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Editorial

Articles

Reliance on the common law for a definition of 'employment' has long created a loophole through which some employers have escaped statutory obligations. The inclusion of a new s 15AA in the Fair Work Act 2009 (Cth) to stipulate what kind of evidence a decision-maker must regard in classifying a work relationship as employment goes some of the way in closing this loophole. It will mean that the 'practical reality' of the relationship as a whole will be regarded, and not merely the terms of a contract drafted by the employer. There is still work to do, however, in ensuring that the underlying tests for determining employment status better reflect the reality of worker engagement in the 21st century, particularly in the case of lowly paid precarious work.

The difficulty in defining and regulating casual work has been a persistent challenge for Australian courts and lawmakers. Tracing the evolution of forms of insecure work under English and Australian law reveals a long-standing tension between security and flexibility in the employment relationship. There is an oscillation between adopting a more expansive definition of casual employment to provide more rights to a greater span of insecure workers, and a desire to narrow the definition to provide more certainty as to the employment status of employees. The High Court's decision in Workpac Pty Ltd v Rossato, adopting a strictly contractual view of casual employment and the subsequent legislative reinstatement of a more expansive definition, exemplifies this dynamic. Although new amendments to the Fair Work Act 2009 (Cth) attempt to strike a balance between providing certainty for employers and employees, the inherent tension between security and flexibility remains.

Labour hire arrangements have been a significant focus of public policy attention in Australia over the last decade, with labour hire licensing schemes introduced in several jurisdictions followed by a more

After much anticipation, the criminal offence of wage theft has been introduced into the Fair Work Act 2009 (Cth) as part of the Closing Loopholes reforms. Following a brief examination of the meaning and extent of 'wage theft', and a review of previous attempts to address it, the article considers the core elements and features of the new wage theft offence. It then sets out the most significant changes to the civil penalty regime as it applies to 'serious contraventions'. The analysis reveals that the interposition of criminal sanctions — into a predominantly civil domain — raises a number of regulatory conundrums: not least of which is whether criminal sanctions are likely to shift the dial on deterrence.

Style Guidelines

In preparing material for submission of articles, authors should be guided by the following points.

1. Where an earlier version of a submission has been published as a working paper or conference paper, the Journal will only proceed with the submission where it is significantly different to the earlier working paper or conference paper.
2. Manuscript Presentation All article manuscripts should be emailed as a Microsoft Word document to law-ajll@unimelb.edu.au. Case notes and other short pieces should be emailed direct to the appropriate section editor. Electronic submissions need not be accompanied by paper copies.
3. Title Each manuscript should have a title which is both succinct and descriptive.
4. Abstract An abstract of no more than 150 words must be supplied at the beginning of each article. The abstract should briefly outline the structure and content of the article and summarise its conclusions.
5. Footnotes These should be numbered consecutively throughout. All bibliographical details, case citations etc should be contained in the footnotes and not in the text. Footnotes should not be used to make substantive points.
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