

# Employee Experience: **Increasing Employee Retention**

## & **Employment Law Update**



Effective  
Workplace  
Solutions

EMPLOYMENT LAW & HR CONSULTANTS

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# Employee Experience: Increasing Employee **Retention**




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## Why is Employee Retention Important?



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Today's job market is more competitive than ever, and with employees on the move in their 1000s and job vacancies higher than we have seen in a long time. Therefore, retaining your 'A' players has never been more important to businesses.



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## Why is Employee Retention Important?



costs  
1/3 → 2x  
salary

Replacing an employee is suggested to cost anywhere from one-third to double their annual salary. This will be different for each business and depends on the role.

However, the effects of employee turnover go far beyond costs and short-term disruptions.

Employee turnover also impacts:

- Employee **morale**
- **Productivity** & business knowledge base
- Customer **experience**

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We know that employees who feel valued and believe their employer is invested in their success will be happier, more productive, and more loyal—a win for everyone.

Therefore, the aim is to create a flexible, supportive and productive work environment where people thrive.

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## Effective Employee Retention Strategies



Before we unpack some of the strategies businesses can adopt to retain their valuable employees, consideration should be given to the fact that retention will look different from business to business and employee to employee.



Every employee's buy-in will be as individual as they are.



So how do you know what will work for your business and your employees?

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## Stay Interviews



Tell me.....

**Stay interviews (or retention interviews), are 1-on-1 conversations with current employees about:**

- **why they like working at your company, and**
- **what they would change about the business, team, or role if they could.**

**The main goal is to determine how to improve the employee experience for this specific employee and keep them in your workplace**

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# Focus on Being an Employer of Choice

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## 1

**Invest in your employees & create pathways for growth**

Career pathing is a process through which employees and their managers work together to identify goals and create a learning and growth action plan to achieve them.

Career path planning:

- can help increase employee engagement; and
- provide reassurance regarding the longevity of their career with your business.

**94%** of employees would stay with their company longer if it invested in their career development.

<https://learning.linkedin.com/content/dam/me/learning/resources/pdfs/LinkedIn-Learning-2020-Workplace-Learning-Report.pdf>

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## 2

## Recognise employees' contributions

Everyone likes to feel valued, and that's especially true in the workplace.

When employees feel recognised for their work, they are **56%** less likely to look for new opportunities.

Reward performance! It's that simple!



Recognition doesn't always have to have a \$ value attached to it. A shout out at a staff meeting or a thank you is also often appreciated by employees.

