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GREG REIFFEL CONSULTING
HUMAN RESOURCES & INDUSTRIAL RELATIONS

Employee Relations Newsletter (Urgent update)

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Introduction

I know it has only been a week since my last newsletter. But it is my personal belief that the following case will have an extraordinarily negative impact on any employers using "compressed hours systems" – ie (say working 38 hours over a four-day week) and the amount of leave entitlements when using this compressed hours system of work.

"A day is a day; a week is a week" when it comes to sick leave

Mondelez Australia Pty Ltd [2018] FWC 2140 (AG2017/5020). Hatcher, VP. 13 April 2018 (supporting RACV Road Services Pty Ltd v ASU. [2015] FWCFB 2881; 249 IR 150).

Whilst this decision relates to the lodgement of an EBA and in particulate whether is passes the "Better Off Overall Test", I believe it has much wider application across Australian businesses.

The long and the short of the decision is that the FW Act (in particular, the NES) makes references to "days" in relation to leave entitlements. Most employers (usually via the payroll systems) convert the days to hours as a matter of (logic) and convenience. The "review" decision effectively nullifies this common practice, and as the AiG argued, would impact on **millions of employees and thousands of employers.**

The FWC was requested by the AiG and Honourable Craig Laundy MP, Minister for Small and Family Business, the Workplace and Deregulation to review this matter, with the matter being assigned to Hatcher, VP who decided that there was enough precedent (ie previous cases) to decide that the matter need not be reviewed.

The unions involved were happy with the EBA as is stood. That is, agreeing with the VP Hatcher's decision.

On my reading, the (non) decision means that an employee working 38 hours over four days is entitled to 10 days personal leave (for example) at 10 days personal leave at (accounting for a 30-minute unpaid lunch break) is 9.5 hours per day. Multiply this by 10 days and the actual entitlement

is 95 hours per year. Where an employee working the same total hours Monday to Friday is only entitled to 76 hours.

Annual leave, on the other hand, should not be affected. As four weeks, is the number of ordinary hours worked in a week (at least according to the decision). That is, the weekly hours still totalling 38 and an employee (not being a shift worker) albeit over (say) four days, is still entitled to 152 hours annual leave.

Conclusion

To my mind, the decision lacks logic: Section 62 of the same Act, sets the maximum hours for a full-time worker at 38 hours per week. There is no mention of this in the decision (or those previous decisions it relies upon). Therefore, logic would demand that a "day" should be interpreted as 7.6 and calculated accordingly.

I then wonder: how many EBA's have been passed by the FWC *with* the these "offending" provisions or businesses that have being using this as custom and practice?

At the very least, if this decision is correct (and it has yet to be contradicted), the Act should be amended accordingly. Madness!

Until next time....

Greg Reiffel
Principal Consultant