



MEMBER UPDATE

AFPA Industrial Dispatch #36

31 October 2018

Welcome to edition 36 of the AFPA Industrial Dispatch, a regular bulletin from the Legal and Industrial Team to keep our members up to date with significant industrial issues.

CURRENT SIGNIFICANT ISSUES

Reduction in Classification

The AFPA have lodged an application in the Federal Court regarding the validity of the “*Reduction in Classification*” clause of the AFP Enterprise Agreement 2017-2020.

Since the introduction of the Professional Standards Panel, members have been facing increasingly harsh ‘management action’ for breaching the Code of Conduct. This includes a number of decisions to impose to reduce members’ classifications, which has the effect of a significant financial penalty, reducing a member’s salary and superannuation benefits.

The AFPA argues there is no head of power in the AFP Act to allow the AFP to reduce the classification of members who have breached the Code of Conduct.

This clause also contradicts the philosophy underlying Part V of the AFP Act which was established following the 2003 Fisher Review. In his review of the AFP’s disciplinary system, Justice Fisher recommended the AFP adopt modern managerial measures to improve performance, as opposed to relying on punitive action.

We encourage any members who have received a demotion or reduction in pay-point/classification as the result of a Professional Standards investigation to contact the AFPA at afpa@afpa.org.au.

No privacy when using work devices

It is important to remember that when using an electronic device provided by the workplace, your employer retains the right to view the data and contents of the device. This applies to mobile phones, laptops and tablets belonging to the AFP.

Arguments that this breaches employees’ privacy have failed in the Fair Work Commission.

As such, members should be mindful to only use their work devices for work purposes and that personal use does not attract the protection of the privacy principles.

When is an employee considered excess?

According to clause 56(2) of the AFP Enterprise Agreement 2017-2020, an employee is considered excess to requirements if:

- a) the Employee forms part of a class of AFP Employees (however described) and there are more Employees in the class than is necessary for the efficient and economical working of the AFP;
- b) the services of the Employee cannot be effectively used because of technological changes within the AFP, or because of changes to the nature, extent or organisation of the functions of the AFP; OR
- c) the duties usually performed by the Employee are to be performed by the Employee at a different location and the Employee is not able to perform duties at that location and the Commissioner has determined that these provisions will apply to the Employee.

If an employee fulfils any of these three requirements, the Workforce Adjustment process should be triggered, as outlined in the Enterprise Agreement. Workforce adjustment provides benefits to employees who have been declared excess including redeployment to another work area without the requirement to be assessed or ranked against other applicants, or being offered a voluntary redundancy.

We are dealing with a number of cases where the AFP appears to have made positions redundant but is refusing to call this Workforce Adjustment. It is our strong view that if your position is made redundant, you should be afforded the protections in clause 56 of the EA, otherwise why is that provision in the EA at all?

We are in the process of taking one of these matters that affects over 20 employees through the Fair Work Commission. Watch this space for updates.

Reduction in Normal Weekly Earnings as a result of new Enterprise Agreement

The AFPA have received reports that several members with accepted Comcare claims have experienced a reduction in their compensation payments since the commencement of the AFP Enterprise Agreement 2017-2020.

This appears to be due primarily to a recalculation of Normal Weekly Earnings for members previously in receipt of the High Volume Operations composite.

If your Comcare payments have reduced since the commencement of the new EA, we encourage you to contact us at afpa@afpa.org.au.

INDUSTRIAL QUERIES

If you have any industrial queries or queries about issues raised in this Dispatch, please contact Sharon, Anish or Sam at afpa@afpa.org.au or call us on (02) 6285 1677.



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