WORKPLACE NEWS

CLIFFORD GOULDSON LAWYERS

Regulations amended to prevent employee 'double dipping'

In 2018, the Full Federal Court ordered an employer to payout an employee's accrued entitlement to annual leave due to the worker being incorrectly employed on a casual basis.

The reason was that the relationship between the employee and the employer had the characteristics of a permanent engagement, rather than a casual one. This was evidenced by (among other things) the employee working consistent, predictable hours and the general understanding that the employee would have ongoing work with the employer indefinitely.

The decision in *Skene v WorkPac Pty Ltd* potentially had serious ramifications for employers who engage casual workers to work regularly and consistently.

This is because employees employed on a casual basis are paid a 'casual loading' intended to compensate these individuals for entitlements that permanent employees are entitled to under the National Employment Standards (**NES**), such as personal and annual leave.

The *Skene* decision meant that some employees incorrectly identified as being employed on a casual basis were entitled to both the casual loading paid to them during their employment and to their permanent employee entitlements granted to them under the NES.

The *Fair Work Regulations* 2009 (Cth) were amended on 18 December 2018 with the aim of preventing this 'double dipping' by allowing employers to offset certain NES entitlements by paying casual employees a casual loading. The Amendment can be read here.

In order for employers to offset certain NES entitlements, the following circumstances must be met:

a. an employee is employed by their employer on a casual basis;
b. the employee is paid a casual loading that is clearly identifiable as being an amount paid to compensate the person in lieu of entitlements that casual employees are not entitled to under the NES, such as personal or annual leave;
c. despite being classified by the employer as a casual, the employee was in fact a full-time or part-time employee for some or all of their employment for the purposes of the NES; and
d. the employee has made a claim to be paid for one or more of the NES entitlements (that casual employees do not have) that they didn't receive for all or some of the time that they were incorrectly classified as a casual.

The takeaway from this Amendment is that employers should clearly indicate to their casual employees that the casual loading paid to them is in compensation for one or more relevant NES entitlements.

If you are concerned about your casual staff base or have questions regarding your casual employees please contact a member of our Workplace Team.

For more information contact our Workplace Team.

Danny Clifford, Director

Kyle Paull, Lawyer

Michelle Price, Paralegal

Angela Pratt, Lawyer

Contact Us

Phone 07 4688 2188

www.cglaw.com.au