

THE 13TH ANNUAL EMPLOYMENT LAW CONFERENCE

OUR REGULAR TWO DAY CONFERENCE
DELIVERED **ONLINE** IN FOUR PARTS
OVER FOUR HALF DAYS

Part 1: Managing Staff in Difficult Times

Wednesday 29 July 2020 [10am to 12.50pm]

Part 2: Challenges in the Workplace

Thursday 30 July 2020 [10am to 12.50pm]

Part 3: Navigating Employee Entitlements

Wednesday 5 August 2020 [10am to 12.50pm]

Part 4: Obligations and Liabilities in the Workplace

Thursday 6 August 2020 [10am to 12.50pm]

FEEDBACK FROM LAST YEAR'S CONFERENCE:

"It is one of the most relevant conferences for HR operatives to stay up to date with policy and legislative issues."

"All speakers were excellent, as was content of each session. Overall, very relevant and highly informative. Also well run and organised by onsite even personnel - Thank you."

"This conference has given me insights, ideas and contacts that I feel I will be able to use to my advantage."

"Very good topics, great speakers, informative sessions and definitely one of the best conferences I attend each year which provides interesting information directly linked to my field and the issues I am confronted in a daily basis. Thank you."



Leaders in online CPD for lawyers

PART 1: WEDNESDAY 29 JULY 2020

**CHAIR: JOANNA BETTERIDGE,
PARTNER, BETTERIDGE LEGAL
CONSULTING, MELBOURNE**

**THEME: MANAGING STAFF IN DIFFICULT
TIMES**

10.00 - 10.05am

Introduction and welcome

10.05 - 10.45am

Session 1: Redundancies and other Necessities During an Economic Downturn

The COVID-19 outbreak has had a significant economic impact on workplaces across the country, with the effects likely to be felt for months to come. Many employers must make difficult decisions about their staff. This session examines when employees can be stood down or made redundant, the myriad of legal obligations that employers must comply with, and the entitlements that exist for affected employees. It covers:

- Meeting the requirements for 'genuine redundancy' in an economic downturn
- The obligation to consult
- Redeployment issues
- Redundancy pay:
 - Can you apply to reduce or extinguish redundancy payments?
 - How to determine the amount payable to the employee
- What are the consequences of failing to comply?
- Stand down versus redundancy - how do they differ?
- Is a downturn enough to justify standing down employees?

Speaker: Nick Ruskin, Partner, K&L Gates, Melbourne

10.45 - 10.55am Questions and Discussion

10.55 - 11.00am

Short break

11.00 - 11.40am

Session 2: Varying Employee Entitlements in an Uncertain Landscape

As businesses continue to weather the COVID-19 economic slowdown, many employers are seeking to reduce their employees' hours or compel staff to take leave. It can be an appealing prospect, as it avoids layoffs and redistributes work flow. However, it can be a perilous path for employers, and if not done correctly, may give rise to an unfair dismissal claim. This session examines how to navigate the process, and considers the following:

- Can an employer unilaterally reduce an employee's hours of work?
- What notice or fair process is required to reduce hours of work?
- Can you direct an employee to use their paid leave entitlements?
- Can you allow some employees to take accrued paid leave and not allow other employees to take paid leave?
- Self-isolation - is this paid or unpaid leave?
- Unpacking the FWA's new 'pandemic leave'
- Availability of paid personal / carer's leave to assist elderly family members or friends

Speaker: Jamie Wells, Partner, King & Wood Mallesons, Brisbane

11.40 - 11.50am Questions and Discussion

11.50 - 12.00pm

Short Break

12.00 - 12.40pm

Session 3: Saying Goodbye to More than a Departing Employee

When an employee decides to leave an employer, particularly to take up a position at a competitor, employers are left vulnerable. This practical session examines how workplaces can best protect themselves, with a focus on non-solicitation and restraints of trade clauses. It includes:

- What you can and can't do with restraint clauses
- Non-solicitation clauses - the right and wrong way of doing
- Protecting an employer's business interests - what does this mean?
- Protecting an employer's goodwill - how far will courts go?
- What factors influence reasonableness when constructing restraint clauses?
- Confidential information and departing employees - extent of employer's rights
- Use of cascading restraint clauses
- Drafting considerations

Speaker: Adrian Barwick, Solicitor Director, WilliamsonBarwick, Sydney

12.40 - 12.50pm Questions and Discussion

12.50pm

Part 1 Close

PART 2: THURSDAY 30 JULY 2020

**CHAIR: GLENN FREDERICKS,
BARRISTER, STATE CHAMBERS,
SYDNEY**

THEME: CHALLENGES IN THE WORKPLACE

10.00 - 10.05am

Introduction and welcome

10.05 - 10.45am

Session 4: Performance Management Risks in the Workplace

Performance management is standard HR practice, right? Yes, but in the process it may create an unwanted employment law headache if it all goes wrong. This session looks at the key risk factors and how to contain them, including:

