



A GUIDE TO COMPLIANCE WITH THE FAIR WORK ACT

GABRIELLE SULLIVAN

Director- Employment & Workplace Relations, BAL Lawyers
gabrielle.sullivan@ballawyers.com.au

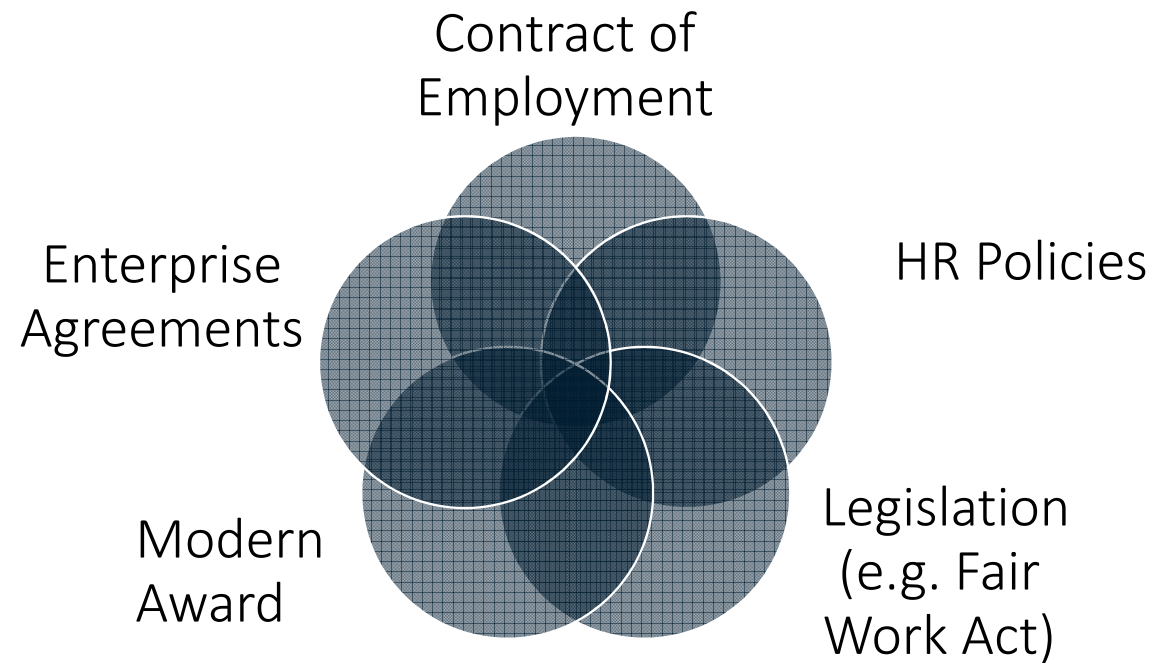
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AGENDA

1. Is your business compliant with the *Fair Work Act 2009*?
2. What to do if you are not compliant?
3. Managing the Fair Work Ombudsman.

INSTRUMENTS REGULATING EMPLOYMENT



COMPLIANCE OVERVIEW

- Key employer obligations under the *Fair Work Act 2009*:
 - 10 National Employment Standards (NES)
 - Relevant Modern Awards:
 - » E.g. Health Professionals and Support Services Award 2010;
 - Any Enterprise Agreement
 - Sham contracting provisions
 - Record keeping obligations
- Employer obligations under the *Fair Work 2009* are upheld by:
 - The Fair Work Commission
 - Federal Courts (Unions, affected employees and the FWO can sue)

COMPLYING WITH THE NATIONAL EMPLOYMENT STANDARDS (NES)

1. Hours

- Maximum weekly hours of work (38)
- Rules about additional hours of work

2. Flexible work requests*

- Employees may request changes to working arrangements in writing
- Employers have 21 days to respond

3. Parental leave*

- Generally applicable to non-casual employees who have been employed for over 12 months.

