

Closing Loopholes amendments

Part	Key Changes	Important Dates	Suggested Actions
Rules for labour hire workers	<ul style="list-style-type: none"> Employers, unions and host employers can apply to the Fair Work Commission (FWC) for a Regulated Order that labour hire workers are to be paid the same as employees directly engaged by a particular business (Host Employer). Positive obligations on Host Employers including to provide information. Small business employers, employees working under a training arrangement and some short-term engagements are exempt. 	<p>Applications for Regulated Orders can be made from 15 December 2023</p> <p>Regulated Orders can take effect from 1 November 2024.</p>	<ul style="list-style-type: none"> From 1 Nov 2024 check whether a Regulated Order applies. If so, obtain or provide sufficient information to ensure labour hire workers are paid the same as employed workers. Update payroll systems and processes to ensure ongoing compliance. Obtain advice if any uncertainty exists.
New discrimination protections	<ul style="list-style-type: none"> The Fair Work Act's Anti-discrimination framework has been expanded to include "subjection to family and domestic violence" as a protected attribute. It's unlawful to take adverse action against an employee or potential employee because they have been subjected to family and domestic violence. Enterprise Agreements and Modern Awards cannot contain terms that discriminate on the grounds that a person has been subjected to family and domestic violence. 	Started 15 December 2023	<ul style="list-style-type: none"> Amend anti-discrimination policies to include "subjection to family and domestic violence" as a protected attribute. Advise employees of policy changes. <p>New Enterprise Agreements:</p> <ul style="list-style-type: none"> Consider risk of discriminatory terms when drafting an enterprise agreement.
Workplace delegates' rights	<ul style="list-style-type: none"> Employers are required to: <ul style="list-style-type: none"> provide workplace delegates with reasonable access to the workplace to communicate with members and prospective members about industrial issues. provide workplace delegates with paid time during normal working hours to attend training. <p>From 1 July 2024, modern awards, enterprise agreements and workplace determinations must contain clauses providing for workplace delegates rights.</p>	Started 15 December 2023	<ul style="list-style-type: none"> Advise managers of rights and obligations regarding workplace delegates.

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Small business redundancy exemption provisions	If a non-small business employer (more than 15 employees) downsizes to the point it becomes a small business employer (less than 15 employees), the employee will remain entitled to redundancy pay.	Started 15 December 2023	Be aware of the changes.
Health and safety representatives (HSR) right of entry	Removes the requirement for officials assisting a state or territory work health and safety representative to hold an entry permit under the Fair Work Act.	Started 15 December 2023 Will be reviewed 9 months later.	Be aware of the changes.
Civil penalties and serious contraventions	The threshold of what constitutes a “serious contravention” has been lowered. A serious contravention will occur if a person knowingly contravenes a civil remedy provision and the person was ‘reckless’ as to whether the contravention would occur. Maximum civil penalties increase - the maximum civil penalty for certain contraventions (excluding small businesses) increases to \$469,500, or \$4,695,000 for serious contraventions. The maximum civil penalty for failing to comply with a compliance notice doubles for companies and individuals.	Started 27 February 2024	Be aware of the changes.
Enterprise bargaining	Terms in an intractable bargaining determination made by the FWC can’t be less favourable to employees (or employee organisations) than terms in the existing enterprise agreement that deal with the same matters. Franchisee employers (of the same franchisor) can access the single-enterprise stream in the enterprise bargaining framework. Rules allowing a transition from a single-interest employer agreement or supported bargaining agreement to a single-enterprise agreement.	Started 27 February 2024	<ul style="list-style-type: none"> • Be aware of intractable bargaining changes during enterprise bargaining. • Consider the terms upon which offers are made including whether it should be made clear that nothing is agreed until everything is agreed. • In the event of any uncertainty, obtain advice.
Sham contacting arrangements	Changes to the defence against sham contracting. Employers must have ‘reasonably believed’ it was an independent contracting arrangement.	Started 27 February 2024	<ul style="list-style-type: none"> • Create and complete due diligence checklist prior to engaging independent contractors. • Keep checklist on file in the event that evidence of a reasonable belief is required.

