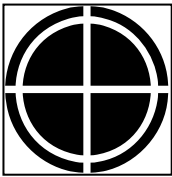




**Employer
Services**



RELATIONS

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NEWSLETTER

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Fair Work Bill Passed

On 20 March 2009, the Federal Government finally secured parliamentary support for its Fair Work Bill after last-minute negotiations broke a deadlock with Independent Senators over how to define a 'small business' for unfair dismissal purposes. More than 200 amendments were made to the original Bill, most proposed by the Government itself.

The new Fair Work Act 2009 (FW Act) is now expected to take effect on 1 July 2009, replacing the Workplace Relations Act 1996 (WR Act). Before then, however, two further measures will need to be passed.

The first of these was introduced on 19 March 2009. The Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 (TPCA Bill) deals with the transition from the current system to the new Fair Work regime.

A further Bill is scheduled for May 2009 to deal with consequential amendments to other federal laws. The Government will be looking to have both these Bills passed by mid-June at the latest, following another Senate inquiry.

Some fundamentals were not changed, but in brief terms the new laws include:

- a new body, Fair Work Australia (FWA) will replace existing tribunals and agencies;
- the National Employment Standards (NES), setting minimum conditions for all national system employees, though only from 1 January 2010;
- a system of 'modern awards' to provide an additional safety net for most employees, again commencing in January 2010;
- provision for the making of single or multi-enterprise agreements (EAs), subject to new good faith bargaining obligations. A new test that requires each employee to be better off overall than they would be under an applicable award, the "BOOT" test;
- retention of most of the existing restrictions on taking industrial action;
- a new set of 'general protections' against other forms of discriminatory or wrongful treatment at work;
- a slightly broader right for unions to enter workplaces, though still subject to many restrictions;
- new rules on the extent to which employees retain their entitlements when transferring from one employer to another.

Changes to National Employment Standards (NES)

The NES covers 10 basic minimum standards including the right to request flexible working arrangements. This will not just apply to parents of school-aged children but to those with children under 18 who have a disability. A dispute over an employer's refusal can now go to Fair Work Australia (FWA). Also, a refusal to not allow a second year of unpaid Parental Leave may now allow for FWA to conciliate.

New Unfair Dismissal Laws

John Howard's WorkChoices laws nearly eliminated the ability for dismissed workers to seek redress by arbitration. From 1 July 2009, the exclusions for many small businesses will disappear and be replaced with a threshold of 15 employees (down from 100). The threshold of '15' is now designated as '15 full time equivalents' calculated as follows: -

"Divide the total number of ordinary weekly hours of all employees in the business (averaged over the 4 weeks prior to the employee's termination) then divide by 38."

Note: This definition of the threshold of '15' is one of the amendments to the new legislation that the Government was forced to concede upon but will only apply until 1 January 2011, at which time it will become a straight calculation (i.e. from 1 January 2011 the threshold of '15' will be calculated as the total number of full-time and part-time employees and long term casuals (casuals with at least 12 months service) employed at the time of the dismissal).

Note also, employees of an employer of less than 15 cannot apply for unfair dismissal redress unless they have had 12 months service with the employer. Employees of an employer of 15 or more will be able to apply for unfair dismissal redress after they have had 6 months service.

What Happens to Agreements Lodged Before 1 January 2010?

Julia Gillard the Deputy Prime Minister has made it clear in a speech to Parliament that the new laws will require –

"Application of NES to all national system employees including those covered by instruments made before the commencement of the new system.

The Bill provides for the application of the National Employment Standards and minimum wages to all national system employees from 1 January 2010, including those covered by instruments made before the commencement of the new system"

"The National Employment Standards include important entitlements to:

- *personal/carer's leave and community service leave;*
- *for parents of young or disabled children – the right to request flexible working arrangements;*
- *notice of termination and, for businesses with 15 or more employees, redundancy pay; and*
- *public holidays and long service leave.*

In addition, the Bill will provide that employees must receive at least the minimum rate of pay contained in a modern award from 1 January 2010.

