



February 2011

E-Update

Update for "Small Business Employers" under the *Fair Work Act 2009*

Prior to 1 January 2010, the *Fair Work Act 2009* (the "Act"), provided that a Small Business Employer was one that employed less than 15 full-time equivalent employees. However, as of 1 January 2011, the definition under s23 of the Act has changed significantly. The updated definition of a Small Business Employer now provides that a business falls within the definition, only if they employ less than 15 employees at the time the termination or redundancy took effect.

The Small Business Fair Dismissal Code (the "Code") mandates that the number of employees is to be calculated based on a head-count of **all** employees at the time of the dismissal. The head-count must include the terminated employee/s, part-time employees, and all casual employees who are employed by the business on a regular and systematic basis, along with any employees from an associated entity.

What this means for you and your business

By redefining the term, the Act has placed a heavy burden on employers who once were able to rely on the Code to defend an unfair dismissal application. Previously, employers were able to utilise the 'Small Business Fair Dismissal Code Checklist' as a defence to an unfair dismissal application. However, with the change in the definition, many businesses will no longer fall within the scope of the definition and, as such, could be exposed to unfair dismissal claims by employees under the Act.

Further, employees that were employed by businesses who previously fell under the definition were unable to lodge an unfair dismissal claim, if terminated, within the first twelve (12) months of their employment. However, the current legislation changes this position dramatically, as businesses that fall outside the scope of a Small Business Employer are now exposed to an unfair dismissal application being lodged against them, so long as the employee has been employed for more than six months. To avoid such a circumstance, it is important to be aware of the proper and appropriate protocols and strategies to be utilised in the event that you need to terminate an employee.

The change also affects the obligation placed on employers when making employees redundant. Small Business Employers, as defined prior to 1 January 2010, were not obligated, under the Act, to compensate redundant employees. However, businesses that no longer fall within the scope of a Small Business Employer will now be required to compensate all employees who are made redundant. The redundancy amount payable will be based on the employee's period of continuous service, so long as they have been employed for more than twelve (12) months. This places a significant financial burden on those businesses that no longer fall within the scope of a small business.

Workplace Law Queensland has invaluable experience in all aspects of employment and industrial law. Our Gold Coast and Brisbane lawyers work closely with clients to achieve optimum solutions.



Our services:

- Employment policies and procedures
- Termination of employment
- Restrictive covenants, protection of trade secrets and confidentiality issues
- Anti-discrimination and sexual harassment litigation
- Interpretation of awards
- Union matters
- Contractor and GST issues
- Enterprise agreements and ITEAs
- Occupational health and safety defences to prosecutions
- Statutory liability and compliance advices
- Crisis and risk management



The Code acts as a form of protection for Small Business Employers as it is developed with an understanding that most Small Business Employers do not have substantial human resource departments to assist them in the everyday running of their business. Therefore, it is essential that as we move forward into the new year, you take a moment to do a head count of all employees, in order to ascertain whether or not your business is, or is still, a small business. If your business can no longer be defined as a small business, you will need to appraise yourself of the obligations that you have in terms of termination and redundancy.

Contact Us

Workplace Law Queensland has worked with a number of businesses, both small and large, to advise them on their obligations to employees in accordance with the *Fair Work Act 2009* and implementing strategies and guidelines for each business to minimise the risk of unnecessary and protracted litigation surrounding the termination or redundancy of an employee. Workplace Law Queensland is also able to provide advice in respect of your obligations to employees in relation to leave entitlements, performance management, genuine redundancies, drafting of Workplace Health and Safety policies and procedures and drafting Employment Contracts that provide you with the option to terminate when necessary in the interest of your business.

You can contact our Workplace Law Queensland team at our Brisbane office on (07) 3226 9022 and at our Gold Coast office on (07) 5597 8888.



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