<https://www.gallup.com/analytics/392540/unleashing-recognition-at-work.aspx>

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## 3

## Reassess compensation

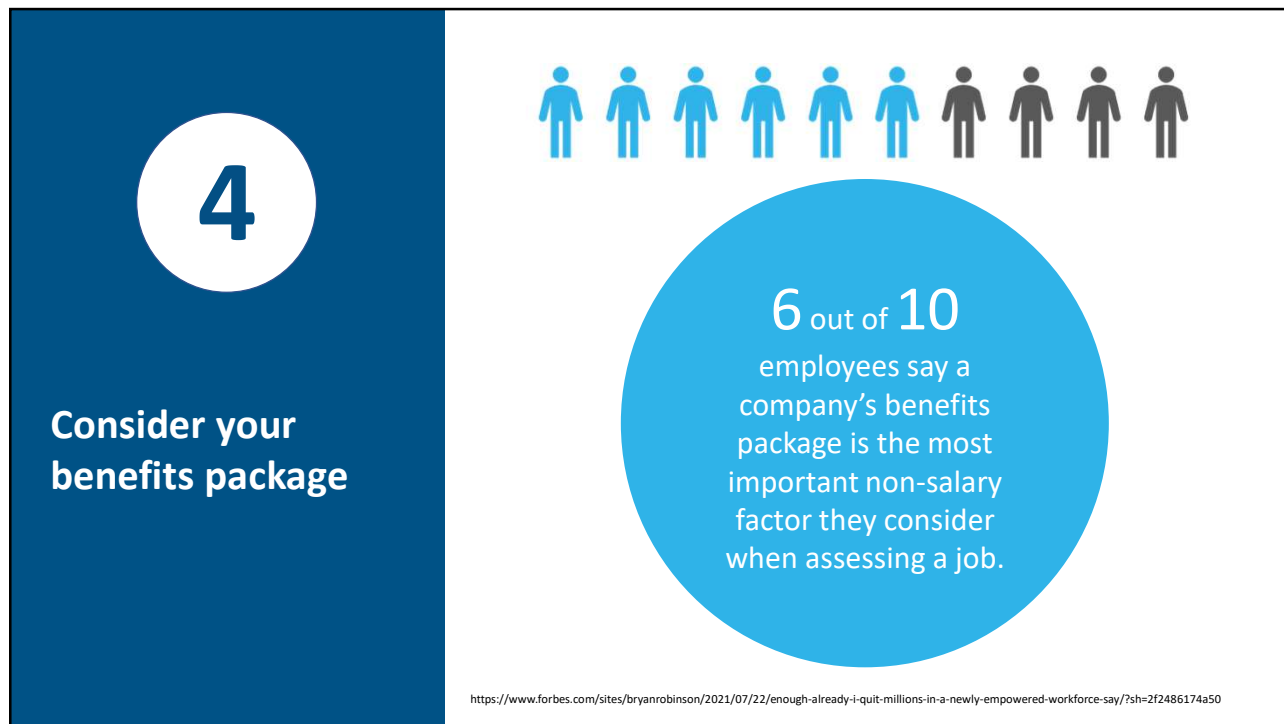
In today's competitive marketplace, compensation is an essential piece of any company's retention strategy.

No matter how valued an employee may feel, they are likely to look outside their current company if they feel inadequately compensated for their work.

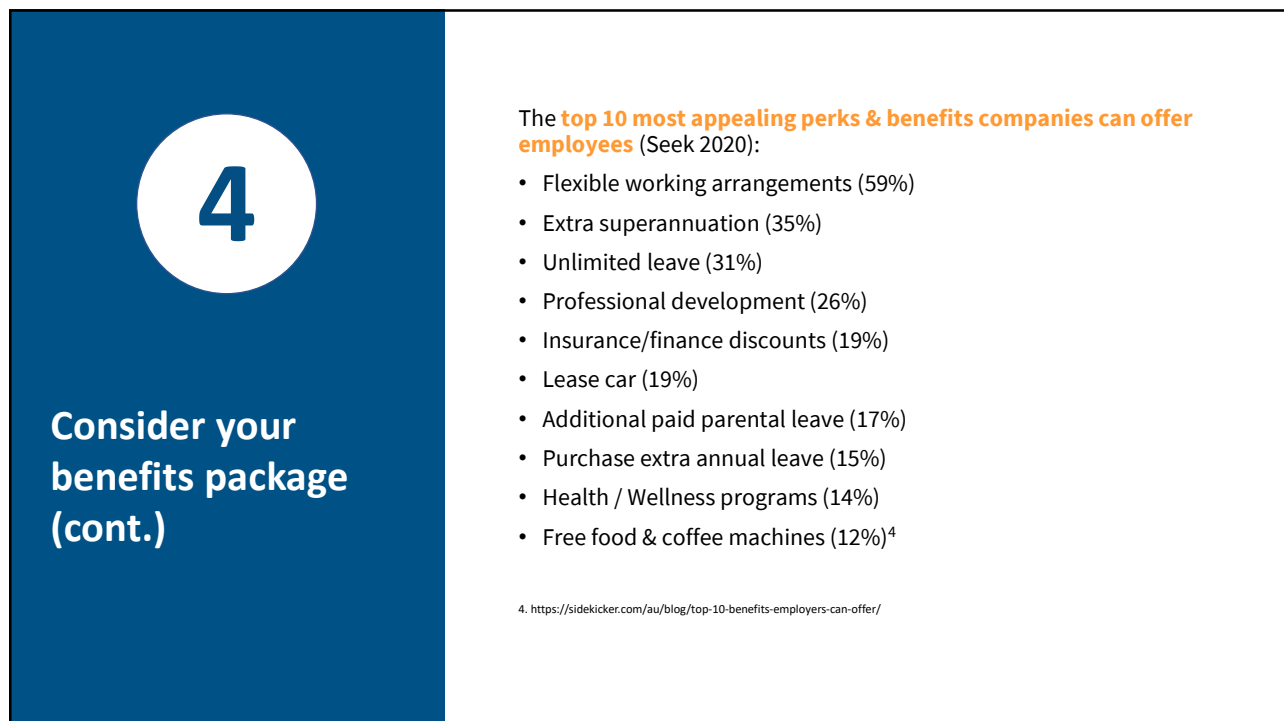
Regular reassessment of industry compensation standards should be a part of your retention strategy.