This means that from 1 January 2010, Australian employees who were required to make 'take it or leave it' sub-standard Australian Workplace Agreements under WorkChoices will receive the benefit of the ten minimum National Employment Standards where their current agreement contains inferior conditions and minimum 'safety net' wages.

Fair Work Australia will have scope to make orders to 'phase in' minimum wages in exceptional circumstances such as where it is satisfied that such measures are necessary to ensure the ongoing viability of a business"

2009 Minimum Wage Case

The ACTU has sought a Federal Minimum Wage Increase of \$21.00 a week before the Australian Fair Pay Commission (AFPC). However, the Rudd Government has come out strongly against the increase drawing "fire" from senior union officials.

Julia Gillard and Wayne Swan have drawn attention to the "unprecedented crisis" facing the Australian and Global Economies.

Employers have supported the Federal Government and have warned that "awarding the claim would cause substantial job losses".

The Government has anticipated that the AFPC will take into account the ongoing tax and transfer measures that have been aimed at supporting the low paid. A decision is not expected before the end of July.

Modern Award Process – How is it Progressing?

Please see our Relations Newsletter of February 2009 for additional background on this topic. Stage 2 Awards will be released on 3 April 2009. Much concern and publicity has been generated over the implementation of the cost of higher wages and penalty rates for the Retail; Fast Food and Hospitality sectors in particular.

Responding to the reaction by Employer Organisations the Deputy Prime Minister stated in Parliament that –

"I issued my award modernisation request to the Australian Industrial Commission on 2 April 2008, with a revised request on 16 June 2008.

The Act and my award modernisation request together allow for the Commission, after consulting with representatives of employers and employees, to publish new modern awards. Modern awards will reduce the number and complexity of existing awards and will be easy to find, read and apply employment conditions.

Importantly, the Act allows for any differences between current state award conditions and the new federal standard to be phased in over a full five year period. This would mean, for example, that the Commission could make a modern award that sets a national modern award entitlement to a penalty rate for Sunday work at 150 percent of the base rate. If however, an existing relevant rate in a State award for the same type of work was higher than this new rate (say, two hundred percent) or lower (say, 125 percent) the transition provisions enable the Commission to establish phasing in arrangements that would gradually, over a full five year period, bring such outlying state conditions into line with the new national standard.

Such phasing in arrangements will ensure that employers are provided with a lengthy adjustment period to adapt and plan for any such new standard."

ES Training Program

Due to the uncertainty surrounding the finalisation of the new Federal Laws, we have held off conducting our Information Sessions.

Please note that they will now be rolled out from May/June following the highly successful model we used for WorkChoices.

Please watch out for the Registration Forms to follow.

What can Employer Services do for your Business?

In addition to our ever popular 'Award Update Service', *Employer Services* offers an array of services you may find useful.

Examples of Consultancy Services accessible at competitive rates include:

- Expert advice on composing employment instruments and documents such as -
 - Workplace Agreements (in both State & Federal Systems)
 - Employment Contracts (Common Law Contracts)
 - Policies and Procedures Manuals
- Conducting Payroll Audits, Calculations for Wage Claims, Wage & Salary Reviews, etc;
- Composition of warning letters, appointment letters, 'show cause' documents, letters of termination, etc;
- Training courses structured to your specifications, offered in-house or at our premises. Popular topics include -
 - 'Back-to-Basics' (Understanding Awards/Agreements);
 - Workplace Bullying / Harassment;
 - Anti-Discrimination;
 - Termination & Counselling Procedures;
 - Handling of Grievances;
- Workplace investigations and mediation;
- Representation in various Commissions and Tribunals;
- Comprehensive strategic advice on complex issues such as -
 - Performance management and counselling procedures
 - Handling of grievances
 - Termination and redundancy processes
 - Organisational restructuring

If you would like further information on any of the services listed above (and more), please feel free to contact us on (07) 3220 3500 to discuss.