Roy Morgan Research Ltd has recently learnt the hard way that, when it comes to the Fair Work Act, it pays to ensure strict compliance over expediency.

Under the “return to work guarantee”, an employee returning from maternity leave is entitled to return to their pre-maternity leave position or, if that position no longer exists, the nearest available position in terms of status and pay for which they are qualified.

Roy Morgan was on the receiving end of a general protections application, filed by a returning mother who was sacked on account of redundancy. The Court accepted that Roy Morgan was undergoing a genuine restructure which meant that the returning mother’s position ceased to exist. Tick.

However, the Court concluded that when the returning mother flagged flexible working arrangements upon her return, and in circumstances where her mat leave cover was working on a particular project that was due to complete in a couple of months anyway, Roy Morgan took the approach that it would be more expedient to simply bring her redundancy forward.

The Court found that not only did the mat leave cover remain in the role for two months after the mother was due to return to work, but the mat leave cover was then redeployed to another position within the business which would have been suitable for the returning mother.

Penalty and damages are yet to be determined. But we do know that a breach of the Fair Work Act can result in penalties of up to $54,000 for a corporation, and $10,800 for an individual “involved in” the contravention. That means HR Managers (or other decision makers) can be in the gun for personal liability.

And given the mat leave cover was redeployed to a new role and remains with the organisation, it certainly speaks to the returning mother having suffered serious economic loss. Ouch.

Questions? Give us a call.