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## Prioritise work-life balance

Companies should be working towards creating a work environment where there is balance and boundaries.

 <p>Encourage breaks – lunch breaks or breaking if employees need to clear their head</p>	 <p>Encourage organisation – workshops on managing workflow, &amp; implementing tools to create efficiencies &amp; track tasks</p>
 <p>Review workloads regularly</p>	 <p>Lead by example</p>

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## Improve organisational culture

While organisational culture may seem subjective, its impacts on retention can't be denied. In fact, company culture is one of the key drivers of workplace satisfaction.

While the building blocks of a strong culture vary somewhat from one workplace to the next, strong corporate cultures share key traits such as:

- Having and embracing clearly articulated values
- Valuing and seeking out employees' voices
- Having strong commitments to diversity, equity, & inclusion
- Providing supportive leadership

<https://www.peoplesense.com.au/news/article/04052018-453/4-tangible-benefits-of-workplace-health-and-wellbeing-programs>

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## 7

## Consider hybrid &amp; remote options



Post COVID, remote and hybrid working is increasingly seen as the norm.

While some roles truly cannot be performed remotely, employers may want to consider offering remote and hybrid options where possible.

Options like requiring core '**in-office days**' or '**anchor days**' or recurring in-office meetings can provide the collaborative benefits of a shared workplace without requiring an overly rigid approach.

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## 8

## Focus on flexibility

In addition to remote working options, employees are increasingly prioritising flexibility as a desired workplace benefit/offering.

The option to flex hours to accommodate family caregiving, medical needs, or even a simple run to the bank in the middle of the day is considered highly valuable as employees look for better work life balance, and control over their workday.

The ability to dictate how and when work is completed is appealing, even if the total number of hours worked remains the same.



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## Support employee wellbeing

**Tangible benefits to employee wellbeing programs:**

- Reduced absenteeism (sick leave) in staff who are healthy and feel their employer cares
- Reduced staff turnover
- Increased productivity
- Happy employees provide positive reviews and boost your brand

**Wellness program inclusions** that raise employees' satisfaction are:

- Stress management and relaxation activities
- Mandatory lunch breaks and coffee breaks
- Healthy food options
- Fitness activities
- Flexible work hours
- Training programs
- Career advancement opportunities
- Financial rewards
- Team building programs
- Clubs and social activities

<https://www.peoplesense.com.au/news/article/04052018-453/4-tangible-benefits-of-workplace-health-and-wellbeing-programs#:~:text=A%20successful%20health%20and%20wellbeing,keeping%20the%20knowledge%20in%20house.>

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## 10

## Focus on team building



- The importance of **comradery** when it comes to retention can't be overlooked.
- A sense of **community and belonging** at work is a major factor in employee satisfaction and loyalty.
- Cohesive teams are better at collaborating and communicating, and according to a report from Virgin Pulse\*, 40% of employees cited their co-workers as the main reason they love their job.

