

We assist over 1,500 employers with their payroll obligations. Having read the Fair Work Bill from this perspective, we like to make a number of suggestions to clarify areas where confusion currently exists or where the proposed Bill appears to make no comment:

Annual shut downs

Unlike the Workplace Relations Act 1996, the Fair Work Bill appears to be silent on the requirements in respect to annual shutdowns which are common in the building and manufacturing industry.

At present it appears that staff must take any accrued leave if there is an annual shutdown but that if a staff member does not have enough accrued leave, they must continue to be paid during a shut down period. This essentially means that with a 2 week shutdown an employer will be liable to make additional payments for any one who has commenced in the prior 6 months as they may not have enough accrued leave. Similarly, an employee could take their leave immediately prior to an annual shutdown and then the employer will be required to continue to pay them during that period.

Could we suggest:

- Where an annual shutdown occurs, staff are required to take any accrued annual leave
- For staff with insufficient annual leave, a period of unpaid leave must be taken
- In the situation where an employee is required to take such unpaid leave, any public holidays that fall due in the period shall continue to be treated as if occurring during a period of paid leave, i.e. they will be paid as well.

This could be achieved by amendment to proposed Section 524 in respect of stand downs.

Payment in lieu of notice

Value

Under the Workplace Relations Act 1996 where an employee receives a payment in lieu of notice on termination of employment, the payment must be calculated on the basis as if they had worked that period.

Under proposed Section 117 of the Fair Work Bill it states:

... the employer has paid the employee payment in lieu of notice of at least the amount the employer would have been liable to pay the employee at the full rate of pay for the hours he or she would have worked had the employment continued until the end of the minimum period of notice.

There has been considerable confusion with the current law as to what is included in the amount that must be paid to the employee. In a 1998 case (see *Furey v Civil*

Service Association of WA (Inc) [1999] FCA 1492), the court awarded the employee an additional amount for the superannuation contribution that would have been made during the period had the employment continued. (On termination, a payment in lieu of notice is classified as an employment termination payment under the Income Tax Assessment Act 1997 and is therefore excluded for being Ordinary Times Earnings for Superannuation Guarantee purposes.)

Whilst the term “full rate of pay” is defined in the Fair Work Bill, can we have clarification of whether an employer would be obligated to increase that amount by the employer superannuation contribution that would have otherwise been required had the employee worked that period but is not required to do so on a termination payment.

Regards

Glynn Flaherty
Payroll Matters Pty Ltd
Work: 08 83708270 Fax: 08 83708489
Mobile: 0417 808 239
Email: glynnf@payrollmatters.com.au
Web: www.payrollmatters.com.au

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