
Employment Law – Recommendations for Employment Entitlements

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Employment Law – Background

This article provides a consideration of the pros and cons of including employment entitlements in the following forms:

- HR policy
- Enterprise agreement
- terms in a separate employment contract

Employment Law – Enterprise Agreements

Employers should actively encourage diversity and inclusion by using ‘inclusive’ language in the Enterprise Agreement. It should include:

- Paid parental leave for both primary and secondary carers (this language includes same-sex couples)
- A flexibility term
- A consultation term
- A disputes, grievance handling provision
- Rates of pay
- Provisions that enhance productivity improvement and flexibility.

Employment Law – HR policy versus Enterprise Agreement

Pros of using a HR policy include:

- the benefit of non-binding application compared to a binding provision for the life of the Enterprise Agreement
- less legal exposure in policy statements as breaches of enterprise agreements can incur fines or legal action
- HR policies can be amended from time to time
- a policy statement adds details and implementation procedures to the core entitlements contained in the Enterprise Agreement

Employment Law – Contract Provisions

Pros of putting provisions in individual contracts include:

- flexibility to accommodate personal circumstances compared to a collective enterprise



agreement

- opportunity to trial new arrangements such as flexible working arrangements

Cons include:

- provisions are difficult to remove later on
- offering different conditions to different employees may increase the likelihood of discrimination complaints

Tips for Employers

Our **Matthews Folbigg Workplace Solutions** employment law team recommends employers:

- engage an employment lawyer to ensure consistency with all employment documents containing employment entitlements
- aim to include every employee demographic group to avoid criticism
- use specific advertisements for employment to target specific demographic groups
- ensure management are aware of the implications of a policy
- educate staff particularly managers who are responsible for eligibility and implementation
- train managers on handling 'sensitive' conversations with 'minority' employees
- provide supporting resources such as toolkits and access to external experts
- consult an employment lawyer about whether to adopt a policy, enterprise agreement or the insertion of provisions in a separate contract
- speak to an employment lawyers about the cost-benefit analysis of each approach
- prepare new employment law policies as required
- draft new/changes to employment contracts with the assistance of an employment lawyer
- draft new/changes to employment law policies with the assistance of an employment lawyer

Employment Law – More Information

Please call the leading employment lawyers in Parramatta, the **Matthews Folbigg Workplace Solutions** employment law team on **9635-7966** to speak with one of our employment lawyers.