<https://hbr.org/2021/10/to-retain-employees-give-them-a-sense-of-purpose-and-community>

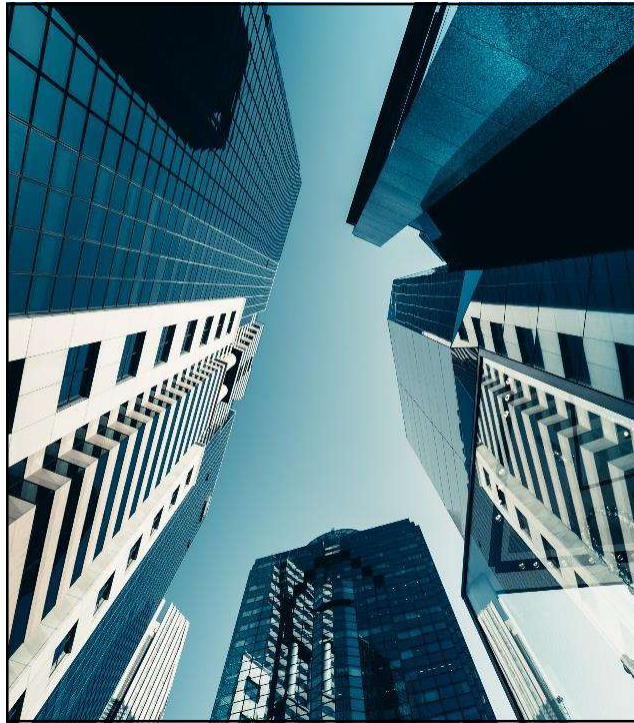
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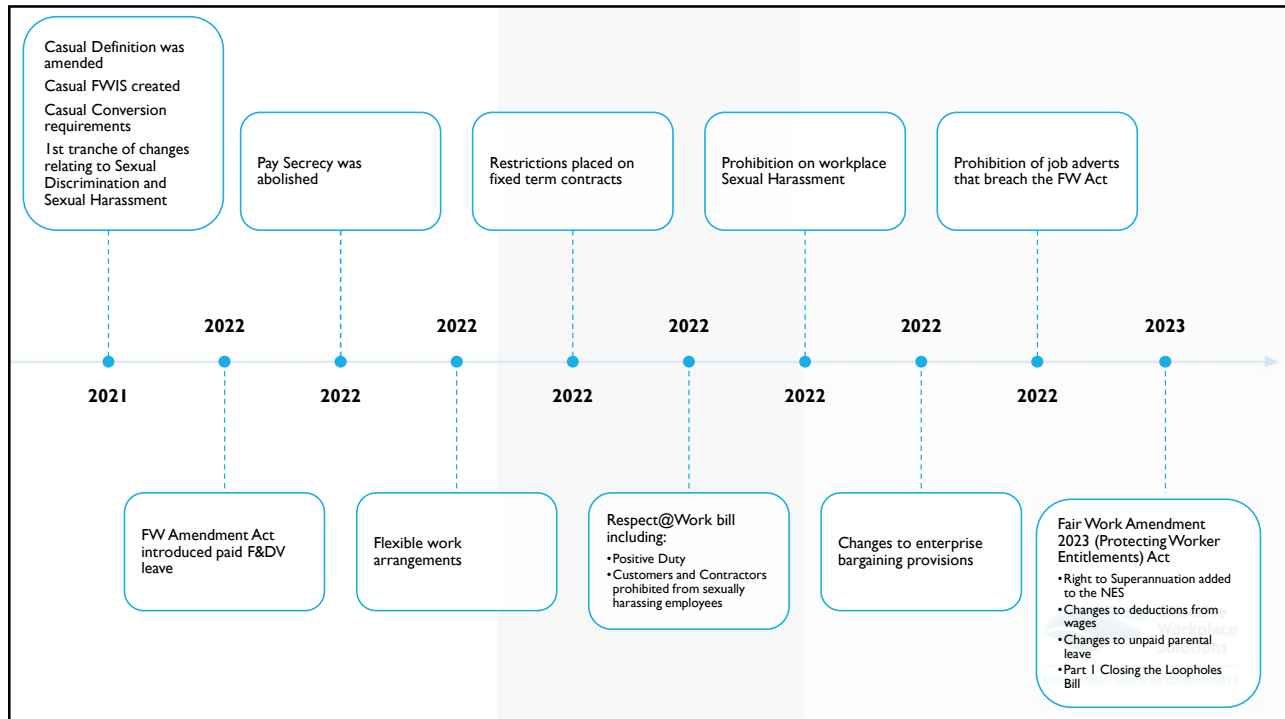
