

# IR POLICY AND GOVERNANCE UPDATE



## INTRODUCTION

In this week's bulletin we look at the Reserve Bank's call on interest rates along with the effects of inflation and employment figures on that decision. We also remind members of the legislative changes to the Fair Work Act that commence this month. Additionally, we look at a recent decision of the Fair Work Commission that considered whether an employee had been dismissed after they had put in their resignation.

## RBA AUGUST INTEREST RATE DECISION

The ABS released figures that put the unemployment rate at 4.1% in June, up slightly from 4% the previous month. This was despite the creation of approximately 50K mostly full-time jobs. The employment-to-population ratio and participation rate both continue to be near their 2023 highs. This, along with the continued high level of job vacancies, suggests the labour market remains relatively tight, despite the unemployment rate being above 4.0% since April. Elsewhere, the ABS noted the underemployment rate remained at 6.5%, and the underutilisation rate fell by just under 0.1 percentage point to 10.0%.

Further, the ABS annual inflation rate has risen to 3.8%, up from 3.6% in the first quarter. According to the ABS, prices rose by 1% in the June quarter, which followed the 1% increase in prices in the March quarter.

So, taking the above figures and reasoning into account, the Reserve Bank Board today determined to leave the cash rate unchanged at 4.35%. The Board held that although the economic outlook remained uncertain, and that the recent data demonstrated that the process of returning inflation to the 2-3% target has been slow and bumpy, the current circumstances did not warrant a change to rates at this time. Let's see what happens between now and the end of September at its next meeting.

## FAIR WORK ACT RELATED CHANGES COMMENCING THIS MONTH

### Casual conversion pathway

From 26 August 2024 the casual conversion pathway will change. Under the legislative amendments the onus will be on the employee to request conversion to permanent status. The employee will need to have been employed for at least 6 months, or 12 months if in a small business, and the employer must consult with the employee and has 21 days to respond to the request. Any rejection of such a request must include a reason that is based on fair and reasonable business related grounds.

### Right to Disconnect

From 26 August 2024 the 'right to disconnect' will commence for employees (other than in small businesses which will commence 26 August 2025). The amendments to the Act, and a new provision within Awards, establish a statutory right for employees to disconnect from work communications outside of normal working hours, unless that refusal is unreasonable.

This new right does not necessarily give an employee carte blanche to not respond to their employer or a client, particularly if it is a requirement under the employee's job description and or contract of employment. Further, the amendments do not affect an employer's ability to contact employees

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over their availability for a shift or in an emergency, or otherwise where the inherent requirements or nature of the job requires an employee to be on call or contactable.

## **EMPLOYEE DEPARTING DURING A NOTICE PERIOD**

In a recent decision, the Fair Work Commission had to determine whether an employee was dismissed by their employer after having put in their resignation.

The employee had been employed as a manager at a transport company and after some internal issues against the company, he put in his one month's notice of resignation. After a phone conversation with the company director, the details of which were contested as to what was said by both parties, the employment ended and before the notice period was worked out. The employee claimed he was dismissed, whereas the employer claimed it gave him the option to leave early.

After considering the evidence, the Commission determined the employee had indeed been dismissed. The Commission emphasised that the crucial factor in such cases is whether the employee had a real choice to work out the full notice period with pay. The Commission stated – 'Because there was no discussion at all about working the balance of the notice period for pay, or paying the balance of the notice period, or not paying the balance of the notice period, it cannot be said that the employee freely agreed to make his resignation effective immediately.'

Therefore, the Commission held that the employment ended at the initiative of the employer, and that the evidence did not establish the employee freely chose to bring forward the effective date of his resignation. This decision also highlights the complexities surrounding the definition of "dismissal" under the Fair Work Act. Even when an employee has given notice to resign, subsequent actions by the employer could potentially turn the resignation into a dismissal, opening the door for unfair dismissal or general protections claims.

The key takeaway from this case is that clear and unambiguous communications is required when discussing an earlier departure after notice of resignation has been given. This is particularly the case where an employment relationship has been strained in the period leading up to the resignation. As always, keep good notes of any related discussion for future reference.

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## **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](mailto:charles@visualmediaassociation.org.au)

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