

## WORK2227: Regulation at Work

Week 1: Introduction to Concepts and Content

Week 2: Regulation of Work

Week 3: Formation of the Work Relationship

Week 4: Rights and Obligations

Week 5: Reading Week

Week 6: Work and Family

Week 7: Work Health and Safety

Week 8: Bargaining and Agreement Making

Week 9: PUBLIC HOLIDAY

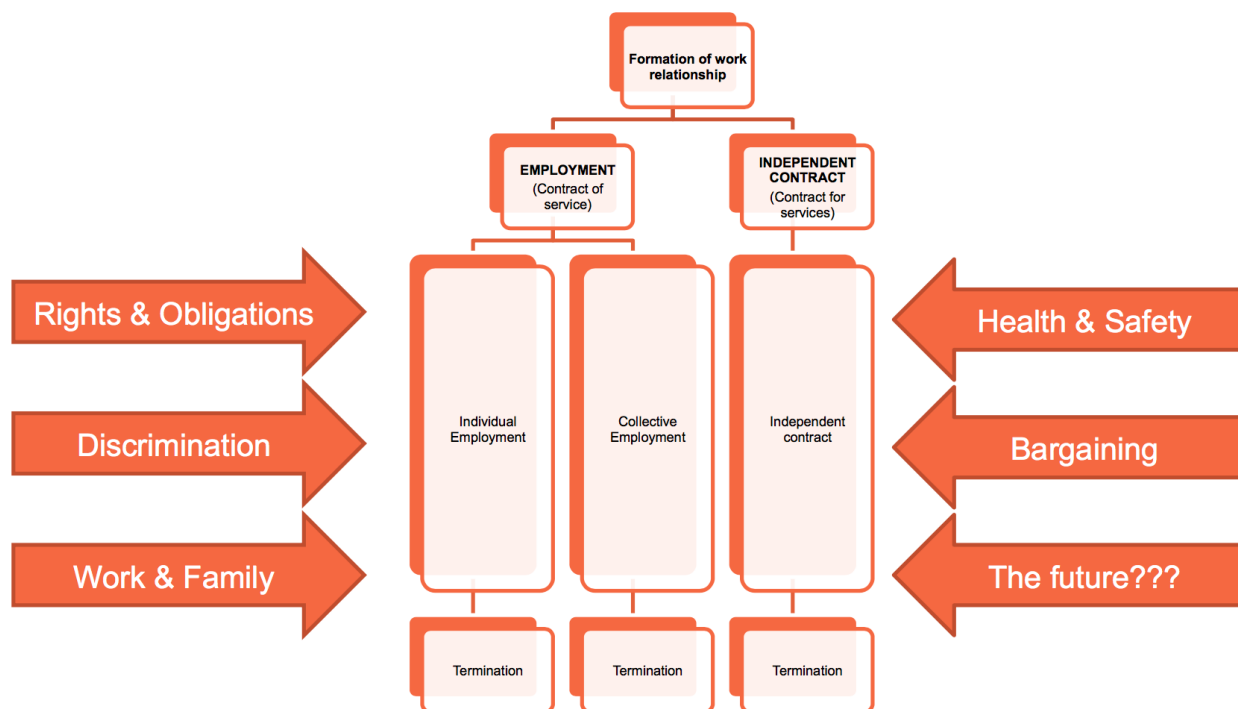
Week 10: Discrimination

Week 11 & 12: Termination

Week 13: The Future of Work Regulation and Conclusion

## Week 1: Introduction to Concepts and Content

### Unit outline



### Introduction to some legal concepts (textbook page 3)

- Common law – case to case laws made by judges
  - System of Precedent
  - Hierarchy of courts – High Court and layers below that – judge makes a decision in the High Court and any subsequent decisions made are based on that case.
  - Means of interpreting legislation
- Statute (Legislation and Acts)
  - State and Federal
  - Employment law predominates at the Federal level
- The Constitution
  - s.51 (20, 29 and 35) – legislative powers of parliament.
    - s.20 relates to the corporation's power and making employment laws that relate to anyone working in that one company – decentralised power
    - s.29 relates to external affairs in the signing of conventions
    - s.35 relates to conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State – gave power to tribunals to settle disputes. Awards came from decisions in arbitration
  - s.109 of The Australian Constitution - when a law of the State is inconsistent with the law of the Commonwealth – the latter shall prevail
- Awards
  - State
  - Federal
  - Modern Awards

