



# SADA IR UPDATE



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## Industrial Relations Changes Part 2

**Underpayment of wages** As part of these changes, intentional underpayment of wages by employers will become a criminal offence. Employers will commit an offence if:

- (a) they're required to pay an amount to an employee (such as wages), or on behalf of or for the benefit of an employee (such as superannuation) under the Fair Work Act, or an industrial instrument.
- (b) they intentionally engage in conduct that results in their failure to pay those amounts to or for the employee on or before the day they're due to be paid.

**Voluntary Small Business Wage Compliance Code** (Voluntary Code) will be established.

Compliance with the Voluntary Code means a small business won't be criminally prosecuted if they underpay their employees. The Voluntary Code is in the process of being developed. There will be more information about the Voluntary Code and how it will operate when it's available.

**Definition of Small Business** is unchanged and is one which employs less than 15 employees.

**Small business redundancy exemptions** will remain, and employers with fewer than fifteen employees will continue to be exempt. A small business is one which employs less than 15 employees on the date the decision for redundancy is made. This includes full time, part time and casuals as equals, and are not converted to full time equivalents. The test on the size of the business is made immediately before the time of the termination of the employee, or at the time when the person was given notice of the termination - whichever happened first. Large employers are bound by the National Employment Standards for Redundancy/Severance payments.

**Unfair Dismissal Claims:** Small employers are exempt from Unfair Dismissal Claims if the employee has worked for them for less than 12 months. Larger employers are exempt for six months for such claims.

**Right to disconnect after hours:** This topic has been very popular in the media.

Farmers have animal husbandry issues that arise unexpectedly. This provision seeks to stop employers from not paying employees for contact after hours. Employees now have the right not to be contacted outside of office hours or set shift hours. Clearly this may be impractical with Managers and higher paid employees. So be sure to include in the contract of employment, that there maybe REASONABLE contact after hours so that the requirements of the position are fulfilled. Other employees who are paid above the Award may need similar wording in their contracts of employment. Our suggestion is to seek advice PRIOR to entering such arrangements.

### Workplace Delegates

Workplace delegates now have new rights and protections under the Fair Work Act.

A workplace delegate is an employee:

- (a) appointed or elected under the rules of an employee organisation.
- (b) who represent members of the organisation in the workplace.

The changes mean that delegates are entitled to:

- (a) represent the industrial interests of members and potential members of the employee organisation (including in disputes with their employer)
- (b) reasonable communication with members and potential members about their industrial interests
- (c) reasonable access to the workplace and its facilities to represent those industrial interests.

Delegates employed by non-small businesses are also entitled to have reasonable access to paid time during normal working hours for workplace delegate training.

### **Applications for additional benefits for Casual Employees**

The ACTU is seeking to have the current casual loading of 25% increased. It is also seeking that there be additional or improved forms of paid leave and other conditions to improve job security including restoring greater predictability and security for permanent work.

The Department of Employment and Workplace Relations has asked the Senate Committee to start consulting on a 2022 Labour Election pledge to establish a scheme for portable employee entitlements for those in insecure work. This is seeking to improve the chances of a casual to apply for such benefits as long service leave or long service leave in the industry rather than being with one employer.

The SA Government is planning to introduce similar legislation later this year for the aged care industry.

### **Fair Work Ombudsman's Office ("FWO") investigations in Farming Employment**

If the above changes aren't enough, the FWO has conducted audits within the industry interstate – so far. In the November 2023 Member Update we advised that the Fair Work Ombudsman paid surprise visits to farms in Western Australia, several horticulture plantations in the Sunshine Coast and Lockyer Valley in Queensland, and the Riverina and Sunraysia areas. Fifteen "hot spots" were identified. Those audits netted \$316,860 in fines and \$72,301 in underpayments across 447 business in its agriculture strategy plan which began in December 2021.

- The Fair Work Ombudsman recently made surprise inspections of agriculture businesses in Tasmania's north and northwest to check workers are getting the right pay.
- Fair Work Inspectors have been targeting about 20 farms and labour hire companies ranging from in and around Devonport through to East Launceston and Cressy.
- Make sure all employees are eligible to work in Australia and obtain and copy their Visas.

To minimise your risk we recommend that you start with the following checks and visiting these links:

- [Starting-a-New-Job-Checklist.docx \(live.com\)](#)
- [Template-induction-checklist.docx \(live.com\)](#)
- [Pay slips - Fair Work Ombudsman](#) – make sure that the employer's name and ABN are correct.
- [Pastoral Award 2020 \[MA000035\] | Fair Work Commission \(fwc.gov.au\)](#) make sure you are not only paying wages correctly but also check for allowances, meal breaks, and overtime.
- Issue the [Fair Work Information Statement](#) to ALL employees and
- [Casual Employment Information Statement - Fair Work Ombudsman](#) to casual employees

As you can see there is a lot happening and mor happening in the coming months around employment. If in doubt seek advice and review your current practices for compliance.

If you have any queries, please don't hesitate to contact the SADA Office on 8293 2399 or email [sada@sada.asn.au](mailto:sada@sada.asn.au)

**SADA members are entitled** to contact MERS for a free half hour consultation, per member per year.



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