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Employment Law e-alert

Paid Parental Leave: Can businesses terminate or reduce employer-funded paid parental leave programs?

The new national Paid Parental Leave ("PPL") scheme will operate from 1 January 2011. It will provide primary carers with up to 18 weeks of parental leave pay at the rate of the national minimum wage, subject to meeting certain eligibility requirements including an income threshold. These payments will be fully funded by the Commonwealth government but will not include any superannuation payments.

Employers who already fund their own workplace paid parental leave schemes are not automatically entitled to reduce employer-funded leave payments. Whether an employer-funded scheme can be altered will depend on whether the employer is obliged to continue an existing scheme at current levels, or has discretion and capacity to vary it. If the obligation to pay parental leave arises under an industrial agreement, it may be very difficult to avoid that liability.

In adjusting benefits available to employees, employers must be aware that the *Fair Work Act 2009* prevents "adverse action" being taken against an employee because of the existence of a "workplace right". The PPL scheme may be "workplace right", so any changes to employer-funded parental leave schemes must be approached with great caution.

Key Points

- Employers who are considering the reduction of existing entitlements need to consider carefully whether reducing employer-funded paid leave entitlements is in fact a prudent step. The positive employee relations reasons for introducing an employer-funded scheme in the first place should be considered.
- If reduction of employer-funded scheme payments is considered, the crucial test is whether the employer is bound to continue to offer those benefits and for how long.
- Care is needed when considering offsetting the PPL scheme payments or otherwise changing an existing employer-funded scheme, to avoid allegations that employees are being subjected to unlawful "adverse action".
- Enterprise bargaining demands for employers to fund parental leave schemes, provide for superannuation contributions during parental leave and "top-up" PPL scheme payments to normal wage levels are likely to be strongly pursued in future.

Contacts

Rachel Drew	07 3292 9717	rdrew@macrossans.com.au
Andrew Knott	07 3292 9760	aknott@macrossans.com.au
Martin Dunne, Sydney (City)	02 9391 3211	mdunne@hunthunt.com.au
Ian Miller, Sydney (North West)	02 9804 5704	imiller@hunthunt.com.au
David Thompson, Melbourne	03 8602 9252	dthompson@hunthunt.com.au
Tim Lange, Melbourne	03 8602 9208	tlange@hunthunt.com.au
Chris Sharp, Adelaide	08 8414 3385	csharp@hunthunt.com.au
Darren Miller, Perth	08 9488 1300	darren.miller@marksandsands.com.au
Sarah Sealy, Hobart	03 6231 0131	ssealy@huntas.com.au
Chris Osborne, Darwin	08 8924 2600	cosborne@huntnt.com.au
Justine Matthews, Newcastle	02 4925 5500	jmatthews@hunthunt.com.au

This e-alert is for general information only. No person should act on the basis of the contents of this publication without seeking advice. If you would like to unsubscribe or provide any feedback please contact Shauna Sadikaj on (07) 3292 9777 or at ssadikaj@macrossans.com.au