

# Alert

## EMPLOYMENT LAW

### Federal Government Responds to Confusion Surrounding Casual Employee Entitlements

By Jodie Bradbrook

Recently I analysed the case of [WorkPac Pty Ltd v Skene \[2018\] FCAFC 131](#), and discussed the widespread implications of the Full Federal Court of Australia's decision to classify Skene, a casual worker, as a permanent employee. This decision meant Skene was entitled to claim annual leave under the NES – effectively creating a 'double dipping' scenario, which could be exploited by other 'casual' workers throughout Australia.

This decision created significant concerns amongst employers with 'casual' employees, particularly those in the labour hire industry and users of labour hire services. It seems the Federal Government shared these concerns, and they have varied the Fair Work Regulations 2009 (Cth) to clarify that in certain situations, an employer can claim that casual loading payments to employees should be offset against certain NES entitlements owing to the employee. This variation came into effect on 18 December 2018.

#### What does this mean for employers?

The change to Fair Work Regulations 2009 attempts to clarify the confusion surrounding 'casual' employee entitlements and alleviate

the concerns of employers who were at risk of this double dipping scenario. However, until the law is tested it will not be possible for employers to have certainty regarding their workforce and as such, they need to review their casual workforce to determine whether:

- employment terms and conditions fit within the definition of casual employment;
- the parties intend to have a casual employment relationship;
- the documented intention is being practically achieved;
- there are any ongoing work expectations beyond the end of each shift or roster period; and
- permanent employment arrangements would be more appropriate.

DW Fox Tucker will be monitoring this change closely and will provide updates if new information becomes available. In the meantime, employers should seek legal advice if they have any concerns regarding their casual workforce.

If you would like to discuss the decision or the variation to the Fair Work Regulations 2009, you can contact me directly or one of our other employment law specialists. Our team is highly experienced in analysing and reviewing employment arrangements. We can review your casual work force and assess your risk exposure to any potential litigation.

Further information about the regulation can be found at the [Fair Work Ombudsman website](#).

If you would like to read my previous article on the Skene decision please click [here](#).



MORE INFO

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