

Insights, News & Events

# AUSTRALIA PASSES COMPREHENSIVE WORKPLACE REFORM: 12 KEY UPDATES EMPLOYERS SHOULD NOTE

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Employers in Australia are facing the most comprehensive workplace relations reform in more than a decade and will need to ensure they update their policies and practices to account for key changes. Australia's Fair Work Act 2009 was a landmark piece of legislation governing the employment relationship in private workplaces. It aimed to provide a balanced framework for workplace relations by promoting both economic success and social inclusion for employees. The act set the standards for employers of all sizes and in all industries that fall within Australia's national workplace system. Now, employers will need to grapple with significant amendments that either already took effect or will take effect later this year under the Fair Works Legislation Amendment Act 2022 – also known as the Secure Jobs, Better Pay Act. What are the 12 most significant updates employers need to review?

## First, What is the Act's Purpose?

The Secure Jobs, Better Pay Act (SJBPA) – which the Australian Federal Government enacted in December 2022 – amends the Fair Work Act. It changes existing laws and creates new laws to lift wages, improve job security, and start closing the gender pay gap. According to Prime Minister Anthony Albanese, the new law gives Australian workers a better deal and a better future by modernizing the bargaining system and promoting more workplace agreements. It also delivers better productivity and flexibility for employers and better pay and conditions for workers.

## 12 Key Changes

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The SJBPA is quite extensive and brings into effect many changes and obligations that will impact Australian workplaces. Many of the key changes outlined below went into effect on December 7, 2022. Others will go into effect on a later date as specified.

## **1. Prohibiting Pay Secrecy**

- Employees now have the right to decide whether to disclose information about their pay or employment terms and conditions that are reasonably necessary to determine their pay. Employees also have the right to ask other employees for their pay information.
- Employees cannot be forced to disclose the above information if they choose not to. They can also exercise these rights after their employment ends.
- Employers cannot take adverse employment actions against any existing or future employees because they exercised these rights.
- Employers have until June 7, 2023 to ensure that contracts and agreements entered into on or after December 7, 2022 comply with the new laws.

## **2. Job Advertisements**

- Effective January 7, 2023, job advertisements or postings cannot include rate of pay information that would breach the act or any other fair work instrument. This means that job postings cannot contain pay terms that fall below the minimum rates or any work conditions that fall below minimum standards. This requirement is retroactive and will apply to all active advertisements that were posted before January 7.

## **3. Flexible Work**

- The act currently allows certain employees to request flexible work arrangements, including employees who are age 55 and older and workers with a disability. Effective June 6, 2023, the act will expand the scope to include pregnant employees and employees who have experienced family and domestic violence.
- Effective June 6, 2023, employers will also have new obligations when evaluating whether a request should be

accepted, such as providing a written response to the request within 21 days.

#### **4. Fixed Term Contracts**

- Effective December 6, 2023, employers' ability to enter into fixed-term contracts will be limited. For example, contracts that last two or more years or permit multiple extensions of the fixed term will be prohibited.

#### **5. Anti-discrimination**

- Breastfeeding, gender identity, and intersex status have been added as protected from discrimination.

#### **6. Prohibiting Workplace Sexual Harassment**

- Effective March 6, 2023, workplace sexual harassment will be expressly prohibited. This will apply to all employees and third parties, including contractors, student interns, volunteers, future workers, and anyone conducting a business or undertaking. Violations are punishable by civil penalties.

#### **7. Unpaid Parental Leave**

- The act alters how employers must respond to requests for extensions of unpaid parental leave. These new requirements will apply to requests made on or after June 6, 2023.

#### **8. Enterprise Bargaining (Collective Bargaining)**

- There are various changes to the collective bargaining framework, such as the agreement approval and termination process. These changes generally encourage or compel collective bargaining in order to improve the existing collective agreement system and achieve wage increases for employees. These changes will likely result in a shift in bargaining power away from employers.

#### **9. Sunsetting of Zombie Agreements**

- A zombie agreement refers to a collective bargaining-related agreement made prior to the commencement of the Fair Work Act 2009 and during the "bridging period" (July 1, 2009 to December 31, 2009). All zombie agreements that are still in effect will automatically terminate on December 7, 2023.

- By June 7, 2023, certain employers are required to notify employees covered by such agreements of the end date, unless an application to extend is made to the Fair Works Commission (FWC), which is the Australian industrial relations administrative agency.

## **10. Errors in Collective Bargaining Agreements**

- The FWC now has power to correct errors in collective bargaining agreements, either on its own initiative or on application by an employer, employee, or union covered by the agreement.

## **11. Abolition of the Australian Building and Construction Commission (ABCC)**

- The ABCC – which was established in 2016 to enforce the Fair Work Act in the commercial building and construction industry – is currently in a transition period and will be abolished on February 6, 2023.
- Once the ABCC is abolished, its functions and responsibilities will be transferred to the Fair Work Ombudsman (FWO), an independent government agency that helps employers and employees understand their rights and responsibilities under Australian labor and employment law.

## **12. Abolition of the Registered Organizations Commission (ROC)**

- The ROC is the independent regulator of unions and employer associations in Australia. Effective June 6, 2023, the ROC will be abolished and its regulatory powers and functions will be transferred to the General Manager of the FWC.

## **Conclusion**

The SJBPA constitutes a major reform to many important areas of the Australian industrial relations system. However, the Australian government has flagged more areas of potential reform, including in relation to labor hire and gig economy workers, and we expect additional legislative changes to be introduced next year.

We suggest being proactive by carefully reviewing whether your entities are impacted by these changes and by gaining an understanding of the act's new requirements. We will also

monitor further developments and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.

If your organization does business in Australia or has any remote employees or contractors there, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [International Practice Group](#) to learn more about the implications of the new laws and to assess what changes, if any, are needed to bring your organization into compliance.