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Exemption certificates for suspected underpayment	Registered organisations (usually a Union) can apply to the FWC for an exemption certificate to waive the 24 hours' notice requirement for entry to investigate suspected underpayments.	Starts 1 July 2024	<ul style="list-style-type: none"> • Be aware of the changes. • Promptly obtain advice if relevant.
Industrial manslaughter offence	<p>A person conducting a business or undertaking (PCBU) will have committed industrial manslaughter if:</p> <ul style="list-style-type: none"> • the PCBU has a health and safety duty; • the PCBU intentionally engages in conduct; • the conduct breaches the health and safety duty; • the conduct causes the death of an individual; and • the person was reckless, or negligent as to whether the conduct would cause the death of an individual. 	Starts 1 July 2024	<ul style="list-style-type: none"> • Update safety and incident response policies and procedures. • Ensure staff receive regular and up to date safety training including on identification and reporting of hazards.
Changes to casual employment	<p>A new definition of 'casual employee'. An employee will be a casual only if:</p> <ul style="list-style-type: none"> • there isn't a firm advance commitment to continuing and indefinite work, factoring in the real substance, practical reality and true nature of the employment relationship. • the employee is entitled to be paid a casual loading or a specific pay rate for casuals. <p>Existing casual conversion provisions have been scrapped and replaced with a new pathway for conversion to permanency.</p> <p>New rules against making misrepresentations in relation to casual employment and dismissing (or threatening to dismiss) an employee to engage them as a casual.</p> <p>Requirement to provide the FWC's Casual Employment Information Statement at the start of employment, and (for employers other than small business employers) every subsequent 12 months.</p>	Starts 26 August 2024	<ul style="list-style-type: none"> • Create and complete due diligence checklist prior to engaging an employee as a casual. • Review and update casual employment contracts. • Provide Casual Employment Information Statement at commencement of employment as well as at the end of every subsequent 12 months (small business employers are exempt from the subsequent requirements). • Consider the nature of the employment at key milestone events (promotion, changes to hours, etc).

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Right to disconnect	<p>Employees will have the right to refuse to monitor, read or respond to contact (or attempted contact) from an employer or a third party, outside their working hours unless that refusal is unreasonable (right to disconnect).</p> <p>Employers cannot take adverse action against an employee for exercising the right to disconnect.</p>	<p>Starts 26 August 2024</p> <p>For small business employers: starts 26 August 2025</p>	<ul style="list-style-type: none"> • Consider approach to communicating with employees outside of work hours, and how this might impact employees working on flexible work arrangements and on differing work schedules. • Update policies. • Update employment contracts to include lawful set off provisions for senior staff. • Seek advice on practices and policies to ensure that managers are aware of this change.
Definition of employment	<ul style="list-style-type: none"> • New definitions of ‘employee’ and ‘employer’ • When determining whether a worker is an employee or an independent contractor, consideration must be given to the: <ul style="list-style-type: none"> ○ real substance, practical reality and true nature of the relationship; and ○ the whole relationship between the parties, including the terms of the contract and how the contract is performed in practice. 	<p>Starts 26 August 2024 or an earlier date set by the Australian Government</p>	<ul style="list-style-type: none"> • Create and complete due diligence checklist prior to engaging independent contractors. • Keep checklist on file in the event that evidence of a reasonable belief is required.
Minimum standards for gig economy workers and the road transport industry	<ul style="list-style-type: none"> • New protections for ‘employee like workers’ in the gig economy and contractors in the road transport industry. • The FWC may set minimum conditions, collective agreements and rights to challenge termination / deactivation. 	<p>Starts 26 August 2024 or an earlier date set by the Australian Government</p>	<p>Obtain advice if applicable.</p>
Criminalising wage theft	<p>Employers that intentionally underpay employee wages will commit a criminal offence if:</p> <ul style="list-style-type: none"> • the employer is required to pay an amount to an employee; • the employer intentionally does an act or omits to perform an act; and • the act or omission results in an intentional failure to pay that amount to the employee in full when payment is due. 	<p>No earlier than 1 January 2025</p>	<ul style="list-style-type: none"> • Check to ensure payroll is aware of employee entitlements (including Awards and agreements). • Audit to ensure payments are correct. • Review payment procedures and ensure that employees pay has been properly calculated and is inclusive of all entitlements. • Legal and accounting advice in the event of any uncertainty.

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	A Voluntary Small Business Wage Compliance Code (Voluntary Code) will be established. Compliance with the Voluntary Code means a small business won't be criminally prosecuted if they underpay their employees.		Small business – review, understand and comply with the Voluntary Code.
Increased penalties for wage underpayments (small business employers exempted)	The maximum civil penalty for certain contraventions involving underpayments will be increased to the greater of 3 times the underpayment amount, or \$469,500. For serious contraventions, it will be 3 times the underpayment amount, or \$4,695,000.	No earlier than 1 January 2025	Be aware of the changes.
Enterprise agreement model terms	The Commission will be responsible for determining, varying, and replacing model terms for enterprise agreements that deal with flexibility, consultation and dispute resolution	Starts 26 February 2025 or an earlier date set by the Australian Government	Be aware of the changes.

This summary contains general information only and is not a substitute for obtaining legal advice.