COMPLYING WITH THE NATIONAL EMPLOYMENT STANDARDS (NES)

4. Personal/Carer's leave and compassionate leave

- Amount of leave/accrual of leave:
 - » 10 days paid PCL per annum, cumulative
 - » 2 days unpaid carer's leave per occasion (casuals included)
- Circumstances when Personal/Carer's leave and compassionate leave can be taken
- Notification and evidence requirements

5. Community service leave

- Period of entitled community service leave
- Meaning of 'eligible community service'

COMPLYING WITH THE NATIONAL EMPLOYMENT STANDARDS (NES)

6. Long-service leave

- Who is eligible? Includes casuals
- How to calculate entitlements:
 - » 1/5 month for each year of service,
 - » accrues after 7 years continuous service in ACT; 10 years in NSW, unless terminated after 5 years of service
 - » no cashing out

7. Public holidays

- Employees entitled to be absent on public holidays
- Exceptions/reasonable requests to work on public holidays

COMPLYING WITH THE NATIONAL EMPLOYMENT STANDARDS (NES)

8. Notice of termination of employment

- NES notice must be: in writing, in advance, specify date of termination
- Amount of notice: sliding scale, depending on period of continuous service (+ 1 week extra if over 45 years); this is minimum only
- Payment in lieu of notice permissible

9. Redundancy pay*

- Amount: sliding scale depending on service
- NES Entitlement to redundancy pay: some exclusions
- NES is minimum entitlement only

10. Fair Work Information Statement

COMPLYING WITH MODERN AWARDS AND ENTERPRISE AGREEMENTS

Modern Award:

- Minimum pay rates, allowances, hours, loadings and penalties , consultation provisions based on the specific industry (e.g. hospitality, architects, medical practitioners)
- For example: Health Practitioners and Support Services Award 2010

Enterprise Agreements:

- Can be used to replace a modern award
- Specific agreements tailored to specific business needs
- Still needs to meet Award minimum rates of pay and employment conditions 'B.O.O.T'

COMPLYING WITH POLICIES AND CONTRACTS

WRITTEN EMPLOYMENT CONTRACTS

- Why are they important?
 - In an employment relationship a contract always exists, either verbally or written.
 - In order to ensure that both you and your employee have a clear understanding of what is expected during the term of employment, it is best to have a written contract.
 - A contract can eliminate disputes which may arise at a later date.

CONTRACTS OF EMPLOYMENT

WRITTEN EMPLOYMENT CONTRACTS

- What can be included in an employment contract?
 - An employment contract cannot provide for less than the legal minimum set out in:
 - » the National Employment Standards (NES)
 - » awards, enterprise agreements or other registered agreements that may apply.
 - Key pro-employer clauses which can be included in contracts.
 - » restraint of trade clauses;
 - » off-set clauses for over-award entitlements; and
 - » employee notice periods

COMPLYING WITH FWA SHAM CONTRACTING PROVISIONS

- What is sham contracting?
 - Representing a contract of employment as a 'contract for services' (or independent contracting arrangement)
 - Defence: 'did not know, and was not reckless'
- What is the difference between an employee and an independent contractor?
 - An employee serves the employer in the employer's business; an independent contractor carries on a business of their own*



WHAT TO DO IF YOU'VE BEEN NON-COMPLIANT

- Affected employees, their union, or the Fair Work Ombudsman can initiate federal court proceedings to claim compensation and civil penalties for non-compliance with the FWA.
- 'Compensation' can include compensation for non-financial hurt
- Civil penalties are significant: max \$10,800 per breach for individual; \$54,000 per breach for companies. 6-year time limit.
- Legal costs are generally not recoverable

HOW TO DEAL WITH THE FAIR WORK OMBUDSMAN

1. Avoid by complying
2. Avoid by correction: voluntary, swift, complete.
3. It must face them:
 - Be cooperative and prompt during any mediation or investigation phase. Be nice.
 - Comply with non compliance notices or seek legal advice if you disagree
4. If proceedings are threatened:
 - Offer enforceable undertaking;
 - Defend as appropriate and make/consider reasonable settlement offers



QUESTIONS