



Employment Law in 2024: the closing loopholes amendments

What we will cover

1. Background and advocacy
2. Definition of employment
3. Sham contracting
4. Definition of casual
5. Casual conversion
6. Same job, same pay
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8. Right of entry
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Background and Advocacy

Definition of Employment

- From 26 August 2024
- Whether an employment relationship exists depends on the real substance, practical reality and true nature of the relationship.
- Overturns [Jamsek](#) and [Personnel Contracting](#) HCA decisions from 2022
- Return to a multifactorial test

Definition of Employment: totality of the relationship (Multifactorial Considerations)

Indicia	Contractor	Employee
Under supervision	No	Yes
Controls how work is done	Yes	No
Responsible for defects/additional costs	Yes	No
Ability to delegate	Yes	No
Engaged to achieve a result	Yes	No
Supplies tools, equipment and materials	Yes	No
Can work elsewhere	Yes	No
Invoices	Yes	No
Has applicable insurances	Yes	No
Wears a uniform	No	Yes

Opting out of the definition of employment

- Two pathways to opt out –
 1. Business may issue a written notice to an independent contractor; or
 2. An independent contractor may issue a written notice to the business.
- Independent contractor must earn above the 'contractor high income threshold'
- Opt out notices can be given at any stage by a business or independent contractor

Sham Contracting

Reasonable belief – a much lower threshold

Definition of casual

- From 26 August 2024
- A person is a casual if:
 1. The relationship is characterized by an **absence of a firm advance commitment to continuing and indefinite work**; and
 2. The person is, or would be, entitled to a casual loading.
- **Firm advance commitment to continuing and indefinite works** determined by the real substance, practical reality and the nature of the relationship
- You must consider:
 - Terms of the contract
 - Non contractual mutual understanding or expectation between the parties
 - The ability to offer/reject of work
 - Future work availability
 - Other permanent employees performing the same work
 - Regular pattern of work

Casual Conversion

- From 26 August 2024
- An employee wishing to convert will need to issue a notice to the employer in writing
- Notice can be given:
 - Small businesses (less than 15) – after 12 months of employment
 - All other businesses – after 6 months of employment
- A person will remain a casual until a 'specified event' occurs (for example, they go through the casual conversion process)

Same Job, Same Pay

A jump up for labour hire

Union delegate rights

01

All modern awards and enterprise agreements to include a workplace delegates rights clause from 1 July 2024

02

New protections for workplace delegates, prohibiting you from:

1. Unreasonably failing or refusing to deal with a delegate
2. Knowingly or recklessly making false representations to a delegate
3. Unreasonably hindering or obstructing a delegate

Right of entry

Assisting a Health and Safety Representative (HSR)

Union official no longer required to have a federal permit

Investigating a breach of the Fair Work Act or Instrument

An application can be made to exempt the union from the 24 hour notice requirement

Right to disconnect

An employee may refuse to monitor, read or respond to contact, or attempted contact, from an employer outside the employee's working hours unless the refusal is unreasonable.

Whether the refusal is unreasonable depends on:

- the reason for the contact
- how the contact is made and the disruption it causes
- the extent to which the employee is compensated
- the nature of the employee's role and level or responsibility
- the employee's personal circumstances

Effective: 26 August 2024 or 26 August 2025 (for small businesses)

Wage theft

- Effective 1 January 2025 (subject to the FWC's small business compliance code)
- Fair Work Act or Instrument (inc. modern awards or enterprise agreements)
- Criminal offence – 10 years imprisonment and hefty fines
- Not intended to apply to underpayments that are accidental, inadvertent or based on a genuine mistake.
- Seek advice if you are contacted by the FWO



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QUESTIONS?



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