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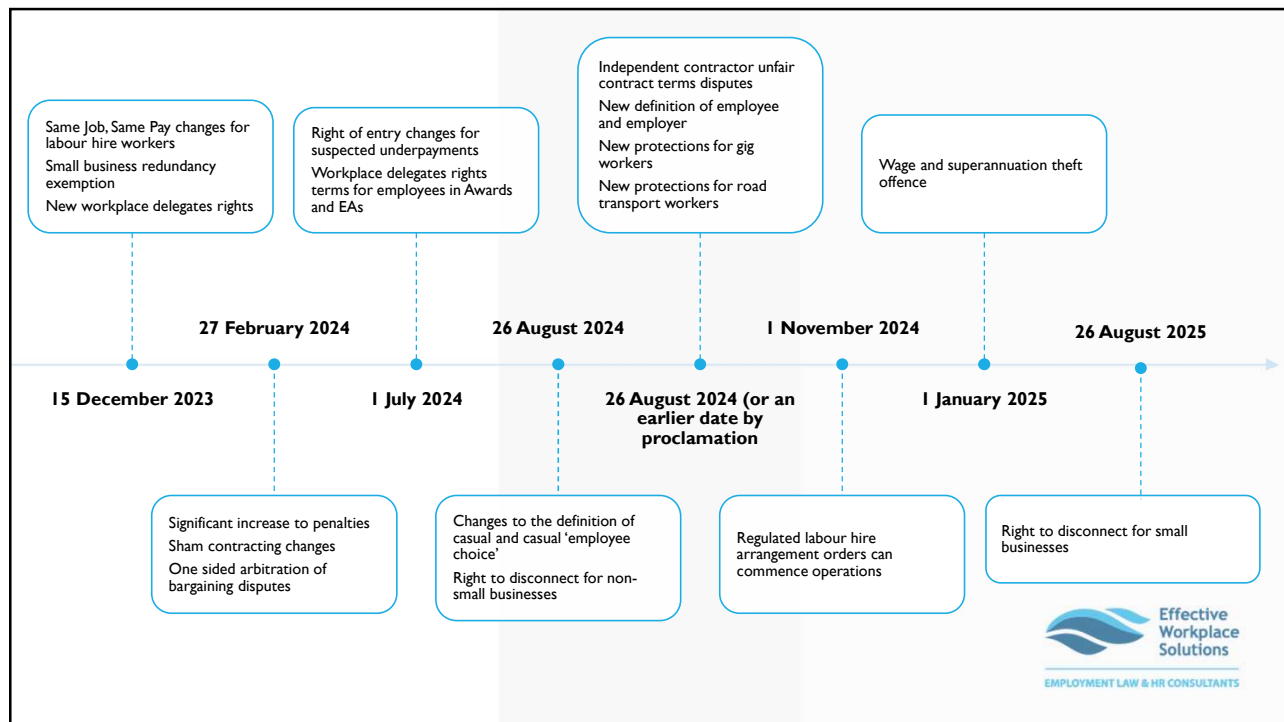
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# Closing Loopholes Legislation

