



## Compliance Essentials e-bulletin November 2011

### HR Snippets

#### Christmas and New Year Holidays

The determination of public holidays over the 2011/2012 Christmas and New Year may vary from state to state; more information on declared public holidays is available on the Fair Work website. Employers should note that where a day is declared as a 'substitute' public holiday the National Employment Standards exclude the original day as a public holiday; where a day is declared as an 'additional' public holiday (e.g. Monday 2 January 2012) both the original day and the additional day are counted as public holidays. Employers need to review the relevant Modern Award that applies to their business for information on penalty rates and loadings applicable to work on a public holiday and also obligations and responsibilities if a shut-down period is planned.

#### Sham Contracting

The Fair Work Ombudsman has released information on its audit of cleaning services, hair and beauty services and call centre industries in relation to sham contracting and has found instances of 'misclassification' of workers. The report states that some employers may have received incorrect professional advice and also that the Fair Work Ombudsman does not consider that the practice of sham contracting is confined only to the industries investigated. Employers are urged to take care with contracted labour arrangements.

#### Unfair Dismissal

It is reported that the number of claims being brought on the grounds of unfair dismissal are on the increase. Whilst not all claims succeed, the financial cost and pressure on resources can be high. It is important to keep policies and procedures up to date with reference to legal obligations. The following is a quote from a Fair Work Commissioner at a recent hearing where a truck driver was deemed to have been unfairly dismissed because the employer had made assumptions about the truck driver's blood alcohol level:

*"Procedural fairness requires that the employee be advised of the likely consequences of their conduct so that they may take action to defend themselves. This is not something to set aside without good reason."*

#### Not-For-Profit Organisations

The federal government continues its work on NFP sector reform and it is reported that the national regulator will be effective from July 2012. In the meantime the ATO has released the 'Self-governance checklist for non-profit organisations' for use by NFPs as a check on organisational tax status (note the document is for internal use and does not need to be submitted to the ATO). This can be accessed via the ATO website [Self-governance check list](#)

*The contents of this document are for information purposes only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.*

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