

HOW THE FAIR WORK COMMISSION ASSESSES YOUR AGREEMENTS (AND WHY IT'S SO COMPLEX)

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Australia Labour, Employment and Workplace Safety Alert

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In a decision handed down last week, the Fair Work Commission (**FWC**) has given (perhaps unintended) insight into the ever more complex process of getting an Enterprise Agreement approved.

Enterprise Agreements will continue to be a hot button issue both politically and industrially, with employer groups and unions both strongly criticising the current system of enterprise bargaining from different sides of the fence.

In a recent article, we drew attention to the 'line by line' scrutiny the FWC is giving Enterprise Agreements, and the impact that is having on the approval process. [Click here](#) to view the article.

THE FWC PUBLISHES ITS INTERNAL CHECKLIST

The BJS Labour Hire Pty Ltd Enterprise Agreement was approved last week by Deputy President Masson with a number of undertakings. The decision is interesting not because of what Deputy President Masson said about the Agreement but because of what was initially published with it - a completed internal FWC document called the 'Single Enterprise Agreement Legislative Checklist' (Checklist). This has since been removed from the Fair Work Commission Website. [Click here](#) to view the checklist. As can be seen, it is lengthy and exhaustive and covers, process, the National Employment Standards and the Better Off Overall Test.

The exhaustive checklist demonstrates an effort by the FWC to address concerns raised in the past that it was approving Enterprise Agreements (both union supported and non-union) that did not meet the requirements of the National Employment Standards and the Better off Overall Test.

WHAT SHOULD EMPLOYERS DO?

Once bargaining is completed and an Enterprise Agreement voted up by employees, all employers (and employees) want to do is get the agreement approved by the Commission and implemented. Using the insight gained from this case, employers should:

- carefully review their Enterprise Agreements to ensure that they are consistent with the National Employment Standards
- apply the terms of the Enterprise Agreement to different rostering scenarios to ensure that employees working all roster patterns will be better off overall under the Enterprise Agreement compared to the relevant Award
- be ready with undertakings for the FWC should they be required.

Critically, employers should also ensure that the application for approval and statutory declarations that accompany applications to the FWC are comprehensive and so far as is possible mirror the approach taken by the FWC, as demonstrated in the checklist. Whilst this may seem a laborious task, it will help the employer preempt any issue raised by the FWC (and proactively develop a solution) as well as facilitate a smoother and faster path through the approval process.

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