

EMPLOYMENT NEWS UPDATE March 2010

Welcome to our newsletter

In response to continued requests for an easy to read summary of developments in employment law, TELS has recommenced publication of its Newsletter for the benefit of our clients.

We intend to publish editions of the Newsletter throughout the year to cover issues of topical and practical application to our many clients and interested readers.

New Fair Work Australia Act now in force

The Federal Governments new Fair Work Act came into full operation on 1 January, 2010 to replace the former WorkChoices legislation of the Howard years. Key changes arising from Fair Work that will most impact on employers are:

- Many more small businesses will now be subject to unfair dismissal claims
- Much greater access by unions to workplaces
- Replacement of AWAs negotiated solely with staff with Enterprise Agreements negotiated with the possible involvement of unions
- New rules for redundancy and change of business situations
- Greater flexibility for staff with parental responsibilities

Fair Work Inspectors take a harder line with employers

The change in legislation covering employment issues in most businesses has also been accompanied by a change in attitude of government inspectors employed to enforce the Fair Work Act and deal with complaints from employees. The fair and understanding approach to employers of WorkChoices inspectors appears to have been replaced by a much harder line being taken against employers by inspectors since 1 January. Small technical breaches are now being prosecuted in many instances, leaving employers to pick up legal expenses, fines and lost time.



Review your employment practices now

With the new Act providing a compliance challenge for many employers unaware of its full implications, reviewing your current employment practices now may save much work and money in the future.

For a quick summary of changes in the Act, check out the following topics:

Unfair dismissal provisions - beware of changes

1 – Notifications from terminated staff

Dismissed employees now have only 14 days to put in a claim alleging their termination was unfair and seeking reinstatement or compensation. The previous time limit was 21 days.

2 – Small business exemptions reduced even further

Under the previous act, employees with 100 or less staff were exempt from unfair dismissal claims. This number has now been reduced to 15 full time equivalent staff or less. If your business is around this new number, make sure you keep good records of the hours your staff work so you can prove your 15 FTE status if required.

3 – Termination exemption now has a limited life

Previously, as long as an employer stayed under 100 or less staff, it remained exempt from claims for unfair dismissal. The new Act now only provides this exemption for small businesses with 15 or less FTE staff **for the first 12 months** –after this, the employer must defend claims from staff claiming to be unfairly dismissed. Although these small employers will have less strict criteria to meet in order to defend unfair dismissal claims than their larger business colleagues, many will still need to spend time and money should a claim be made against them.



4 – Some issues remain unchanged

The previous act exempted fixed term, casuals and trainees from unfair dismissal protection and these exemptions continue under the new Act. Additionally, an employee must be either working under an award/registered workplace agreement or if covered by a common law contract, must not have annual remuneration exceeding the indexed threshold currently at \$108,300.

Employment conditions

Employees now have their minimum entitlements set out in the new National Employment Standards (NES) which apply to all – from award free executives under common law contracts to staff under awards or enterprise agreements. NES conditions can only be modified or excluded to a limited extent, including through modern awards.

Key changes over the previous system include:

- **Maximum weekly hours of work** – 38 hours plus “reasonable additional hours” – a number of former executives are now using this as a bargaining tool against their employer
- **Community service leave** – available to staff engaging in community and emergency services activities
- **Notice of termination + redundancy pay** – severance pay up to 16 weeks pay for redundant staff
- **Flexible working arrangements** for parents; and
- **Parental leave** of up to an additional 12 months, only to be refused on reasonable business grounds
- **Cashing out leave** – now restricted to modern awards

Redundancies

The previous act allowed employers to use “genuine operational requirements” to defend unfair dismissal claims arising from redundancy situations, including those arising from transfer of business situations.

These circumstances have been substantially reduced under the new Act. In cases involving numbers of redundant staff, employers are urged to seek expert assistance prior to taking any action in terminating staff.