- Legitimate vs unlawful grounds for managing performance
- Managing performance and warnings
- Defining and communicating performance objectives
- Frequency of performance management feedback
- Always ensuring the employee knows what is expected of them
- Discussing results of performance management process regularly
- Strategies to prevent underperformance
- Case study: Work from home arrangements and managing performance

Speaker: Mark Howard, Partner, HWL Ebsworth Lawyers, Melbourne

10.45 - 10.55am Questions and Discussion

10.55 - 11.00am

Short break

11.00 - 11.40am

Session 5: Managing Stress and Mental Health: Adjusting to the New Normal

Employees are facing considerable stress and fear over the continuing effects of COVID-19, with some staff grappling with isolation at home, while others face financial uncertainty. Employers have a duty to do what they can to reduce the psychological risks. This session, presented by a mental health expert, examines how you can best support staff, including:

- Identifying the possible psychosocial risks from COVID-19
- Managing working from home risks
- Recognising your needs and the needs of your staff
- What steps can employers take to minimise workplace stress?
- Adding practices that bolster mental health

Speaker: Mark Oostergo, General Manager & Principal Psychologist, CommuniCorp Group, Sydney

11.40 - 11.50am Questions and Discussion

11.50 - 12.00pm

Short Break

12.00 - 12.40pm

Session 6: Workplace Investigations - The Essential Dos and Don'ts

Employers generally don't do workplace investigations that well. Why? A mixture of poor technique and confusion over limits of authority may play a part. This session looks at essential dos and don'ts in this important area. It includes:

- Understanding when to undertake an investigation
- Identifying when external or internal investigation is required
- Application of procedural fairness to the employee
- How to ensure remote or virtual workplace investigations are conducted fairly
- Collecting evidence - what, where and how
- The extent of enquiry - understanding the limits of the investigative process
- Dealing with difficult or unreliable witnesses
- Construction of investigation report
- Presenting report findings to the employee
- When can you maintain legal privilege of workplace investigation report?
- Case study - Workplace investigations checklist

Speaker: Belinda Winter, Partner, Cooper Grace Ward Lawyers, Brisbane

12.40 - 12.50pm Questions and Discussion

12.50pm

Part 2 Close

PART 3: WEDNESDAY 5 AUGUST

**CHAIR: ELIZABETH PERRY, LLB
FAICD, ADELAIDE**

**THEME: NAVIGATING EMPLOYEE
ENTITLEMENTS**

10.00 - 10.05am

Introduction and welcome

10.05 - 10.45am

Session 7: Salary or Wages? Choose Your Own Compliance Adventure

The FWC has introduced model annualised salary clauses for some modern awards, taking effect 1 March 2020, but there is often more than one way that an employer can lawfully vary a requirement to pay wages pursuant to the applicable workplace instrument. This topic examines:

- The new model annualised salary clauses, including reconciliation and record-keeping requirements
- Individual flexibility arrangements under modern awards
- Guarantee of earnings under the Fair Work Act
- Using well-drafted set-off clauses in contracts

Speaker: Skye Rose, Principal, Moores, Melbourne

10.45 - 10.55am Questions and Discussion

10.55 - 11.00am

Short break

11.00 - 11.40am

Session 8: Wage Underpayments: No Business is Immune

It seems every day we hear of another case of wage 'theft.' This session looks at what is causing this problem, how to spot the warning signs and how it should be fixed. It includes:

- Identifying types of underpayment
- What to check and what systems to put in place to remain award compliant
- Identifying old or outdated practices in paying wages or salaries
- Understanding the extent of penalties including accessorial liability
- Wage 'theft': a new criminal offence - understanding the elements of the law
- Recent wage underpayment examples and their lessons

Speaker: Rohan Doyle, Partner, Herbert Smith Freehills, Melbourne

11.40 - 11.50am Questions and Discussion

11.50 - 12.00pm

Short Break

12.00 - 12.40pm

Session 9: Getting Clarity on Casuals

The decisions of *Workpac v Skene* and *Workpac v Rossato* have refocused attention on the definition of casual employment and whether employees are truly 'casual' employees. But confusion abounds generally over the application of the test in practice. This topic addresses:

- The definition of casual employment for the purposes of the Fair Work Act, workplace instruments and the general law
- A broad review of casual employee entitlements, including unfair dismissal and casual conversion
- The latest developments in litigation and class actions following *Workpac v Skene*, including the Full Bench decision of *Chandler v Bed Bath N' Table Pty Ltd* and other Fair Work Commission and Court decisions
- Steps to take to mitigate claims by casuals that they are not 'true' casuals, including the use of set-off clauses
- An update on the Full Court of the Federal Court's decision in *Workpac v Rossato*

