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REDUNDANCY

Are You Aware of Your Obligations?

The Building and Construction General On-Site Award 2010 (the Award) has a very unique definition of "redundancy" that can sometimes catch employers out and unintentionally put them at risk of being in breach of the Award and the Fair Work Act 2009.

The National Employment Standards (NES) in respect to redundancy do not apply to employers and their employees covered by the Building and Construction General On-Site Award 2010.

Employers who do not meet their requirement to pay a redundancy payment to employees who are entitled to such payment are considered to be in breach of the Award and may be fined in addition to having to pay the required benefit to the aggrieved employee(s).

The Award has a very broad and unique definition of redundancy.

"Redundancy means a situation where an employee ceases to be employed by an employer other than for reasons of misconduct or refusal of duty. Redundant has a corresponding meaning".

As a result a redundancy payment in accordance with the Award provision must be made where:

- an employee is made redundant by their employer; or
- an employee resigns after having been employed for twelve (12) months or more.

In determining an employee's service an employer should be aware that service as an apprentice will count towards payment of the redundancy benefit where the apprentice completes an apprenticeship and remains in employment with the same employer for a further twelve (12) months.

The Award does not provide an exemption for a small business employer, as defined, under the Fair Work Act 2009, from having to pay redundancy benefits to employees employed under the Award. It is recommended that affected employers assess risk minimisation strategies on the matter of redundancy pay obligations by considering the benefits of joining an Approved Workers Entitlement Fund under the Fringe Benefits Tax Regulations 1992.

In South Australia the only approved fund is the Building Industry Redundancy Scheme Trust Fund (BIRST).

Aside from the contributions being tax deductible the benefits of an employer joining BIRST are:-

1. The Fund handles all the paperwork involving redundancy payments.

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2. Employers are able to manage their cash flow by making regular monthly redundancy contributions rather than make lump sum payouts at a time when they can least afford it.
3. BIRST allows employers to "cap" contributions to match the Award redundancy obligations where such provision is included in an enterprise agreement or an enterprise flexibility agreement.
4. The BIRST Fund supports and sponsors the Construction Industry Drug and Alcohol Program and the Mates in Construction suicide prevention program.
5. While an employee is an "active" member of the Fund, the Fund provides:-
 - Free travel insurance from home to work and return; and
 - Emergency 24/7 ambulance coverage and funeral benefits up to \$6,000 per person to employees and their family members which includes spouse, dependent child under sixteen (16) years of age and dependent full-time students under twenty five (25) years of age who are not in receipt of any taxable income.

As the payment is made on a regular basis employers are aware of the cost and include the contribution in their charge-out rate.

This article has been written by Maurie Howard, February 2018