A Checklist of Issues Relating to Multiple Employment in Local Government

Blake Robson
Industrial Officer Member Services
blake.robson@lgnsw.org.au
Multiple employment under the Local Government State Award

- Provision inserted into the 2014 Award which allows councils to employ staff in more than one position and under separate contracts of employment.
- In order to rely upon clause 29 of the Award, employers need to satisfy 2 key criteria:
  - positions involve different duties or are in different work function areas; and
  - the employee agreed to the second position.
- The Award provides that such an arrangement ‘may’ be treated as separate engagements, for all purposes of the award. i.e. “may” not “shall”.
What if the requirements of clause 29 are not satisfied?

An employment arrangement which is non-compliant with clause 29 prevents council from treating positions as separate and distinct engagements.

- Hours worked across both positions treated cumulatively & may expose the employer to an underpayment claim with respect to overtime.

- Potential exposure in terms of continuity of service where the employee has accrued leave entitlements in one position & subsequently resigns from that position yet continues to be engaged in the second position.

- Intended application of clause 29, employee prevented from windfall gain of accessing leave accruals at higher rate in second position.
Practical Considerations

- Indicators of 2 separate & distinct engagements: work performed in each engagement is captured under 2 different PDs; employee issued second payroll number for second position; different rates of pay; different work locations.

- Overlap in terms of duties and responsibilities may lead to conclusion that positions are not “separate & distinct engagements”.

- Letter of offer for their second engagement should make express reference to clause 29 of the Award and note that the position is a “separate and distinct engagement for all purposes of the Award”.

- Need to be able to demonstrate that the employee has made full informed decision as to what is meant by treating their second position as separate and distinct for all purposes.

- WHS obligations with respect to fatigue management & sufficient breaks.