Apply legislation to HR processes

Overview
When developing processes for HR activities like performance management, remunerations, recruitment or separation, you need to examine the legal environment that impacts on managing people at work. This learning resource will outline the legal environment in Australia including employment contracts, common law, statutory law and industrial awards and agreements.

Key terms

**Australian Workplace Agreements**
AWAs; individual agreements made between an employer and a single employee. An alternative to common rule Awards, able to tailor terms and conditions for workers to link them to productivity gains for the particular workplace or industry.

**Certified Workplace Agreements**
Collective agreements made directly between an employer and employees or between an employer and a union(s). An alternative to common rule Awards, able to tailor terms and conditions for workers to link them to productivity gains for the particular workplace or industry.

**Common law**
Also referred to as 'case law', evolved over time from precedents set by cases that have come before the courts.

**Employment contract**
Under the Workplace Relations Act 1996 an employment contract can be either an individual employment contracts or collective contracts.
HRM
Human Resource Management

HRMIS
Human Resource Management Information System; computer system to collect and analyse information to assist in the making of timely HR management decisions, examples are databases, spreadsheets, information networks

Industrial awards
Also referred to as 'awards'; historically in Australia, the main mechanism for confirming minimum terms and conditions for workers in a particular occupational group or industry

Statutory law
Also referred to as ‘legislation’, comprises the Statutory Acts enacted by Federal and State Parliament

The legal environment
When developing HR processes, you need to understand the legal environment that impacts on managing people at work.

Why? The answer is simple. If there is an expensive court case as a result of discriminatory staffing practices, or industrial action resulting from disgruntled workers receiving inappropriate responses from management, or a serious accident as a result of failure of supervisory duty of care, it could cripple or close a company. Then everyone loses.

A potential employment relationship starts when you advertise for applicants. This is where the contract of employment begins to be formed – and this is the point where you need to start considering the impact of the legal environment on employee-employer relations.

HRM is enshrined in a legal framework. The main sources of legal obligation that you need to be aware of when managing HR processes are:

- employment contracts
- common law
- statutory law (Acts)
- Industrial Awards and Workplace Agreements.

Detailed information, as well as easy-to-read summaries are readily available on the web for those willing to do a little research. Many government departments regularly publish and circulate hard and soft-copy
bulletins and up-dates and it’s only a minute or two’s work to ensure your name is on their circulation lists. Both employer and employee associations (unions) generally offer similar services, and are often a good place to start, because their information is aimed at ensuring that their own members’ rights and obligations are properly represented.

Think

**How will you as an HR Manager keep up to date with the legal issues behind HRM?** Consider Commonwealth and State Government websites, employer associations, and HR professional associations and journals.

**Employment contracts**

A contract is a legal undertaking for any number of reasons, whether it is a marriage contract, a business contract, or a mortgage contract.

A contract may be a formal written documents, or a formal verbal agreement. Written contracts are clearer, more able to be verified, and therefore, safer and easier to uphold. While verbal contracts are legal, they need to be proven to be true and valid agreements. This may not be easy to do.

In the light of EEO (equal employment opportunity), anti-discrimination, and industrial relations legislation that impact on the employment relationship between employers and employees, your employment contracts need to be written documents. The should be easy to understand, with a minimum of legal jargon, and able to be read and understood by both parties to the agreement, then signed and dated, and a copy retained by each party. If you have, or have had an employment contract, you might think about whether it met all of these criteria.

Employment contracts under the Workplace Relations Act 1996 can be either individual employment contracts or collective contracts. The choice is a matter of need and negotiation between the parties involved.

Employment contracts may cover:

- benefits
- bonuses
• confidentiality agreement
• discipline policy and procedures
• duties
• hours
• intellectual property
• leave entitlements
• overtime requirements
• promotion policy and procedures
• salary/wages
• superannuation
• supervision
• work location

Whilst New Zealand has legislation to cover employment contracts under the Employment Contracts Act 1991, Australia does not have such specific legislation. However, other legislation can be applied in some circumstances. For example, Section 298 of the Workplace Relations Act 1996 deals with unfair dismissal and discrimination, and Section 106 of the NSW Industrial Relations Act 1996 can be applied to terminating the employment of Executives.

