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YOUR JOB
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Protection from victimisation

As the economic downturn begins to bite, in this edition of *UnionLaw* we highlight some important rights that protect vulnerable employees in these difficult times – the anti-victimisation provisions of the *Fair Work Bill* and the immigration law protections available for workers on 457 visas.

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Second class rights for unionists

In one of those sagas that we are all painfully used to, a longstanding loophole in the protections against victimisation of union members was temporarily closed by the Federal Court late in 2007, opened up again by the Full Federal Court in late 2008 and now hopefully will be closed firmly and permanently by the federal government's Fair Work legislation.

In a claim brought in Victoria by the CFMEU and its member Victor Claveria, the Federal Court agreed that a union was a "competent administrative authority".

This allowed Victor to successfully make a claim for reinstatement and compensation after he was dismissed for making a complaint to the CFMEU about bullying by his supervisor.

The Court decided the CFMEU was a competent administrative authority because the union had rights to represent members under the certified agreement grievance procedure, prosecute breaches of the certified agreement and because of the union's special status under the WR Act.

Unfortunately, on appeal a Full Court of the Federal Court overturned that decision. It decided that "competent administrative authority" is limited to government bodies with power to receive and investigate complaints.

The result means, for example, that if an employee is sacked for making a complaint to the Workplace Ombudsman, it could prosecute the employer and get the employee reinstated with compensation. And of course do this all at no cost to the employee.

If that employee's workmate is sacked for making the same complaint to his or her union probably nothing could be done about it.

The Fair Work Bill protections

Under the *Fair Work Bill* the rights of members complaining to their union will become similar to those of non-members complaining to a government authority.

The Bill prohibits an employer victimising an employee because the employee has exercised a right under an award or workplace agreement (such as lodging or threatening to lodge a grievance) or if the employee makes a complaint “in relation to his or her employment.”

These appear to be significantly broader than the current protections.

The Bill removes the whole notion of “competent administrative authority”, so that an employer cannot take “adverse action” against an employee because he or she makes a complaint or inquiry to their union about an issue of award or agreement entitlements.

On its face, the Bill will protect an employee who makes a complaint to the employer directly, to their union or to a government authority.

These elements of the *Fair Work Bill* are important protections which may become critical as members and delegates stand up for their workplace rights at a time when the threat of dismissal looms large.

Protections for 457 workers

There is a lot of misinformation fed to workers on 457 visas about their rights in the workplace and their vulnerability to being sent packing if they don't toe-the-line.

The real bottom line, however, is that visa workers are protected by the same minimums in legislation, awards and agreements that apply to other workers. In fact there are also specific additional migration law protections for visa workers.

As fears of recession and job losses grow, here are ten protections union officials and delegates should ensure that all 457 visa workers know about:

10. You have to be paid a minimum of \$836 each and every week for a 38 hour week. In regional areas (outside Brisbane or the Gold Coast) the minimum is \$752 per week.

1. If you work more than 38 hours in a week, your minimum pay increases for every extra hour you work. So if you work for 45 hours in a week you must be paid at least \$986 for that week (or \$888 in regional areas).
2. If your employer reduces the total number of hours you work below 38 hours, you still have to be paid a minimum of \$836 each week (\$752 in a regional area).
3. If your workplace shuts down for a few days or weeks because there is not enough work, you still have to be paid a minimum of \$836 every week (or \$752) even if you are not working.
4. If you leave your job or you are sacked, your employer has to keep paying you the minimum salary of \$836 (or \$752) every week for up to four weeks after you are dismissed. Your employer has to keep paying you this minimum no matter what your contract says.
5. If you leave your job or are sacked, your visa allows you at least four weeks to find a new job.
6. You do not have to leave Australia if you lose your job. Your employer cannot make you leave Australia and cannot tell the Department of Immigration to make you leave Australia.
7. If you lose your job you must tell the Department of Immigration and apply for an extension of your visa to give you time to find a new job.
8. If you are sick or injured your employer must meet the costs of your medical treatment in a public hospital. Even if you are injured when you are not working and even if you have been sacked and later get sick, your employer is responsible for your public hospital medical costs until you get a new job.
9. **If you need advice about your visa or visas for your family, contact your union or Carne Reidy Herd Lawyers for help.**

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