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HUMAN RESOURCES

27 June 2019

Employment Relations (Triangular Employment) Amendment Bill

The Bill, in its final form, is substantially different to when it was introduced. Originally intended to both (1) extend coverage of a client employer's collective agreement to employees who perform services for the client but who are directly employed by another party (e.g. labour hire firms) and (2) enable the client employer to be joined in personal grievance proceedings, the first of these two proposed changes was dropped during the Select Committee phase of the Bill's passage. It is possible, however, that this is a matter which may be revisited in the development of Fair Pay Agreements in future.

The new law (see below) is set to come into force *on the earlier of* a date appointed by an Order in Council or 12 months after receiving the Royal assent, – the actual date is far from clear at this point!

The Employment Relations (Triangular Employment) Amendment Act amends the Employment Relations Act 2000 and introduces the concept of a '**controlling third party**' – meaning a person –

Who has a contract or arrangement with an employer under which an employee of that employer performs work for the benefit of the person; and who exercises, or is entitled to exercise, control or direction over the employee that is similar or substantially similar to the control or direction an employer exercises in relation to an employee.

Section 103 (Personal Grievance) of the principal Act is amended by inserting new s103B – **Joining controlling third party to personal grievance.**

This section allows an employee to raise a personal grievance when working under the control and direction of a controlling third party and for the employee or the employer (or both), to apply to the Authority or Court to join the controlling third party to personal grievance proceedings to resolve the grievance.

The Authority/Court must grant the application if satisfied that the controlling third party has been notified in accordance with statutory requirements (s115A) and that an arguable case has been made out that –

- The party to be joined is a controlling third party; and
- That the party's actions caused or contributed to the personal grievance

The Authority/Court may also join a controlling third party to proceedings of its own motion.

If the Authority/Court determines that the controlling third party caused or contributed to the situation that gave rise to the personal grievance, it –

- May, if satisfied that it is just to do so, order the controlling third party to either, or both, reimburse the employee for lost wages and pay compensation for humiliation, loss of dignity, and injury to feelings and loss of any benefit which the employee might reasonably have otherwise expected to obtain;
- Must consider the extent to which the controlling third party caused or contributed to the situation giving rise to the PG;
- Must award any remedies against the employer and the controlling third party in a way that reflects the extent to which the actions of each contributed to the situation; and
- May order payment for reimbursement of lost wages or compensation in instalments but only if the financial position of the controlling third party requires it.

Members having any questions in relation to this matter are advised to contact our HR/ER Advisers –
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