Read

Read about employment contacts:


Look for information on:

• types of contracts
• terms and implied terms of the contract
• preparing and presenting the contract.

Common law

Common law is 'case law' evolved over time from precedents set by cases that have come before the courts. Common law is the source of legal duties and obligations. Employer-employee responsibilities under common law are outlined below.
Employer duties and obligations:

- To pay employees' wages and reasonable expenses incurred in the course of employment.
- To provide work in circumstances where payment is directly related to employment.
- To take reasonable care for the health and safety of employees.
- To indemnify an employee for losses incurred by the employer, while performing duties under the Contract of Employment.

Employee duties and obligations:

- To work in a skilful and competent manner.
- To obey the employer's lawful demands.
- To provide faithful service, which includes prohibition on disclosing confidential information; accounting for and protecting the employer's property; giving complete attention to performing the work.
- Further, the benefit of discoveries or inventions developed by employees during the course of their employment must be given to the employer. This should be explained to the person at the interview stage.

Under common law, some of the implications for recruitment, selection, and induction could be:

- accurate information is given to potential employees on wages and payment of expenses
- accurate information is given to applicants on the conditions of employment and conditions of work
- assurance is given that the work matches the job as advertised
- OH&S issues are addressed at induction
- opportunities for asking questions and seeking feedback are provided to new employees at induction
- a contract of employment is understood and signed by both employer and employee
- the job skills, knowledge, and attributes are detailed for potential applicants to examine before applying for a job
- job responsibility is detailed for potential applicants to examine before applying for a job.
Statutory law

Statutory law comprises the Statutory Acts enacted by Parliament. They prescribe minimum conditions of employment, and prohibit discrimination in the workplace and in workplace practices, including pre-employment and employment practices. The following table summarises the main Commonwealth legislation that impacts HRM.

Table 1: Federal legislation – key points (2 cols)

<table>
<thead>
<tr>
<th>Federal legislation</th>
<th>Key points</th>
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</thead>
<tbody>
<tr>
<td>Equal Opportunity for Women in the Workplace Act 1999, replacing the Affirmative Action (Equal Opportunity for Women) Act 1986</td>
<td>Organisations with more than 100 employees must establish EEO for women in the workplace programs.</td>
</tr>
<tr>
<td>Human Rights and Equal Opportunity Commission Act 1986</td>
<td>Prohibits discrimination in employment on the basis of sex, religion, race, trade union activity, age, marital status, disability, sexual preference, among other things. Sets up the framework for equal opportunity at the Commonwealth level.</td>
</tr>
<tr>
<td>National Occupational Health and Safety Commission Act 1985</td>
<td>Sets up a system of national standards and codes of practice in OH&amp;S.</td>
</tr>
<tr>
<td>Privacy Act 1988</td>
<td>Provides protection for individuals whose information is held by Commonwealth Government agencies, such as the Taxation Office and Centrelink</td>
</tr>
<tr>
<td>Privacy Amendment (Private Sector) Act 2000</td>
<td>Extends privacy obligations to private organisations. This is an issue that is becoming increasingly relevant with the use of and access to HRMIS.</td>
</tr>
<tr>
<td>Superannuation Guarantee (Administration) Act</td>
<td>This Act introduced the Superannuation Guarantee Levy – employers contribute a percentage of gross pay towards each employee’s superannuation. It’s also called the ‘employer’s contribution’.</td>
</tr>
<tr>
<td>Workplace Relations Act 1996</td>
<td>Set out the minimum conditions for</td>
</tr>
</tbody>
</table>
Federal legislation

Key points

employment in Australia and sets up the framework for our industrial relations system. Encourages direct negotiation between employees and employers over issues such as wages, conditions and work practices.

