

Gun & Davey

Covered



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COVERED CASES

THE STATE OF SOUTH AUSTRALIA (THE DEPARTMENT OF EDUCATION & CHILDRENS SERVICES) v DAY

I 66/1999

This is a decision of the ***Full Industrial Relations Court*** which whilst involving an underpayment of wages claim has significant impact on a worker's entitlements to, but more importantly an *employer's* liability to pay, actual *wages* to a worker who, whilst not sufficiently recovered from a disability to be able to return to normal duties has recovered sufficient capacity to enable a return to alternate duties being provided by the employer.

This decision indicates that depending on the facts, the work being undertaken by a worker in such circumstances may attract payment of *wages* by the *employer* itself (not income maintenance) in addition to which the worker would then be entitled to a make up component by way of income maintenance if those wages were less than the worker's average weekly earnings or 80% of the difference between such wages and the worker's rate of notional weekly earnings.

We have not outlined the facts as they, as well as the reasoning of the Full Industrial Court, are complex (to say the least!).

We simply wish to put you on notice that in these types of circumstances an employer may be liable to a worker for *wages* with a concurrent reduction in liability on the part of a compensating authority to pay income maintenance and that this may have a significant impact on registered employers – i.e. why offer alternate duties if the position being offered is supernumerary and yet the employer will be liable to pay wages?