**Temporary Visa Workers should get lost entitlements protection**

The exclusion of temporary visa workers from reimbursement under the Fair Entitlements Guarantee (FEG) Scheme for lost wages and entitlements (annual leave etc) owed to them when their employer collapses is not just unfair. It is inconsistent with the approach in other important government guarantee schemes, such as the Financial Claims Scheme (FCS), where non-residents are eligible.

It is also inconsistent with the principle of non-discrimination stated on the fairwork.gov.au website that “all people working in Australia, including foreign workers, are entitled to basic rights and protections in the workplace”.

During the current crisis many workers have experienced the hardships of both losing their job and then discovering that unpaid wages and other entitlements have been lost due to insolvency of their employer. Australian citizens, permanent (and some other) visa holders are entitled to claim for compensation under the FEG, albeit with limits on the amount claimed. But temporary visa holders, such as international students working in restaurants or shops to earn enough for rent and living expenses, are not eligible to claim.

Is it right to exclude them from the Australian taxpayer support provided by the FEG. One possible answer could be yes – if it is thought that the objective of the scheme is solely to provide compensation solely for Australians suffering loss. But an alternative answer (no!) is that the objective is to provide compensation for failings by bosses of Australian businesses to adequately provide for the amounts owed to any employees.

There is, in my mind, a very strong case for the latter answer, and thus inclusion in the FEG of temporary visa holders. The FEG is an alternative to other methods of ensuring that employers adequately provide for amounts owed to employees. These could include an explicit, premium based, insurance scheme, or requirements for employers to maintain amounts in a trust account adequate to meet unpaid entitlements.

In the absence of such direct disciplining measures on employers which would protect all workers, the FEG is a substitute to provide such protection, albeit not fulfilling the important job of ensuring bosses make adequate provisions.

Any of these approaches work to improve the efficient operation of the labour market by removing the need for potential and current employees to assess (and worry) whether an employer will be able to meet unpaid entitlements. Not only is that a virtual impossibility for them, but their ability to take actions to reduce exposure to potential losses is highly limited (short of quitting and demanding immediate payment).

It is worth comparing the FEG with the Financial Claims Scheme (FCS) which protects bank depositors and insurance policy-holders (up to maximum amounts covered). Yes, an important feature is that it provides ex-post compensation for losses from a failed institution. But a critical feature is that it enhances the stability and efficiency of the financial sector by removing concerns of those covered about risk of failure of their financial institution. The resulting peace of mind also reduces the risk of “runs”.

The FCS does not exclude non-residents with AUD accounts held in Australia from its coverage. Just as Australian retail customers are generally unable to assess the financial health and risk of a bank or insurance company, so too are non-resident retail customers. Probably more so!

And, an important feature of the FCS is “rapid access” to amounts owed by a failed institution. This reduces the disruption to customers relying on access to those funds for daily living and other expenses.

The same arguments are relevant regarding coverage by the FEG. Covered workers need not worry about possible loss of unpaid entitlements if their current (or prospective) employer fails. (Although it must be said that lags in payment of compensation still leave them at risk of even greater financial hardship when employer insolvency leads to job loss).

Realistically, employees on temporary visas are even less likely than Australian employees to have the ability to assess risk of loss from employer insolvency, and as casual, part-time, employees less (if any) bargaining power. The financial hardship resulting from loss of entitlements (on top of unemployment) of such relatively low-paid workers with limited access to other forms of financial support is undoubtedly severe.

Add to that the Fairwork principle of non-discrimination that “all people working in Australia, including foreign workers, are entitled to basic rights and protections in the workplace”, and the conclusion is obvious.

The FEG should apply to such workers on temporary visas.

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