

# EMPLOYMENT LAW TRAPS

**Presented by:**

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# About Us



**Sarah Cappello LLB**  
*PARTNER sydney*



**Andrew Rowe LLM**  
*PARTNER griffith*



**Enis Goktepe LLB**  
*PARTNER narellan*

 WILLS, PROBATES & ESTATES	 TAXATION LAW	 TRADEMARKS & INTELLECTUAL PROPERTY	 PROPERTY LAW	 LIQUOR LICENCES	 FAMILY LAW
 EMPLOYMENT	 TRADE PRACTICES CLAIMS	 CONTRACTS AND AGREEMENTS	 DISPUTE RESOLUTION	 DEBT RECOVERY	 COMMERCIAL

# Introduction to Employment Law – Fair Work

The Fair Work Act 2009 and the Fair Work Regulations 2009 govern the *employee/employer* relationship in Australia

Fair Work Act provides;

- Safety net of minimum entitlements
- Enables flexible working arrangements
- Fairness at work
- Prevent discrimination against employees
- Governs process for ending employment

Other relevant legislation (*not exhaustive*)

- Corporations Act
- Independent Contractors Act
- Privacy Act
- Competition and Consumer Act



## Awards, Registered Agreements & Employment Contracts

“ An employee can enter into a contract of employment however they *cannot be worse off than their minimum legal entitlements.* ”

### Employees covered by Award and Enterprise Agreement

Awards apply to certain industries and certain type of jobs.

They do not apply if an EA is in place or employee earns over \$148,700

Registered Agreement is a document between employer and employee regarding employment conditions. An agreement must be approved by and registered with Fair Work

### Award & Agreement free – entitlements come from NES and Employment Contracts

Still entitled to at least Minimum wages and National Employment Standards (NES)

Employment contracts

The terms govern the relationship between the parties like any contract

## Who is an employee?

*“ Each case must be considered on its own facts. It is a matter of working out whether the arrangement involves the creation of an employment contract”*

1

Employment contract can arise even if you call it something else  
eg. Contractor or unpaid intern

2

Can be verbal

3

Intention to enter into an agreement

4

Consideration/payment

Significant decision in 2017 – Uber driver is not an employee

*Kaseris v Rasier Pacific V.O.F*

## Letters of offer & Employment contracts

- 1 Recommended to put in writing for all employees  
Award employees letter offer - focus on job description
- 2 Important to set out the terms and conditions of employment
- 3 Incentive or bonus structure must be clear
- 4 Notice period
- 4 Restraints & Non Compete



## Best Practice

Employment Contract

Policies & Procedures

Conduct



## Recent updates in Employment Law

1

***Personal leave***; Must be 10 working days regardless of hours  
Impacts shift workers and part time employees

2

***Ordinary working hours***; Failing to correctly apply annualised salaries and conduct annual reconciliation.

3

***Social media***; Can lead to unfair dismissal or general protections claim. Important to have strong policy



# While we are talking about updates....

## Why not register to receive our newsletter?

SEPTEMBER 2, 2019

### Controversial decision on sick leave may leave employers exposed to back pay

Article By: Sarah Cappello Cappello Rowe Lawyers Sydney  
Recently the Federal Court handed down a decision about sick leave that has the potential to leave many businesses exposed. The controversial decision, handed down on 21 August 2019, confirms that all employees, including part time employees, are entitled to a full...



By Admin

MARCH 12, 2018

### Parental Leave – Can I Return To Work Part Time?

Employees have a statutory entitlement to return to work and to their previous position after taking a period of parental leave under the Fair Work Act 2009 (the Act). If the

no longer exists, the employee  
return to the position which is closest in...

years

OCTOBER 31, 2017

### Does your employment contract measure up?

If you are entering into an employment contract do you know what should be included? If you are an employer and using an old contract, should it be reviewed first? It is clear contracts should be individually structured to meet the needs of those involved and in reality both employer...