Speaker: Wendy Fauvel, Executive Counsel, Herbert Smith Freehills, Brisbane

12.40 - 12.50pm Questions and Discussion

12.50pm

Part 3 Close

PART 4: THURSDAY 6 AUGUST 2020

**CHAIR: LINDY RICHARDSON,
PARTNER, MADDOCKS, MELBOURNE**

**THEME: OBLIGATIONS AND LIABILITIES IN
THE WORKPLACE**

10.00 - 10.05am

Introduction and welcome

10.05 - 10.45am

Session 10: Personal Leave Arrangements - Managing Absence Proactively

The high profile decision of *Mondelez v AMWU* has highlighted the challenges employers face when managing leave entitlements, particularly when employing shift workers and part-time employees. This session examines how employers can manage the traps and pitfalls of personal leave requirements, including:

- Unpacking *Mondelez v AMWU* [2019 FCAFC 138 and the pending High Court appeal decision]
- How is a 'day of leave' determined?
- Traps with deducting personal/carer's leave balances when only part of a day is taken
- Converting hours of leave into days
- Challenges with pro-rata reduction of personal leave entitlements of part time employees
- How to effectively review your systems and reduce the risks of claims for back pay and contravention of the Fair Work Act

Speaker: James Pomeroy, Special Counsel, Gilbert + Tobin, Sydney

10.45 - 10.55am Questions and Discussion

10.55 - 11.00am

Short break

11.00 - 11.40am

Session 11: Adverse Action and General Protections: Dodging the Traps for Employers

This session looks at recent case law developments in adverse action and general protections, with a focus on the key lessons for employers. It includes:

- Termination and prohibited reasons - navigating the traps
- What if there has been a history of conflict between a decision-maker and the employee?
- Objective criteria or reasons for termination
- Employer risks when not keeping adequate records
- Managing the risks of disability discrimination and adverse action
- Practical tips to limit the risk of a successful adverse action claim
- Case study: dismissal for refusing to work overtime
- Lessons from recent cases

Speaker: Elizabeth Devine, Principal, Devine Law at Work, Sydney

11.40 - 11.50am Questions and Discussion

11.50 - 12.00pm

Short Break

12.00 - 12.40pm

Session 12: Whistleblower Laws - It's Time to Report

Australia's new whistleblower laws will have significant repercussions for how some grievances and workplace investigations will need to be handled. This topic covers the new legal landscape, including:

- What are the new whistleblower provisions?
- Having a lawful whistleblower policy
- How the laws change employment practice relating to workplace grievances
- How the laws affect disciplinary processes and workplace investigations
- Thinking beyond policies - changes to processes and governance frameworks
- Tips on how to manage whistleblower complaints

Speaker: Alison Baker, Partner, Hall & Wilcox, Melbourne

12.40 - 12.50pm Questions and Discussion

12.50pm Conference Close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the conference, online access to the conference materials and recordings of each of the sessions provided after the conference.

Conference Materials

Access to the conference materials (papers and Powerpoints) will be available online to all delegates in the lead-up to the conference (as the materials become available), during the conference and for 30 days after the conference. The materials will be available in .pdf format for easy download to your local computer or portable device.

Lawyers - CPD Units/Points

Lawyers (except WA): 7 CPD units (substantive law)

WA Lawyers: 6 CPD points (substantive law)

Employment Law Accredited Specialists: 12 units/hours

CPD Certificate

All delegates attending the conference will receive a CPD Certificate confirming attendance.

Online Conference Delivery

The conference will be delivered online. Delegates will receive a link to login and attend each of the 4 parts of this online conference.

This online conference will be delivered in a style similar to a live conference. There are Chairs for each part to introduce speakers and facilitate question time and the online portal allows delegates to pose questions to the speakers via the chat facility.

Cancellation Policy

Cancellations must be received in writing at least 10 days prior to the Conference for a 85% refund. Substitute delegates accepted at any time.

If a registration was purchased as part of a group discount the cancellation of that registration may affect the discount level for other members of the group. The amount of the refund will be adjusted to recoup any adjustment required to the overall registration fees for that group.

Conference Terms

Program subject to change without notice. The information and views presented in the conference are not necessarily those of TEN and participants rely on these at their own risk. TEN is not responsible for any financial or other losses incurred by delegates or for injury or damage to persons or property. TEN's maximum liability for conference cancellation or any other loss or liability is the refund of the registration fee paid.

TEN is not responsible for financial loss incurred by you as a result of the cancellation or postponement of the conference as a result of strikes, natural disasters, and other Acts of God such as volcanic ash clouds in Australian airspace. We therefore strongly advise you to take out travel insurance if your attendance plans involve air travel or other significant travel to the conference venue.

© 2020 Television Education Network Pty Ltd. All rights reserved. The program for this conference is copyright and may not be reproduced in any form without the prior written consent of the copyright owner.