Tip

States and Territories also have legislation on these areas, and specifically in relation to privacy and workers compensation. Be sure you know the legislation specific to your State or Territory – the related Federal department’s website will usually have links to States and Territories’ websites.

What it means

The following table set out examples of how Commonwealth legislation may impact Human Resource Management. This is not a comprehensive list and it does not include requirement under State and Territory legislation.

Table 2: Implications of legislation for HRM (2 cols)

<table>
<thead>
<tr>
<th>HRM area</th>
<th>Implications of legislation on HR processes</th>
</tr>
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<tbody>
<tr>
<td>HRMIS</td>
<td>Privacy requirements – you must restrict access to information about individuals and provided by individuals</td>
</tr>
<tr>
<td>Performance management</td>
<td>There must be fair process in monitoring employee performance and interventions must be based on performance results.</td>
</tr>
<tr>
<td>Industrial relations</td>
<td>Staff must be treated according to industrial awards and workplace agreements, and in accordance with the Workplace Relations Act; under OH&amp;S regulations the employer must ensure a safe workplace.</td>
</tr>
<tr>
<td>Remunerations and benefits</td>
<td>Staff must be paid according to industrial awards and workplace agreements; all tax and superannuation laws must be obeyed.</td>
</tr>
<tr>
<td>Recruitment and selection</td>
<td>EEO – job candidates are not discriminated against on the basis of gender, race or disability</td>
</tr>
</tbody>
</table>
HRM area | Implications of legislation on HR processes
---|---
| Privacy requirements – access to personal information provided by applicants; access to information gained in psychometric test

Separation and termination
Unacceptable reasons for termination according to the Workplace Relations Act include the following: race, colour, gender, age, physical or mental disability, marital status, religion, family responsibilities, temporary absence as a result of sickness, non-membership of a union, or union membership, participation in trade union activity, seeking public office, filing a complaint.

Unfair dismissal is when the dismissal is considered harsh, unjust or unreasonable. The onus is on the employer to justify the dismissal; and a failure to provide the employee with written warnings or to conduct a proper investigation or to provide written notice of the termination give the employee an opportunity to dispute the dismissal.

Summary dismissal is generally used only when an employee’s conduct is characterised as being gross, serious and wilful misconduct.

Work/life programs
EEO – programs must not discriminate on the basis of gender, race or disability
Women in the workplace – organisations with more than 100 employees must establish EEO for women in the workplace programs

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Industrial Awards and Agreements
Apart from Federal and State industrial relations legislation enacted to protect the rights of employers and employees, there are Awards and Workplace Agreements that also impact on the employment of workers.

Industrial Awards
Industrial Awards have been for many years the main source for confirming minimum terms and conditions for those workers covered by a particular Award. They include details on pay rates, hours of work, sick leave, annual
leave, public holidays, superannuation, meal breaks and times, protective
clothing and more.

As a human resource professional, you will need to know the Industrial
Awards and Workplace Agreements that apply to your workplace. They
underpin your HR processes, as they define the minimum working terms
and conditions of jobs. You are permitted to offer more to a new employee,
but not less than that set out in the relevant Award or Agreement.

Certified Workplace Agreements

The Workplace Relations Act 1996 (Commonwealth) is lessening the
relevance of Awards as Workplace Agreements are developed. The Act
provides an alternative, and Certified Workplace Agreements can now be
made between an employer and a group of employees or a union, and
Australian Workplace Agreements can be made between an employer and
single employee.

Agreements emerge predominantly from disputes, although they often
proceed through negotiation to amicable agreement. Agreements offer an
alternative to common rule Awards, and are able to tailor the terms and
conditions for workers to be linked to productivity and efficiency gains for
the particular workplace and industry.

Research

What Industrial Awards or Workplace Agreements apply to your
organisation or industry?

Parts of this resource are adapted from Open Learning Institute (2003)
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