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Practice Group:

*Labour, Employment
and Workplace Safety*

Monetary Threshold Increases for Australian Employers – Effective 1 July 2015

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Australia Labour, Employment and Workplace Safety Alert

As in previous years, a number of workplace changes come into effect on 1 July 2015. Employers should take note of these changes and make any adjustments required prior to the start of the new financial year.

Increase to National Minimum Wage and Modern Awards

On 3 June 2015, the Fair Work Commission's minimum wage panel awarded a 2.5% increase to the national minimum wage and all modern awards.

As a result, the new weekly minimum wage will be AUD656.90 or AUD17.29 per hour. The increase will operate from the first full pay cycle starting on or after 1 July 2015.

The Fair Work Commission has now adjusted the rates of pay and allowances under all modern awards in accordance with the increase. Employers paying employees covered by a modern award should confirm that employee salaries are appropriately adjusted. Further, employers who are paying employees an over-award salary and intend to continue to do so should check their calculations to ensure their employees continue to receive the appropriate level of remuneration.

High Income Threshold

On 1 July 2015, the high income threshold will increase from AUD133,000 to AUD136,700. Accordingly, employees earning more than AUD136,700, who are not covered by a modern award or enterprise agreement, will not have access to the unfair dismissal jurisdiction under the *Fair Work Act 2009 (Cth)* from 1 July 2015.

The maximum compensation payable in the unfair dismissal jurisdiction is capped at the lesser of six months' pay or the equivalent to half of the unfair dismissal high income threshold. Therefore, in line with the increased high income threshold, the maximum compensation will increase to AUD68,350 for all dismissals effected after 1 July 2015.

It is important that employers understand the payments that contribute to their employees' earnings in order to determine whether they will be covered by unfair dismissal laws.

Earnings

An employee's earnings are defined under the Fair Work Act as relevantly including:

- the employee's wages

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- amounts dealt with on the employee's behalf or as the employee directs
- the agreed monetary value of non-monetary benefits.

On the basis of the excluded amounts identified below, an employee's wage can be interpreted as meaning an employee's base wage.

Salary sacrifice arrangements, and other amounts dealt with on behalf of employees, may contribute to the calculation of earnings where they can be characterised as forming part of an employee's 'cashable' salary.¹ That is, to be included as earnings, an amount spent on behalf of an employee must be distinguishable as a distinct amount from the operational expenses ordinarily associated with employing staff.²

Excluded Amounts

The Fair Work Act provides that earnings do not include:

- payments that cannot be determined in advance
- reimbursements
- superannuation contributions.

Superannuation

Superannuation that is paid in accordance with the compulsory statutory contribution, is not included in the calculation of an employee's earnings. However, additional superannuation contributions paid in excess of the compulsory amount will be included as part of an employee's earnings.³

Commission, Bonuses and Overtime

Whether a bonus will be included as part of an employee's earnings depends on whether it can be 'determined in advance'. Where bonuses are based on performance or the employer has the right to alter or discontinue the bonus plan, the amount is unable to be appropriately determined in advance and therefore, will not be considered earnings.⁴

Employee Benefits

Where an employee receives a benefit for both personal and business purposes, the proportion of the benefit used for business purposes is not included in a calculation of earnings.⁵ Benefits for personal purposes may be included. For example, where a mobile phone or motor vehicle is used by an employee for both personal and business purposes, the amount of the benefit should be apportioned with the amount

¹ *Batley v Cocos Islands Co-operative Society Ltd* [2010] FWA 2289.

² *Ibid*, 34.

³ *Craig Ablett v Gemco Rail Pty Ltd* [2010] FWA 8124 (22 October 2010); *Roberts v High Professional Productions Pty Ltd T/A Hi-Vis Labour Hire* [2010] FWA 3462 (30 April 2010).

⁴ *Jenny Craig Weight Loss Centres v Margolina* [2011] FWA 9137 (unreported, Giudice J, Hamilton DP, Robert C, 23 December 2011).

⁵ *Davidson v Adecco Australia Pty Ltd T/A Adecco* [2012] FWA 8393 (unreported, Booth C, 4 October 2012).

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attributed to personal use being included as earnings and the business use component excluded.⁶

What Does This Mean for Employers?

The increase of the high income threshold serves as a timely reminder to employers to carefully consider whether the unfair dismissal laws will apply to an employee. An employee who appears to earn more than the high income threshold at first blush may, in fact, be protected from unfair dismissal because of the definition of earnings under the Fair Work Act.

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⁶ *Chang v Ntscorp Ltd* [2010] FWA 1952; *Rofin Australia Pty Ltd v Newton* (1997) 78 IR 78, 82.