### What is work?

- A source of income, providing access to food, shelter and other necessary goods and services
- Transactional/commercial and can be bought and sold just like any commodity
- A source of identity providing purpose and meaning in life
- A social network
- A structural bond in the community through the interdependence of people through work relations
- Economic, social and cultural contribution to communities through productive labour
- A fulfilling and essential human activity which should be supported in all of its guises

## What is a worker?

- Employee
- Independent contractor
- Volunteer
- Home duties
- Toil work performed out of sheer necessity (hence focus in past of relief from labour in the form of protected leisure time)
- The answer to this question has changed over time with significant changes in workforce structure:
  - Industrial era to global era
  - Breakdown of male breadwinner model
  - Changes in workforce participation
  - Radical changes in regulation of work since 1993 after 90 years of relative stability

## Readings

### IR reform doesn't always mean job done; Gittins

- Politics and policy involves thinking of a problem, then proposing a reform we imagine will fix it
- Fair Work reforms reversed the Work Choices concept while retaining much of its change
- Achieving a stable and predictable IR framework for the benefit of business should be a national imperative
- The parties on the ground need to focus on achieving greater cooperation in pursuing the business's goals, with fair sharing of the rewards

### The new black; Arnold

- Underpaid or not paid, avoiding tax and other obligations by paying cash
- In some sectors, underpaying is the new normal where there's no superannuation, workers compensation or annual leave
- For example, Bakers Delight, Pizza Hut, Grill'd have been accused of transgressing awards or enterprise agreements
- Food delivery services such as Deliveroo and Foodora have been taken to court regarding their fairness of employment of drivers without sick leave, superannuation and other employment benefits
- Small employers are generally taking shortcuts with casualised, non-unionised and young, migrant workers – keeping costs low
- Staff not fully informed that there was no workers compensation and the impact their injuries would have in their next job
- Staff are out of pocket for the injuries they incur
- Casualisation is currently sitting around 20% of the workforce – flexibility can be a choice of the employee but it is also a loophole for exploitation (if you're not available 24/7, you don't get shifts)
- Sexual harassment/assault is common for staff who don't speak English

## Week 2: Regulation of Work

### Regulation theory

- Theory: moves us beyond the mere description, attempts to explain a certain phenomenon – allow us to analyse rather than describe
- Decent work is a key agenda of the ILO – represents the government, employers and employees and sets minimum standards for member states. Decent work relates to the construction of standards and means to enforce regarding:
  - Provision of adequate knowledge re rights and obligations
  - Maintenance of workplace free from harassment and risk of injury
  - Adequate remuneration (not subject to arbitrary reduction)
  - Capacity for workers to adjust work time with changed personal circumstances
  - Protection against arbitrary termination
  - Freedom from unlawful discrimination

- Freedom of speech
- Right to privacy
- Freedom of association
- Private regulation/the employment contract: agreement between one employee and one employer
  - Individuals negotiate and define their own relationship
  - Best way to operate in global era with increasing individualism and is more flexible
  - Best outcomes for the market when bargain negotiated free from third party interference
  - Assumption that there is equal bargaining power and the future is known
  - Employers' and employees' preferences don't always coincide
  - Public policy – not dealt with in the contract (minimum wage and race to the bottom) – doesn't deal with what's best for the society
  - Emphasis on express terms – what's actually expressed in writing or verbally
  - Contracts also have implied terms – duties to obey lawful and reasonable commands and render loyal and faithful service
  - Some modern developments in contract law include implied mutual duty of trust and confidence
  - Criticisms – means of enforcement are costly and slow and there are limited damages compared to a tort as you can only recover what you would have received if they had actually complied, generally the value of notice

#### Changes to Australian society and workforce

- Industrial to global, male breadwinner to complex participation, protection to open, pluralism to unitarism, collective to individual and responsive to command and control

#### Philosophical approaches to work regulation

- Balance inequalities between capital and labour - "The main object of labour law has always been, and we venture to say always will be, to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship."
- Neoliberalism
  - Prioritise the market and competition to gain market efficiency
  - Minimise regulatory interference and other third-party interference
- Social democracy
  - Maintain public regulation
  - Social justice within a capitalist system
- Some say that neoliberalism has run its course