



Classifying employees under an enterprise agreement or modern award

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A recent Fair Work Commission decision highlights the importance of properly identifying and communicating an employee's classification under an award or enterprise agreement.

The Facts

Mrs Grabovsky had worked at an aged care facility for almost a decade. While Mrs Grabovsky's letter of offer did not specify her classification, she was paid throughout her employment as a Care Service Employee Grade 2 under the relevant enterprise agreement.

Part of Mrs Grabovsky's role required her to give residents tablets/capsules at the appropriate time according to a Webster pack or the instructions on a medicine bottle, and to ensure the residents were taking their medications. After some time however, Mrs Grabovsky formed the view that being required to administer medication fell outside the duties of a Grade 2 employee, and she refused to perform those duties.

After receiving a warning from her employer for refusing to administer medication to patients, Mrs Grabovsky applied to the Fair Work Commission to arbitrate the dispute regarding her proper classification.

The Decision

After contrasting the classifications in the enterprise agreement against Mrs Grabovsky's duties, and taking into account the context of the agreement as a whole, the Commission dismissed the claim that Mrs Grabovsky was being required to perform duties at a Grade 3 classification.

The Commission noted that the duties of a Grade 2 employee included tasks such as "assisting and supporting residents with medication utilising medication compliance aid." The Commission found that Mrs Grabovsky's duties in administering medication from Webster packs fell within this description.

While Mrs Grabovsky held a Certificate Level III Aged Care, which was a requirement for a Grade 3 classification, the Commission held she was not subject to that classification as:

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- she had not been classified as such by her employer; and
- she was not performing duties specifically mentioned in the enterprise agreement for a Grade 3 employee, such as by being designated to supervise other staff or being assigned overall responsibility of a function within the aged care facility.

Lessons for Employers

While Mrs Grabovsky was unsuccessful in this case, her employer would have incurred considerable cost and inconvenience in defending the claim.

It is always preferable for issues relating to an employee's classification to be sorted out either prior to or at the time a person commences employment with an organisation. That way, those issues can be resolved immediately, avoiding the risk of underpayment claims. Some awards and enterprise agreements also require employers to notify their employees of their classifications.

Russell Kennedy therefore recommends that employers with employees classified under an enterprise agreement or modern award ensure that any letters of offer or employment contracts for those employees:

- specify the employee's classification under the award or enterprise agreement; and
- attach a tentative position statement (which should be marked as subject to change from time to time by the employer) consistent with the indicative duties set out in the relevant award or enterprise agreement classification.

Employers should also take care to ensure that classification descriptions in their enterprise agreements are tailored and relevant to the staffing structures and duties of their specific organisation, while remaining broad enough to accommodate change.

Employers having difficulty classifying particular employees or positions under a modern award or enterprise agreement should seek legal advice.

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