

# IR POLICY AND GOVERNANCE UPDATE



## INTRODUCTION

This week we look at the most recent Fair Work Act amendments that have taken effect, what is a reasonable overtime request, a recent underpayment claim of interest, superannuation, and FBT on electric work vehicles. Additionally, we remind members the Reserve Bank will hold its first monetary policy meeting for 2023 next week and we will provide a synopsis of that decision in our next week's Bulletin.

## FAIR WORK ACT AMENDMENTS

As previously advised and detailed late last year the amendments to the Fair Work Act and the workplace relation system come in to effect at various time throughout this year. Of recent note:

- > From 1 February, the 10 days paid family and domestic violence leave entitlement is now in effect for businesses with 15 or more employees (August 2023 for small businesses).
- > From 7 January 2023, job advertisements can't include pay rates that would breach the Act or a relevant Award or enterprise agreement.

We will continue to remind members of further legislative amendments throughout this year as they come into effect.

## REASONABLE OVERTIME REQUESTS

In a recent decision of the Federal Court, it was found that a meat processing business which unreasonably mandated a 50 hour working week and failed to pay overtime rates should be fined \$93K for its conduct and breaches of the Fair Work Act and relevant Award.

By way of background, the particular employee commenced his regular start times early in the morning on regular weekdays, undertaking additional hours across Saturday and Sunday, was a new immigrant from an underdeveloped country, was not provided with a Fair Work Information Statement upon commencement, and was often exhausted from the physical nature of the job.

Section 62 of the Fair Work Act imposes limitations on the number of hours an employee may be asked to work or required to work. Essentially, an employer should not require an employee to full-time employee to work more than 38 hours in a week unless those additional hours are fair and reasonable. The corollary is that an employee is entitled to refuse to work more than 38 hours in a week if those additional hours are unreasonable.

## Considerations

- > In addition to paying overtime rates, a 'reasonable overtime request' must consider usual patterns of work in the industry, the amount of notice provided to an employee, the nature of the employee's role, any health and safety risks from working the additional hours of work, and an employee's personal circumstances.
- > It is not recommended to include a contractual term that requires workers to work more than 38 hours per week. Rather, state the hours of work will be the ordinary hours plus any reasonable additional hours to perform their duties.
- > Consult with your employees over additional hours and seek their agreement to perform those hours.
- > As always, keep written records of such requests and responses.

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## **FBT ON ELECTRIC WORK VEHICLES**

Previously employers were required to pay FBT on electric vehicles that were provided to employees. From 1 July 2022, employers are now exempt from paying FBT on benefits provided for electric cars that meet all the following criteria:

- > the car is a zero or low emissions vehicle i.e. a battery electric, hydrogen fuel electric, or a plug in hybrid electric vehicle (until April 2025), and carries a load of less than 1 tonne.
- > the first time the car is both held (owned or leased) and used is on or after 1 July 2022
- > the car is used by a current employee or their associates (such as family members)
- > luxury car tax has never been payable on the importation or sale of the car.

Registration, insurance, repairs or maintenance and fuel expenses provided for eligible electric cars are also exempt from FBT. However, a home charging station is not considered a car expense associated with an employer providing an electric car and may have its own expense or property fringe benefit reporting requirements.

Despite the exemption, employers still need to determine the taxable value of the benefits provided, and include it in your employee's reportable fringe benefits amount (RFBA). You need to report the RFBA on your employee's income statement or payment summary.

## **SUPERANNUATION**

Super guarantee (SG) contributions for the December quarter were due by 28 January 2023. Ensure you pay your employees the right amount on time and don't forget the two changes to SG that commenced from 1 July 2022:

- > the rate increased from 10% to 10.5%
- > your employees no longer need to earn \$450 per month to be eligible.

Employers now need to make super contributions for all your eligible employees, regardless of how much they were paid – their earnings amount is not relevant. However, employees who are under 18 years of age still need to work more than 30 hours in a week to be eligible.

## **UNDERPAYMENT CASE OF INTEREST**

The Fair Work Ombudsman (FWO) has filed a Federal Court complaint against Super Retail Group Limited (SRG) and four companies for alleged underpayments (between 2017 and 2019) totalling more than \$1M. As part of its investigation, SRG and its subsidiaries Super Cheap Auto Pty, Rebel Sport, SRG Leisure Retail Pty (operating as BCF and Ray's Outdoors), and Macpac Retail Pty are being investigated by the regulator.

This is the first court action where the FWO is alleging breaches by the holding company for contraventions by its subsidiaries. The FWO is holding the expectation that holding companies will have appropriate governance measures in place to promote compliance across their subsidiaries, and act immediately to rectify any identified problems.

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Under the Fair Work Act, the serious contraventions provisions apply to conduct occurring on or after 15 September 2017 and the holding company provisions in the Fair Work Act apply from 27 October 2017. The FWO is seeking penalties against Super Retail Group Limited and each of the four subsidiaries. The maximum penalties for the alleged serious contraventions are \$630,000 per breach, 10-times the penalties which would ordinarily apply. For the other alleged contraventions, SRG Limited and the four subsidiaries face penalties of up to \$63,000 per breach. Holding company liability-related penalties are also up to \$63,000 per breach. The FWO is also seeking court orders for the four subsidiaries to rectify outstanding entitlements allegedly owed to the 146 sample employees.

This matter is a timely reminder that no matter what corporate structure exists, appropriate payroll and related governance measures need to be in place to avoid the possibility of employee underpayments occurring or the potential for an organisation failing to recognise that an underpayment has occurred.

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## CONTACT

Any Industrial Relations Member who has a related query should contact Charles Watson, GM – IR, Policy and Governance via email [charles\\_watson@pvca.org.au](mailto:charles_watson@pvca.org.au)

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