ✓ A good time to review your employment contracts
- ✓ Remove any pay secrecy clauses
- ✓ Re-issue contracts (as existing clauses could invalidate the whole contract)



Family and Domestic Violence Leave

- Employee experiencing violence from a member of their family
- Employee providing support to a member of their immediate family or household, who are experiencing violence from their family
- 10 days paid leave
(applies to all organisations, regardless of employment type)

What do you need to do?

- ✓ Include in *leave policy*
- ✓ Pay when supplied with evidence
(ensuring payslip does not reference family or domestic violence leave)



Sexual Harassment

- Extends to: employees, contractors, subcontractors, outworkers, apprentices, trainees, students, volunteers and prospective workers
- The FWC can deal with sexual harassment by:
 - a stop sexual harassment order
 - dealing with a dispute and ordering compensation

Sexual Harassment

- The FWO has the power to investigate and bring civil penalty proceedings

The maximum civil penalty is \$66,000 (company) and \$16,000 (individual), there is no cap on compensation orders to the person in federal jurisdiction

What do you need to do?

- ✓ Have a *Prevention of Discrimination and Harassment Policy* which clearly prohibits discrimination and harassment
- ✓ Have a *Grievance Procedure* to resolve grievances (including an investigation process)



Pay and Superannuation Increases

The Fair Work Commission increased Award rates by 5.75%.

Superannuation Guarantee is now 11%
(increasing to 11.5 in 2024 and 12% in 2025)

What do you need to do?

- ✓ Check your pay rates are compliant by completing a Better Off Overall Test (BOOT)
- ✓ Keep up to date on the minimum entitlements for your employees



Public Holidays

- Employees have the right to have the Public Holiday off and employers need to genuinely ask if the employee is willing to work, consider their reasons if they say no and look at what the next stage is if there are no other options

What do you need to do?

- ✓ Consider if you will need employees to work over public holidays in peak seasons
- ✓ Ask employees if they are willing to work and genuinely consider their response
- ✓ Confirm the agreement or direction in writing



Fixed Term Contracts

- The use of fixed term contracts will be limited effective 6 December 2023
- Importantly a contract cannot be more than 2 years
- Exemptions to this rule are those who are undertaking traineeships, apprenticeships, specialised work and some Chief Executive Officers

What do you need to do?

- ✓ Review any employees currently on fixed term contracts
- ✓ Prior to choosing fixed term contracts in the future make an assessment against the Fair Work Ombudsman's Fixed Term Contract Information Statement



Authorised Deductions

- Deductions still need to be agreed in writing and principally in the interest of the employee
- The change is that employees can enter into a written agreement that authorises the employer to deduct amounts that vary where there is a clear reason for the variation and understanding that the amount may vary

Superannuation in the NES

- Effective 1 January 2024 the National Employment Standards will include the right to Superannuation Contributions
- This means underpayment of Superannuation can be pursued by the Fair Work Ombudsman

What do you need to do?

- ✓ Review your superannuation practices
- ✓ Ensure you are increasing your superannuation contribution as required each year until it reaches 12%



New Employment Law Changes

Casual
Employment TBD

Sham
Contracting
TBD

Labour Hire
Changes
TBD

Wage Theft
TBD

What you need to do to meet employment laws

- ✓ Have *Employment Contracts* and *Individual Flexibility Agreements (IFA)* for each employee
- ✓ Conduct the *Better Off Overall Test (BOOT)* for each employee
- ✓ Have *HR Policies & Procedures* to meet legislation requirements:
 - Leave; Grievance; Bullying, Discrimination & Harassment; Performance Management; Discipline & Termination; Record Keeping, Workers Compensation, Injury Management and Privacy (as a minimum)

What you need to do to meet employment laws

- ✓ Induct every employee and keep evidence
- ✓ Follow the Award or IFA and pay employees correctly and issue payslips
- ✓ Keep detailed employment records (including timesheets)
- ✓ Keep up to date with the changes that are coming and update documents accordingly

What you need to do to meet WHS laws

- Develop a Risk Register
- Build a WHS management system:
 - WHS Policy
 - Key processes across
 - Inducting and training employees
 - Contractor and visitor management
 - Chemical and equipment management
 - Incident management
 - Emergency Management
 - Communication and Consultation
 - Safe Work Procedures across all risk areas

What you need to do to maintain WHS compliance

- Induct and train all employees
- Induct all contractors and visitors
- Maintain registers across Risk, Chemicals, Equipment/Plant, Contractors, Incidents
- Have regular Safety meetings
- Conduct Annual Site Inspections
- Conduct Annual emergency exercise
- Have at least two first aid attendants



Thank you

*"We take care of the people,
so, you can take care of the rest."*



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