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Employment Law e-alert

Employment implications of the Federal Budget

The Federal Budget for 2009/2010 has introduced a number of measures which will impact employers and employees. Highlights of two significant measures are set out below:

Paid parental leave

From 1 October 2010, employees will be able to lodge claims for government funded paid parental leave ("PPL") in respect of the birth or adoption of a child that takes place on or after 1 January 2011. They will be entitled to receive payment of the Federal minimum wage (currently \$543.78 per week) for a period of up to 18 weeks while on parental leave.

Significantly, PPL will be available to:

- (a) Fathers as well as mothers. By contrast, most employer funded schemes only apply to mothers. This may result in an increase in the levels of paternity leave traditionally taken in your workplace.
- (b) Casual employees, contractors and self employed people, in addition to fulltime and part time employees.

Where a primary carer returns to work before receiving all of their PPL entitlement, they may transfer the unused part of their PPL to another caregiver who meets eligibility requirements.

To be eligible for the PPL Scheme, the primary carer must be in paid work and have:

- been engaged in work continuously for at least 10 of the 13 months prior to the expected birth or adoption of the child; and
- undertaken at least 330 hours of paid work in the 10 month period (an average of around 1 day of paid work a week); and
- an adjustable taxable income of \$150,000.00 or less in the previous financial year.

PPL must be taken within 12 months after the birth or adoption of the child. Employees will not accrue leave entitlements during a period of government funded PPL.

An employee may choose whether to participate in the PPL Scheme depending on the employee's individual circumstances. Where the employee chooses to participate in the Scheme the employee will not receive the Baby Bonus (except in multiple birth cases) or Family Tax Benefit Part B during the 18 week PPL period.

Employees who are eligible for PPL will also be able to continue to access employer funded leave at the time of the birth/adoption of a child. Therefore, government funded PPL may be taken in conjunction with, or in addition to, employer provided paid leave.

Payments made under the PPL Scheme will be taxable. At this stage employers will not be required to make superannuation contributions on government funded PPL. However, employers may be in for an unwelcome surprise on this issue in the future as it is stated that this will be reviewed after 2 or 3 years from the time that this Scheme commences. Had it not been for the global financial crisis employers may have been required to make superannuation contributions from commencement of the Scheme.

The Family Assistance Office will administer the PPL Scheme and is given the task of ensuring that government funds are transferred to employers in advance of their usual payroll cycle to enable them to make this payment to employees.

Employers will not be obliged to make PPL payments to those employees who have less than 12 months continuous service prior to the date of birth or adoption of their child. Those employees may claim PPL directly from the Family Assistance Office.

The government will consult with employers and unions during the second half of 2009 after which legislation concerning this Scheme is expected to be introduced in 2010.

Taxation of Foreign Employment Income

From 1 July 2009 income earned by Australian residents who are employed outside of Australia will be assessable in Australia. However, tax paid in the foreign country on that income may be subject to tax offsets.

The current exemption (which precludes the taxation of income earned overseas in foreign employment that lasts for at least 91 consecutive days), will only apply to aid workers, charitable workers, certain government employees (eg defence and police force personnel deployed overseas) and those persons employed on overseas projects which have been approved by the Minister for Trade as being in the national interest.

Affected employees working in countries with taxation thresholds that are lower than those in Australia will now have to pay additional taxation in Australia. They may also be faced with lengthy waiting periods before they are able to claim the foreign tax offset because the date of lodgement of tax returns in Australia may not correspond with the date of lodgement of tax returns in the foreign country.

For further information please contact:

Martin Dunne, Sydney (City)	+61 2 9391 3211	mdunne@hunthunt.com.au
Ian Miller, Sydney (North West)	+61 2 9804 5704	imiller@hunthunt.com.au
David Thompson, Melbourne	+61 3 8602 9252	dthompson@hunthunt.com.au
Rachel Drew, Brisbane	+61 7 3292 9717	rdrew@macrossans.com.au
Chris Sharp, Adelaide	+61 8 8414 3385	csharp@hunthunt.com.au
Darren Miller, Perth	+61 8 9488 1300	darren.miller@marksandsands.com.au
Gregory Geason, Hobart	+61 3 6231 0131	ggeason@hunthunt.com.au
Chris Osborne, Darwin	+61 8 8924 2600	cosborne@huntnt.com.au
Justine Matthews, Newcastle	+61 2 4925 5500	jmatthews@hunthunt.com.au

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