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## Changes to Legislation



- Right to disconnect
- Casuals
- Contractors
- Wage Theft
- Road transport
- Gig economy
- Union Delegates

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## Right to Disconnect



Employees will have a legal right under the *Fair Work Act 2009* (Cth) to refuse to monitor, read or respond to contact from their employer outside of their working hours unless the refusal is unreasonable.

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## Right to Disconnect



The media speculation and hype suggested the following:

- You cannot send an email or text to an employee outside of work hours
- You cannot call an employee outside of work hours
- It is a criminal offence to contact an employee outside of work hours.

However, this is not strictly true.

Rather, what the legislation provides is:

- A right for an employee to 'ignore' contact outside of their working hours in certain situations.

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## Right to Disconnect



The right to disconnect will not apply to circumstances in which an employee's refusal is deemed to be unreasonable, including:

- the reason for contact
- how contact is made
- the level of disruption resulting from contact
- the extent to which an employee is compensated to remain available to work during the period when contact/attempted contact is made or for working additional hours outside the employee's ordinary hours of employment
- the nature of the employee's role and their level of responsibility
- any relevant personal circumstances. For example, family or caring responsibilities.

**Commences on 26 August 2024 for most employers and 26 August 2025 for small businesses (less than 15 employees)**

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## Right to disconnect



### Addressing this in your business

Employers should consider:

- preparing policies around the use of work technology outside of agreed working hours;
- monitoring employees' work activity outside of agreed working hours;
- encouraging managers to respect employees' boundaries;
- providing training for managers to ensure they are aware of the new right and don't take action against employees who are exercising their new right;
- training employees about the new right and what their employer is doing about it;
- organising feedback mechanisms for employees who feel the need to work outside of agreed working hours;
- encouraging all employees to schedule any emails and tasks to be delivered during agreed working hours; and
- organising training that highlights the mental health benefits of disconnecting from work.

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## Casual Definition

Changes to the definition of casual ➡

Factors include:

- a mutual understanding or expectation between the employer and employee;
- the employee's ability to accept or reject work;
- the future availability of continuing work;
- whether there are other employees performing the same work who are part-time or full-time employees; or
- a regular pattern of work

**Note: it is important to get the classification of a casual correct at engagement to avoid civil penalties.**



*"The employment relationship is characterised by an absence of a firm advance commitment to continuing and indefinite work; and the employee is entitled to a casual loading (which may arise from a fair work instrument or employment contract)."*

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## Casual Conversion

Changes to casual conversion.

- The existing casual conversion rules will be replaced by 'employee choice'.
- Casual employees have the discretion to convert to permanent employment after 6 months of employment (12 months for small businesses).
- Employee may issue a new notification if they would like to change to full/part time if:
  - that they believe they no longer meet requirements of casual employment definition
  - they have been employed for a period of 6 months at the time the notification is given (or 12 months for small business employers)
- Employers have 21 days to respond (accept or decline)

**Commences on 26 August 2024 for most employers and 26 August 2025 for small businesses (less than 15 employees)**

If an employee is correctly engaged as a casual at the start of their employment, they remain a casual employee **unless**:

- they exercise '*employee choice*' and satisfy a series of tests to change to permanent employment.
- otherwise agree to change to permanent



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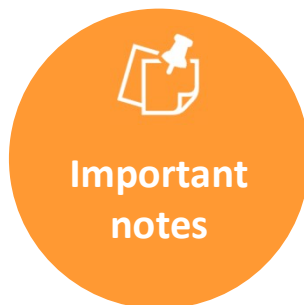
## Casual Employment



The onus is now on the employee to approach the employer with a request to convert.



Casual contracts and letters of appointment should reflect the definition of a casual.



Casual FWIS is now to be issued at engagement, then at the 6-month mark (excluding small business employers) and the 12-month mark.



Where possible and practicable roster casuals in a way that does not reflect "regular and systematic" hours of work.

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## Casuals



### Addressing this in your business

Employers should:

- Check your employment contracts and LOAs for casuals to ensure that the wording is consistent with the new definition of casual employment.
- Ensure reminders in calendars or payroll systems for the issuing of the Casual Employment Information Statement every 6 months (12 months for small businesses).
- Make sure you are using the most up-to-date Casual Employment Information Statement (available from the FWO).
- Where possible and where practical roster your casual employees on a genuinely casual basis rather than on a regular and systematic basis if you want to avoid claims for conversion, or indeed claims for retrospective payment for annual leave and personal leave.

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## Contractor v Employee



Employment will be defined for the first time in the *Fair Work Act 2009* (Cth) so that the courts must have regard to the “real substance”, “practical reality” and “true nature of the relationship” when considering whether a worker is an independent contractor or an employee.

