

How does the new Industrial Relations legislation affect me?

With this question being asked of us daily, we thought we'd try to shed some light on the new legislation to be implemented in July 2009. As most of you will know, when the new labour Government came into office, one of the first jobs on the list was to abolish the controversial WorkChoices legislation introduced by the previous Government. Some small changes were made to keep things ticking over in the short term and they undertook to introduce a new, more widely accepted replacement. The Fair Work Bill is that replacement. Whether or not it is widely accepted remains to be seen!

FAIR WORK BILL 2008 - Top 4 Changes

Like the introduction of Work Choices, the Fair Work Bill 2008 makes sweeping changes to the industrial relations landscape. At a time of worsening global financial conditions, the Bill will place a range of new obligations on employers. It is therefore critical that all businesses understand and prepare for the introduction of the Bill in July 2009. To keep you informed, and on advice from our legal partners, we have compiled a list of the 4 most important changes to look out for.

1. Fair Workplace Australia (FWA)

FWA will replace the Australian Industrial Relations Commission, Australian Industrial Registry, Australian Fair Pay Commission, Australian Fair Pay Commission Secretariat and Workplace Authority and operate as a "one stop shop" for workplace relations. FWA will have the power to vary awards, make minimum wage orders, approve enterprise agreements, determine unfair dismissal claims and make orders in relation to good faith bargaining.



2. Unfair Dismissal

After 6 months employment (or 12 months, if employed by a business with 15 employees or less), employees will have access to unfair dismissal claims.

In case of redundancy, employers will need to show it was not

reasonable to redeploy the employee within the enterprise.

A small business may dismiss an employee fairly after 12 months if the employer complies with the Fair Dismissal Code for Small Business. This includes the right to dismiss employees for capacity or conduct reasons after one warning.

Unfair dismissal claims must be lodged with FWA within 7 days of dismissal. Reinstatement will be the primary remedy, otherwise compensation will remain at a maximum of six months.

3. Employment Standards & Modern Awards

By 2010, 10 National Employment Standards (NES) will provide a new safety net to all employees, while modern awards will apply to particular industries and occupations. New minimum standards include:

- The right to request flexible working arrangements after 12 months service (employer cannot unreasonably refuse)
- Each parent has a right to take 12 months unpaid parental leave, with a right to request up to an additional 12 months unpaid leave (employer cannot unreasonably refuse). Couples will only be entitled to take up to 3 weeks parental leave concurrently
- Annual leave can be cashed out in accordance with an award or enterprise agreement, provided the employee maintains a leave balance of at least four weeks
- Employers with more than 15 employees are obliged to make a severance payment to an employee terminated on the ground of redundancy, after 12 months service.

Modern awards will also be implemented but will not apply to employees with guaranteed annual earnings of more than \$100,000. This exemption applies if an employer provides a written undertaking to pay an employee annual earnings at or above the high income threshold over a 12 month period.

A modern award must contain a flexibility clause allowing an employer and employee to make an individual flexibility arrangement to vary the terms of the award (eg a parent who begins and finishes work early in order to coincide with school hours). The employee must be no worse off overall under the flexibility agreement. The flexibility clause should partly alleviate the effects of the abolition of AWAs for some employers.



4. Discrimination

Another substantial and previously unpublicised change under the Bill is in respect to discrimination laws. Under WorkChoices, dismissal on grounds of certain attributes was prohibited. The Bill expands the prohibition on discrimination to any "adverse action" (including a refusal to employ) taken on the basis of attributes which include race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin. These rights will add to those which employees have under State and Federal Discrimination legislation.