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Week 1 – Introduction to Employment Law

Overview of Australian Employment Law

- Employment law regulates the relationship between employers and employees.
- It combines common law principles (from contract law and torts) with statutory protections created by legislation.
- The current system is primarily governed by the Fair Work Act 2009 (Cth) (FWA).
- Other important frameworks include work health and safety, anti-discrimination, long service leave, and workers compensation.
- Employment law seeks to balance managerial control with employee protection and fairness.

Sources of Employment Law

- 1. Common law**
 - The employment contract remains the core of the employment relationship.
 - Derived from contract law, agency, and torts principles.
 - Courts imply duties such as fidelity, trust, and confidence.
- 2. Statute**
 - Most rights and obligations now come from statute, especially the FWA.
 - Statutes provide minimum standards and override inconsistent contractual terms.
 - Other relevant Acts: Work Health and Safety Act, Anti-Discrimination Acts, Long Service Leave Acts, and Superannuation Guarantee legislation.
- 3. Industrial instruments**
 - Modern awards and enterprise agreements supplement statutory standards.

- These instruments are legally enforceable and often set conditions above the statutory minimum.

Constitutional and Institutional Framework

- The Commonwealth Parliament relies primarily on the corporations power (s 51(xx)) to legislate in employment matters.
- Historically, the federal power was limited to conciliation and arbitration for interstate industrial disputes (s 51(xxxv)).
- Since 2009, all states except Western Australia referred their powers to the Commonwealth, creating a near-national system under the FWA.
- Key institutions:
 - Fair Work Commission (FWC) – the national workplace relations tribunal, responsible for awards, enterprise bargaining, and disputes.
 - Fair Work Ombudsman (FWO) – compliance and enforcement agency.
 - Federal Court and Federal Circuit and Family Court – judicial enforcement and appeals from the FWC.

The Employment Relationship

- Employment law applies only when a worker is an employee, not an independent contractor or volunteer.
- Determining employment status is crucial for access to statutory protections and benefits.
- The High Court has emphasised that the employment relationship depends on the totality of the relationship, particularly contractual terms.
- Key indicators of employment: control, integration, delegation, provision of tools, opportunity for profit or loss, and method of payment.
- Important cases:
 - *Hollis v Vabu Pty Ltd* (2001) 207 CLR 21 – bicycle couriers were employees because they worked within the employer's business and under its control.
 - *ZG Operations Australia Pty Ltd v Jamsek* (2022) 96 ALJR 198 – focus shifted back to the written contract if it represents the true legal rights and obligations.
 - *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* (2022) 96 ALJR 184 – contractual terms again decisive; if the contract establishes employment, conduct cannot later alter that character.

Interaction of Common Law and Statute

- The common law provides the foundation, but statute now sets the minimum standards.
- Contractual terms more beneficial to employees remain valid; less beneficial terms are overridden by legislation.
- Employers must comply with both the contract and the FWA; breach of either can attract different remedies (contractual damages vs civil penalties).
- Courts interpret the FWA in light of its protective purpose and the principle of fairness between the parties.

National Employment Standards (NES)

- Ten minimum statutory entitlements forming the safety net for all national system employees.
- Include maximum weekly hours, flexible work requests, parental leave, annual leave, personal/carer's leave, community service leave, long service leave, public holidays, notice and redundancy pay, and the Fair Work Information Statement.
- Employers cannot contract out of or provide conditions less favourable than the NES.

Modern Awards and Enterprise Agreements

- Modern awards apply to specific industries or occupations and provide detailed minimum conditions.
- Enterprise agreements are negotiated at the workplace level and must leave employees better off overall compared to the relevant award.
- The award and agreement system aims to promote collective bargaining while preserving a statutory safety net.

Workplace Institutions and Their Roles

- **Fair Work Commission:**
 - Makes and reviews modern awards.
 - Approves enterprise agreements.
 - Deals with unfair dismissal and other disputes.
 - Determines minimum wages annually.
- **Fair Work Ombudsman:**
 - Investigates complaints and enforces compliance.
 - Can commence civil penalty proceedings.
- **Federal Courts:**
 - Hear appeals and enforce compliance orders.
 - Interpret the FWA and related legislation.

Interaction with Other Legal Areas

- Work health and safety law imposes duties on employers and workers to ensure safe workplaces.
- Anti-discrimination law operates concurrently to prohibit unequal treatment.
- Contract law principles continue to govern formation, interpretation, and breach of employment contracts.
- Torts law (especially negligence and vicarious liability) remains relevant where employee conduct causes harm.

Policy Goals and Underlying Principles

- Promote fairness, job security, and cooperative workplace relations.
- Encourage productivity through good faith bargaining.
- Provide a universal safety net that prevents exploitation.
- Ensure accessible enforcement through FWC and FWO.