The new changes reverse the High Court decisions of 2022 and reinstates the previous common law test which was applied prior to these decisions.

This will create more uncertainty for companies when they classify workers.

Companies will need to consider a “multi-factorial test” when classifying its workers and have ongoing regard to how the contract plays out in practice.

This includes considering:

- Right to subcontract
- Right to work for other companies
- Provision of tax invoices
- Provision of tools of trade
- Wearing of uniforms

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## Contractor v Employee



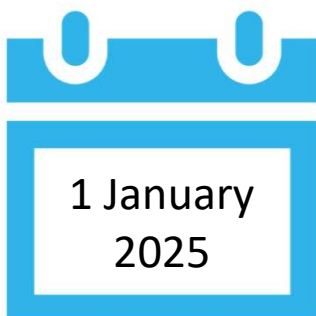
### Addressing this in your business

Employers should:

- Review the current use of independent contractors to assess the likelihood that contractors would be considered employees under the new definition.
- Review your contractor's agreements to ensure compliance.

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## Wage Theft Provisions



**\$7.8mil**



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**“deliberate”**

- It has been emphasised in both government communications and media reporting, these new laws will only pertain to employers who deliberately underpay their staff. That is, **there is a wilful act of underpayment, not simply a mistake made by not understanding or misinterpretation of Award or Act provisions.**
- When it comes to these provisions a court will look at the **knowledge, conduct and intention of executives of the business.** They will look at whether or not they knew this was happening and did nothing to fix the issue.
- This means HR operatives and Employers should treat this as a warning to “double down” on compliance exercises around payroll.
- The new legislation will also include provisions for the underpayment of superannuation, so not only will underpayment of super be a breach of tax laws, it will also be a breach of the Fair Work Act.

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## Right of Entry for Underpayments



A union will have the power to go to the FWC for an ‘exemption certificate’ which will **waive the minimum 24 hours’ notice** requirement for entry into a workplace if it concerns the underpayment of wages or other monetary entitlements of its members.

The Fair Work Commission can only issue the exemption certificate if it reasonably believes that advance notice of the entry given by an entry notice would hinder an effective investigation into the suspected contravention or contraventions.

Employer should review existing right of entry processes and procedures to ensure they are consistent with the amendments. Relevant personnel should be trained to avoid inadvertent breaches of the provisions.

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## Wage Theft



### Addressing this in your business

Employers should:

- A proactive stance will be your shield to the recent changes
- Preparation for the new criminal; wage/super theft offence and higher penalties should start now
- Treat this as a warning to “double down” on compliance exercises around payroll –risk based periodic audit
- Consider payroll reviews by external operators
- Review employment contracts and Award provisions (if applicable)
- Rectify errors now if they are discovered

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## Road Transport Authority



The Fair Work Commission will have the power (on its own motion or an application) to set minimum standards in the road transport industry.

A minimum standards order may include any of the following matters:

- payment terms
- deductions
- record-keeping in relation to specified matters
- insurance
- consultation
- representation
- delegates' rights, and
- cost recovery.

**Commences on 26 August 2024**

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## Gig Economy



The Fair Work Commission is empowered to set binding minimum standards for 'employee-like' workers who perform digital platform work. The standards will be similar to an Award.

A minimum standards order may include any of the following matters:

- payment terms
- deductions
- record-keeping in relation to specified matters
- insurance
- consultation
- representation
- delegates' rights, and
- cost recovery.

**Commences on 26 August 2024**

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## Enhanced Rights for Workplace Union

From 1 July 2024, all modern awards, and new enterprise agreements are to include a term relating to the rights of workplace delegates.

Under the new laws, a workplace delegate will have the right to:

- represent the industrial interests of members
- reasonable communication with members
- reasonable access to the workplace and workplace facilities
- reasonable access to paid time delegate training (does not apply to small business)

FW Act will be amended to provide specific protections for workplace delegates. Under the changes, an employer would be prohibited from:

- unreasonably failing or refusing to deal with a workplace delegate;
- knowingly or recklessly making a false or misleading misrepresentation to a workplace delegate; and
- unreasonably hindering, obstructing or preventing the exercise of rights of a workplace delegate.