By Cappello Rowe Lawyers

## Ending the relationship

# Ways to terminate the relationship

### Resignation

Employees decision although can be considered forced

### Redundancy

Must be genuine redundancy

### Dismissal

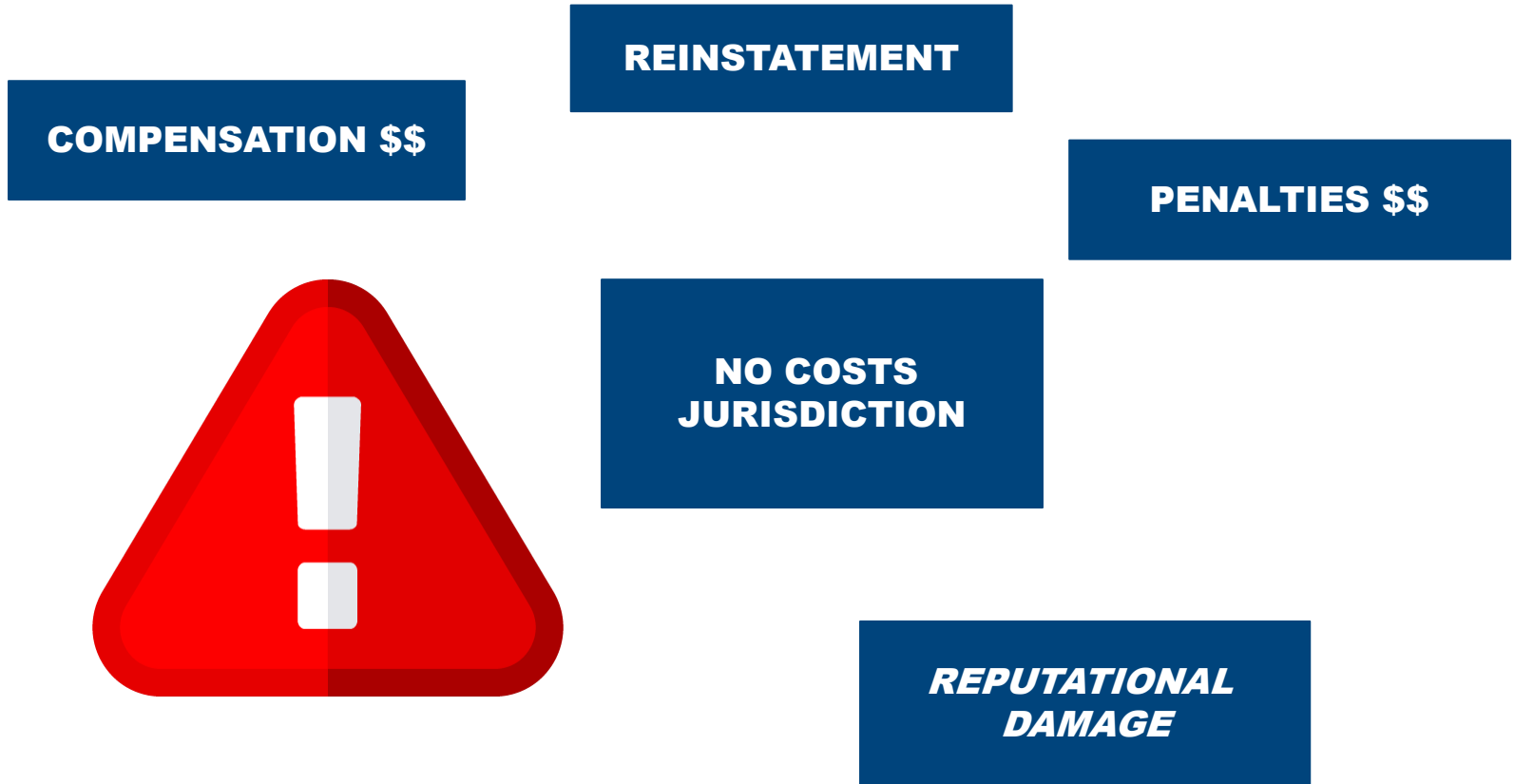
- Notice
- Reason for dismissal ie. Performance based
- Properly communicate the reason

### Instant dismissal

Serious Misconduct warranting instant dismissal

What can go wrong when ending employment?

## Unfair Dismissal or Adverse Action Claim



*“Harsh, unjust or unreasonable”*

- Employee has to have worked for > 6 months or >12 months for small business
- Excludes “Genuine Redundancy” or “Resignation”

*Early advice can minimise exposure when terminating an employee.  
Get advice BEFORE you terminate*

*“Harsh, unjust or unreasonable”*

- Need a valid reason
- Notify the employee of the reason
- Offer for them to bring a support person
- If the dismissal was for unsatisfactory performance, give them warning before dismissal
- HR department - standard higher so have policies

*Early advice can minimise exposure when terminating an employee.  
Get advice BEFORE you terminate*

*A person cannot take any adverse action against another person because that person has a workplace right, has exercised a workplace right or proposes to exercise that workplace right.*

### **Adverse action is;**

- Termination
- Not giving entitlements
- Changing job to their disadvantage
- Treating employees differently
- Not hiring

### **General Protections**

#### **Prohibited Reason;**

- Workplace rights
- Not Industrial activities
- Protection from discrimination

*Quick Tip: Check the date the security agreement was signed against the date of registration*

- Ensure managers and employees know and understand General Protections
- Have policies in place to handle complaints fairly
- Ensure fairness when dealing with employees
- Document meetings and reasons for decisions with respect to employees

*Get advice on drafting and implementing policies and procedures and review periodically and of course get advice if an incident occurs*



## Key points

- Clear contract of employment
- Implement policies
- Think carefully before taking any action with respect to an employee – get advice
- If deciding to terminate, follow procedure and of course keep records
- If a dispute does arise think commercially

*Contact Cappello Rowe before you need us.*

*Almost always, getting advice prior to a conflict will increase your chance of success by 10 fold.*

It'll only take a minute  
and will save you in the long run.

EFFICIENT. NIMBLE. INNOVATIVE.

## Finding the right path to expedite solutions



### Getting the whole view

Most firms will look at your case in isolation. We take a holistic view of your matter and your business. We make sure all pieces fit.



### Protecting your Interests

At the heart of all we do, protecting your interests is the most important. Whether it be Employment, Tax, Contract or Family you can be sure we put your interests first.



### Your Loyalty is our Reward

Since inception 80% of all clients have engaged us to act in other matters. Our clients return because they know they can trust us to do the job in an efficient manner.

BY THE NUMBERS

## Why we are trusted by clients like you

Numbers don't lie. While they don't mean everything in our line of work, they can be good to give you some comfort.

### Since 2010:

1976

total clients

561

companies and  
businesses

3842

matters opened

2926

matters  
completed/settled

1673

property  
transactions