Australian Financial Review, Australia
18 Jun 2020, by David Marin-Guzman

General News, page 3 - 242.00 cm²
National - circulation 38,015 (MTWTF--)

ID 1289775306 BRIEF AMMA INDEX 1

High Court asked to ditch casual work double-dip decision

David Marin-Guzman
Workplace correspondent

Labour hire firm Workpac has launched a High Court challenge to a landmark ruling on casual employment, warning it will expose businesses to up to $14 billion in backpay.

Workpac is seeking special leave to overturn a full Federal Court ruling last month that found if a casual employee works regular and predictable shifts they must be paid leave and other entitlements even though they receive a 25 per cent loaded rate in lieu of such entitlements.

Attorney-General and Industrial Relations Minister Christian Porter said the government would intervene to support the application.

"Given the significance of the full Federal Court's decision, I can confirm, as I indicated the day after the decision, that the government will intervene in the appeal to the High Court," he said.

"This full Federal Court decision has caused confusion and uncertainty and has the potential to expose businesses to significant financial liability during a period where businesses are facing their greatest ever challenge."

Australian Industry Group filed evidence with WorkPac's application that estimated the decision, if applied generally, would expose small and large businesses to up to $14.2 billion in permanent entitlements.

Out of the 2.5 million casual employees, 1.35 million worked regular shifts for their current employer for 12 months. That could equate to $10.3 billion in annual leave entitlements and $2.3 billion for paid sick leave plus $1.6 billion in redundancy pay for casuals retrenched in the past five years.

The ruling is a key issue in industrial relations talks between unions and employers overseen by the Morrison government that are set to start next week.

Unions are strongly against overturning the ruling but have flagged they are open to measures that would reduce insecure work.

A WorkPac spokesman said the judgment would "expose tens of thousands of Australian businesses to double-dipping backpay claims for up to six years".

"This would have a devastating impact on small, medium and large businesses already reeling from the COVID-19 pandemic," he said.

"We seek for the High Court to restore sense and clarity to casual employment on behalf of WorkPac and the thousands of other Australian businesses affected by this decision."

WorkPac and other labour hire firms in the mining industry are already facing million dollar class actions over the ruling but it is unclear how the decision will apply to other sectors such as retail or healthcare, where shifts may fluctuate more.

CFMEU national president Tony Maher said WorkPac and the employer lobby "should stop throwing money at lawyers and address this issue by stopping the unlawful treatment of casuals".

"WorkPac has been caught out using an unfair business model that employs people as 'permanent casuals'," he said.

"The Federal Court has twice been very clear that this practice is unlawful. Rather, casual work is irregular and intermittent – as most Australians would understand it."

Australian Mines and Metals Association chief executive Steve Knott said Parliament should legislate to define casual as one who is paid and engaged as such, rather than wait for a High Court decision.

"Who knows how long the High Court appeal will take and what the outcome will be?" he said.

"All employers are asking for is if they have already paid the casual loading, that they can offset that against any entitlements owed if an employee was found to have been misclassified as a casual.

"Most people would see that as perfectly reasonable."

Mr Porter has previously said legislation may be necessary.

We seek for the High Court to restore sense and clarity to casual employment.
Workpac spokesman