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# Workplace Sexual Harassment

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## Trigger warning

The following contains information and discussions about sexual harassment. If at any stage anyone finds that this presentation is confronting, or it raises issues and concerns with you that are upsetting – please feel free to leave the room and take a break.

If you need support, help is available at [1800RESPECT](#) — a free and confidential counselling service

or

**Lifeline** on 13 11 14

or

**Beyond Blue** on 1300 22 4636

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# What is Sexual Harassment?



Sexual harassment is defined in both the Fair Work Act and Sex Discrimination Act to be:

1. An **unwelcome sexual advance**, unwelcome **request** for sexual favours or other unwelcome **conduct** of a sexual nature, which
2. Makes a person feel **offended, humiliated or intimidated**; and
3. Where a **reasonable person** would have **anticipated** the **possibility** that the other person would feel offended, humiliated or intimidated.



*1 in 3 workers have reportedly experienced sexual harassment in the workplace.*

*Reporting statistics are as low as 18%*

Time for Respect: Fifth National Survey on Sexual Harassment in Australian Workplaces November 2022

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# What is Sexual Harassment?



This does not include mutual attraction or consensual behaviour.

A single incident may constitute harassment.



## Motive and intent is irrelevant

An individual may still be liable or accused of sexually harassing another individual even if there was no motive or intent to do so.

It was a joke

I was just having a bit of fun

I was drunk

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## Where it May Occur



In the workplace



On a meal break



On a work trip/  
function outside  
of ordinary work  
hours



When working  
from home



Outside of work during  
workers' private activities  
when there is a **"relevant  
connection to the  
workplace"** (staff social  
functions and  
cyber harassment)

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## 2021 Sexual Harassment Laws 1st Tranche of Changes



*Sex Discrimination and Fair Work (Respect at Work)  
Amendment Act 2021 (2 September 2021)*

Confirms sexual harassment a valid reason for  
dismissal under *FWA*

Sexual harassment confirmed as being grounds for  
summary dismissal (serious and willful misconduct)

FWC may make stop sexual harassment orders  
expanding on the orders to stop bullying

Extends compassionate leave to include miscarriage  
(2 days paid, casuals unpaid)

*FWA Fair Work Act*  
*FWC Fair Work Commission*

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## 2022 Sexual Harassment Laws 2<sup>nd</sup> Tranche of Changes



- *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022*
- Onus on employers to determine their own initiatives to support real and substantive change on how workplace sexual harassment is addressed
- Employers will need to take all reasonable steps to prevent and respond to workplace sexual harassment. Important for employers to treat sexual harassment as a workplace hazard and to take a work, health and safety approach to limiting the risks
- Because it is now treated as a WHS issue, this will now include ensuring that staff are not sexually harassed by customers, guests and contractors.

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## Sexual Harassment Law Enforcement



### Positive duty

- The Australian Human Rights Commission will be given the power to monitor and assess compliance with the positive duty in the Sex Discrimination Act. Even **without a complaint being made or on foot**.
- The Commission will be given powers to:
  - conduct inquiries into compliance with the positive duty
  - provide recommendations to employers to achieve compliance
  - issue and enforce compliance notices
  - apply to the Federal Court for an order to direct compliance with a compliance notice
  - force employers into entering into enforceable undertaking

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## AHRC Standards



# 7 STANDARDS

### Guidelines for Complying with the Positive Duty

1. Leadership
2. Culture
3. Knowledge
4. Risk management
5. Support
6. Reporting and response
7. Monitoring, evaluation, and transparency.

<https://humanrights.gov.au/sites/default/files/2023-08/Guidelines%20for%20Complying%20with%20the%20Positive%20Duty%20%282023%29.pdf>

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### Reporting and complaints procedures

Poor complaint handling is a major reason matters escalate to legal proceedings.

Poor complaint handling also can exacerbate the trauma for the complainant.

All complaints should be treated as highly **confidential**.

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# Thank you!

If you have any questions about HR or employment law, contact us:



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