Leana Street Consulting

Employment Law • Industrial Law • Human Resources

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SCHADSI Sleepover Shifts – Conflicting Decisions Create Uncertainty

Recent developments have created uncertainty regarding the treatment of sleepover shifts under the SCHADSI Award, with differing positions provided by the courts and Fair Work Commission.

A Full Federal Court decision in the *Jats Joint* case has confirmed that sleepover periods are not considered time worked, meaning employees are not entitled to penalty rates for shifts immediately before or after a sleepover. This interpretation reflects a distinction within the award between active duties and periods of inactivity and has provided some clarity following years of inconsistent application.

However, the Fair Work Commission has taken a different approach in draft variations, indicating that where work is performed immediately before and after a sleepover, those periods may be treated as a single continuous shift. In that context, the sleepover is not characterised as a break in the ordinary sense, which may result in penalty rates applying across the combined period.

The divergence between judicial interpretation and proposed industrial reform leaves the position unsettled. For organisations utilising sleepover arrangements, particularly residential and community-based services, the potential for increased costs and retrospective exposure remains closely tied to the outcome of the Commission's final determination.

$29 Million KFC Settlement Signals Escalating Underpayment Risk

A significant class action settlement involving KFC and its franchise network reflects the increasing scale and impact of underpayment litigation in Australia.

The proceedings alleged that workers were denied their entitlement to paid rest breaks over an extended period, with the in-principle settlement of $29 million expected to compensate tens of thousands of current and former employees. The matter forms part of a broader pattern of large-scale claims targeting systemic non-compliance against other major employers.

Although no admission of liability has been made, the outcome highlights the cumulative impact of relatively small entitlements when applied across large, dispersed workforces.

The increasing prevalence of such actions suggests a continued focus on compliance with modern Award obligations at an operational level, particularly where workforce practices are replicated across multiple sites or service lines.

Landmark Sexual Harassment Decision Signals Expanded Enforcement Pathways

A recent Federal Circuit and Family Court decision awarding $90,000 in damages and penalties marks the first workplace sexual harassment case under the 2023 amendments to the *Fair Work Act 2009*.

The case, *Mejia v Capital City Café-Bar* [2026], involved a single incident in which a café owner engaged in unwelcome physical conduct towards a young employee, in circumstances compounded by power imbalance and vulnerability. The Court imposed combined penalties and compensation reflecting both the seriousness of the conduct and associated contraventions, including underpayment and record-keeping failures.

In assessing damages, the Court drew on principles in anti-discrimination law, reinforcing that the relatively new statutory prohibition on sexual harassment in connection with work, operates alongside, rather than replaces, existing legal avenues. The decision confirms that the Fair Work Act now provides an alternative pathway for individuals to pursue civil remedies for workplace harassment.

The judgment also highlights the breadth of the provision, which extends beyond conduct occurring strictly "at work" to behaviour connected with employment more broadly. While the conduct in this case was limited to a single incident, the Court nevertheless imposed a substantial penalty, emphasising the seriousness with which such matters are now treated.

NSW Public Sector Nurses Wage Decision Sets New Benchmark for National Pay and Future Bargaining

A very recent decision by the NSW Industrial Relations Commission has delivered a significant uplift in wages for NSW public sector nurses and midwives of up to 28% over 3 years, positioning those at the top of their pay scales to become the highest paid in Australia.

The ruling follows detailed consideration of interstate comparisons, which showed NSW nurses had been among the lowest paid nationally prior to the decision. The Commission determined that substantial increases were justified on the basis of rising cost of living pressures, changes in the value and complexity of nursing work, and gender undervaluation within the profession.

The increases will be implemented over a 3-year period, with adjustments varying across classifications i.e.

- Assistants in nursing receive the most significant uplift of approximately 28%;
- Enrolled nurses receive increases of around 18%;
- Registered nurses and midwives receive increases of around 16%,

with increases heavily frontloaded in year 1. This staged approach reflects an effort to address immediate pay disparities and to progressively realign NSW salaries with national benchmarks.

While the ruling applies to NSW public sector nursing employees, the increases have implications on private sector nursing employers in relation to matters of attraction and retention of nursing staff. It is also likely to embolden employee bargaining requests for higher wages in enterprise bargaining negotiations.

Legal Professional Privilege – Preserving Protection in Workplace Communications

We have noticed several instances where clients have referred to legal advice received when communicating with employees or other parties. We thought it timely to remind clients of the importance of maintaining legal professional privilege in relation to legal advice received.

One of the most common risks we see arises in day-to-day communications with others. If the communications you are having with internal colleagues or external parties refer to, summarise or even hint at the substance of legal advice, this can be enough to waive privilege. This includes emails, letters or messages that mention what a lawyer has recommended, concluded or directed, even if that was not the intention.

As a general approach, it is usually sufficient to simply note that legal advice has been obtained, without going into detail. In many cases, even that level of reference is not required. Care should be taken to ensure communications only include what is necessary, particularly in writing, as these may later be reviewed in the context of disputes, investigations or regulatory processes.

By maintaining discipline in how legal advice is referenced in your communications, we can work together to preserve privilege and better protect your interests.

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