

New WHS Laws and Paid Leave Entitlements in Australia: What you need to know and do

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1. Introduction

Recent legislative changes in Australia to Work Health and Safety (**WHS**) laws and paid parental leave entitlements are critical for Australian companies and foreign entities operating subsidiaries in Australia.

These amendments were introduced via the *Work Health and Safety Amendment Act 2023* (Cth) and *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Act 2023* (Cth), which shall be examined in this article.

2. WHS – Lowering the Bar for Conviction

The amendment to Australian WHS laws through the *Work Health and Safety Amendment Act 2023* (Cth) has expanded the most serious offence under WHS laws to include negligence as a fault element. Critically, this lowered the conviction bar where reckless and grossly negligent employers can now face more serious consequences and penalties. The amendment also introduced a prohibition on the use of insurance to cover financial penalties incurred by WHS fines, ensuring that fines act as a proper deterrent rather than just another cost of doing business.

Companies operating in Australia, including foreign entities in Japan and worldwide with Australian subsidiaries, should be aware of the lower thresholds for offences under the new WHS amendments and take action as set out below.

Review Internal WHS Policies

Internal WHS policies of Australian entities should be thoroughly reviewed in light of the new amendments to exclude WHS issues from arising, including through acts of negligence or gross negligence to the maximum extent possible to avoid facing penalties

under WHS laws.

Conduct Training for Staff and Stakeholders

All employers in Australia have a 'duty of care' over their employees, meaning they are ultimately responsible for their safety in the workplace. Training on WHS compliance should be held for staff and internal stakeholders to increase awareness around adequate WHS practices and minimise the risk of WHS issues from arising. Such training can be outsourced to WHS compliance professionals or law firms which can advise on obligations of the employer and employees, recent legislative and regulatory amendments and how to comply with those requirements through simple training programs.

Establish Adequate Reporting Systems

Clear reporting systems or hotlines ensure that employees and stakeholders are able to report WHS hazards and issues promptly and anonymously. In this way, such issues can be addressed and mitigated without delay.

3. New Paid Parental Leave Entitlements

The *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Act 2023* (Cth) introduced significant changes to the Australian Government's paid parental leave scheme. The key change concerns paid parental leave being extended from 18 weeks to 20 weeks from 1 July 2023. Other changes also include removal of the 30-day cap on the number of individual days of leave that can be paid under the scheme and additional provisions for infant bonding and care with parents who are not birth parents.

To ensure compliance, companies should be aware of the extended paid leave entitlements for their employees in Australia and make appropriate amendments to their employment agreements, payroll systems and other ancillary documents.

4. Conclusion

The amendments to WHS legislation and paid parental leave entitlements introduced substantial changes to the level of responsibility which companies have for their employees, as well as their employment relationship. It is critical for employers to be aware of the new changes and take appropriate action to ensure compliance, uphold

goodwill and avoid significant penalties.

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