



THINKING EMPLOYMENT

Awards, enterprise agreements, employee entitlements, occupational health and safety, termination of contracts, redundancy and dismissal are often contentious areas in the area of employment law. If you are an employee, it is important to familiarise yourself with your rights and the avenues available to you to enforce your entitlements. If you are an employer, you should adhere to the correct and current legislation to protect both your business and your staff.

There is over 120 industry and occupation awards in Australia. Classifying the correct award is not always straightforward. Employees will often have a range of different roles and several awards can apply to a business. Employees should check to make sure they are being paid the correct pay rate for their hours worked. Pay rates can be determined by an award, enterprise agreement or with reference to the national minimum wage which is currently \$17.70 per hour before tax. Certain employees such as junior employees, trainees or apprentices will have different pay entitlements.

It is also important to know your industry penalty rates and allowances. This may be applicable if you work weekends, public holidays or overtime or if you undertake supervisory roles, use your own tools, have any specific skills or work in dangerous environments.

Equally important is knowing your rights or obligations when it comes to taking or approving leave. Leave is generally available if you are sick, need to care for someone, are grieving, have been injured at work, have worked continuously for the same employer for an extended period of time or you have accrued it annually. In certain circumstances, some of these entitlements can be paid out when ending employment. Employees must also make sure that they understand and are familiar with redundancy and superannuation guarantee entitlements.

Employers have an obligation to provide pay-slips and keep records. It is important to keep pay-slips, and maintain records of all contracts, agreements, awards, employment policies and any other relevant documents. If a dispute does arise, quick and easy access can facilitate an

early outcome and minimise costs. If you are consulting with a solicitor, you should have these records available for your first appointment.

If you have been dismissed from your job and believe it was harsh, unjust or unreasonable there are avenues you can pursue. Always remember to act quickly. Strict limitations apply as applications are generally not accepted after 21 days of your dismissal taking effect. Employers must be sure that there are sufficient grounds to dismiss an employee or terminate a contract. Small businesses have different rules surrounding dismissal and an employer should consider obtaining professional advice if they have any doubt about the proper procedures to be applied to considering the dismissal of an employee.

In the event that you have to file proceedings, the award you are covered by may determine what jurisdiction in which your matter will be heard. Most people are covered by a federal award which means their matter will usually be dealt with in the Fair Work Commission. If you are employed by the state public sector or local government, it is likely that the Industrial Relations Commission will be the appropriate jurisdiction. In some circumstances, such as recovering statutory and award entitlements, it may be appropriate to commence proceeding in the Federal Circuit Court or the Local Court.

It is always preferable to resolve any concerns or disputes you may have by talking any grievance with your employee or employer to avoid the cost and imposition of formal proceedings. It is also usually an award or contractual requirement to participate in mediation or other alternative dispute resolution before commencing any legal action. The Fair Work Ombudsmen may also be able to offer some assistance. Employees might consider obtaining advice from their union and employers might consult a relevant employer group or their local business chamber.

After exhausting avenues at a local level, or if legal proceedings are to be commenced you may also consider obtaining legal advice from your solicitor. Talk to us. You'll be inspired!

Morgan G. Quaife
Solicitor

Thinking employment



Your goals Our know-how

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and tenacity needed
to get you there.

Solicitors

From commercial, insurance and business transactions to family, employment and estate matters.

Conveyancers

Fast, accurate detailing of all property transactions.

Mediation

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Notary Public

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