

IR POLICY AND GOVERNANCE UPDATE



INTRODUCTION

In our first Update for 2025, we look at current Australian employment figures, and a couple of interesting employment related decisions for your consideration.

EMPLOYMENT FIGURES

According to the latest data from the ABS, Australia's unemployment rate for December 2024 rose to 4% up from 3.9% in November. This was despite an increase in the number of employed people growing by 0.4% in December. Additionally, the employment-to-population ratio achieved a new record of 64.5%, indicating a strong job market resilience.

The ABS data also highlighted that hours worked in December rose by 0.5%, indicating not just more jobs but more work being done. The underemployment rate, which includes part-time workers who wish to work more hours, decreased slightly to 6.0%, showcasing a 0.6 percentage point improvement from December 2023. Let's see what this means when the RBA meet to determine interest rates in February.

COURT ORDERS EX-EMPLOYEE TO RETURN CONFIDENTIAL INFORMATION

The Supreme Court of New South Wales recently dealt with an employment case about confidential business information. The dispute involved questions about an employee's obligations regarding sensitive data both during and after employment.

The case centred on a real estate agency and their former senior property manager. At issue was a rent roll purchased for \$880,000 that contained management agreements between the agency and landlords for 161 properties. The employer requested court orders to prevent information sharing and to recover confidential materials, particularly focusing on protecting a valuable rent roll containing client and business data.

The Court found that confidential information had been moved to personal devices by the employee. The evidence included emails sent to personal accounts and documentation shared through Google Drive. When questioned about these transfers, the worker's explanations were found to be inconsistent with other evidence. The employee attempted to defend her actions, arguing that transferring business information to personal devices was part of performing her regular duties. She explained this was necessary for handover purposes and due to technical access limitations.

The employment agreement contained specific confidentiality provisions but notably did not include post-employment competition restrictions. Relevantly her employment agreement contained terms that defined "confidential information" to include names, addresses (including email addresses), phone numbers and all other contact information of sellers, buyers, prospective sellers and buyers, any property owner (including their employees, contractors, and representatives) on whose behalf a property is managed by the [employer].

The Court concluded that rent roll acquired by [the employer] from the vendors is confidential information of [the employer] for which it is entitled to protection by way of injunctive relief. The court ordered the worker to stop using or sharing rent roll information, return physical copies of confidential information within 30 days, and provide an affidavit detailing any previous disclosures.

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The key takeaways for members from this decision are ensure confidentiality clauses are:

- > included within employment agreements.
- > drafted appropriately, and particularly where an employee has access to commercially sensitive information.
- > drafted so that the obligations of confidentiality extend beyond the employment period.
- > reiterated to the employee when they resign or are terminated.

NOT AGREEING IS NOT MISCONDUCT

In a decision of the Fair Work Commission, it was held that a manager in a security company who did not agree to sign an amended contract of employment was not guilty of misconduct, but was in fact unfairly terminated and awarded \$42K.

The Commission held the employer had deliberately pressured the employee to sign a new contract and showed a clear unwillingness to address the employees concerns relating to the contract. This included issues around a significant increases in sales targets. The managers decision not to sign the new contract did not amount to misconduct of any kind nor did it relate to his performance. Further the Commission found the manager was:

- > not notified of his dismissal in clear terms.
- > not notified of a valid reason for his dismissal.
- > not given an opportunity to respond to allegations about his alleged conduct

Additionally, and contrary to the claim made by the employer, the employee had not resigned, but was told to 'finish up' when he refused to sign the new contract.

The facts of this case evidence the matter was handled poorly by the employer. Members are reminded to take a careful approach when attempting to make amendments to pre-existing terms of employment, including taking the time to discuss any proposed amendments and address any questions an employee may have.

CONTACT

Any Industrial Relations Member who has a related query should contact the HR Hotline on 1800 835 167 or contact Charles Watson, GM – IR, Policy and Governance via email: charles@visualmediaassociation.org.au

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