

Fair Work Act 2009!



The Fair Work Act 2009 commenced on 1 July 2009. In this edition of WorkSight Focus, we will outline how and when various elements of the Act become operational and set out some employer obligations. We will also cover the introduction of the Regulations which support the Act and the main features of award modernisation.

Who runs the new system?

The new institutions Fair Work Australia and the Office of the Fair Work Ombudsman became operational on 1 July 2009. Fair Work Australia will take over the work of the Australian Industrial Relations Commission as well as the functions of the Fair Pay Commission, while the Fair Work Ombudsman will continue to manage compliance as well as taking on an educative role to assist employers understand their obligations. The AIRC will finalise award modernization

Unfair dismissal

The new law relating to unfair dismissal removes the 100 employee threshold for bringing an unfair dismissal claim. Employers with fewer than 100 employees are now no longer exempt from unfair dismissal claims. The Fair Work Act 2009 provides unfair dismissal arrangements for employers with fewer than 15 full time equivalent (FTE) employees – they are classified as “small businesses” and will be covered by the new Small Business Fair Dismissal Code. If a small business genuinely complies with the code then the dismissal will be regarded as a fair dismissal with no remedy available. After 1 January 2011 the Small Business definition of 15 FTE employees will convert to a simple headcount of 15 full-time, part-time and long-term casual employees.

An employee of a small business can bring an unfair dismissal claim if they were employed for 12 months prior to the dismissal and for employees of other businesses it is 6 months. An employee can apply for unfair dismissal to Fair Work Australia if they are employed under award conditions or their remuneration does not exceed \$108,300. An application fee of \$59.50 applies. The limit on compensation that can be awarded is \$54,150.

More information on unfair dismissal can be found in the Fact Sheet published by the Australian Government.

http://www.deewr.gov.au/WorkplaceRelations/NewWorkplaceRelations/Documents/Fact-Sheets/FactSheet_9.pdf

Enterprise Agreements

There are three types of employment agreements under the Fair Work Act: Single enterprise agreements, Multi-enterprise agreements and Greenfields agreements. There is no longer a distinction between union and non union agreements and new individual agreements cannot be made other than as flexibility agreements under a modern award or enterprise agreement.

New collective bargaining laws impose an obligation on the bargaining parties to bargain in good faith; this does not mean that an employer has to agree to the claims being made but that they must genuinely consider claims made.

Enterprise agreements can contain:

- matters pertaining to the employment relationship
 - matters pertaining to the relationship between the employer(s) and the employee organisation(s) that will be covered by the agreement
 - deductions from wages for any purpose authorised by an employee who will be covered by the agreement
 - how the agreement will operate
- Mandatory terms for inclusion in enterprise agreements include:



- Nominal expiry date (max 4 years)
- Individual flexibility term (new)
- Consultation term (new)
- Dispute settling procedure

The flexibility term allows the employer and individual employees to enter into individual flexibility arrangements which vary the effect of the agreement to meet their needs, provided the employee is better off overall under the flexibility arrangement.

The consultation term requires the employer to consult employees about major workplace changes that are likely to have a significant effect on the employee.

Regulations under the Fair Work Act 2009

The regulations under the Fair Work Act detail how some of the provisions of the Fair Work Act apply. Some items which may be useful for employers to be aware of include:

Reasonable deductions from an employee's pay

The Fair Work Act states that the employer cannot make unreasonable payments and deductions from an employee's pay for the benefit of the employer. However, the Regulation goes on to define what may be considered a reasonable deduction, which would include that:

- the deduction is made in respect of the provision of goods or services by the employer to the employee in the normal course of business; and
- would be made available to the general public on at least the same terms and conditions; or
- would not be made available to the general public on more favourable terms.

Employee Records

Employee records should be kept by employers for 7 years and are required to contain the following information for each employee:

- basic employment details such as the name of the employer and the employee and the nature of their employment (e.g. part-time, full-time, permanent, temporary or casual); and
- pay; and
- overtime hours; and
- averaging arrangements; and
- leave entitlements; and
- superannuation contributions; and
- termination of employment (where applicable); and
- individual flexibility arrangements and guarantees of annual earnings.

There are also obligations on old employers and new employers in transfer of business situations.

Employee Pay slips

Employee pay slips must contain the following information:

- the employer's name; and
- the employee's name; and
- the period to which the pay slip relates; and
- the date on which the payment to which the pay slip relates was made; and
- the gross amount of the payment; and
- the net amount of the payment; and
- any amount paid to the employee that is a bonus, loading, allowance, penalty rate, incentive-based payment or other separately identifiable entitlement; and
- on and after 1 January 2010 — the Australian Business Number (if any) of the employer.

Modern Awards

Modern awards will be operational from 1 January 2010. Existing federal and preserved state awards will be replaced with a smaller number of modern awards. Enterprise awards applying to a single employer will continue but will also be subject to review. Employers who employ staff under award conditions should ensure that they are familiar with the rates and conditions as well as any transitional arrangements that might apply.

Transition Arrangements

While the modern awards are scheduled to become operational from 1 January 2010, the Commission is still considering what transitional arrangements should apply. These arrangements will outline how the modern awards will be implemented, particularly where differences arise between existing arrangements and the modern awards.

National Employment Standards

The National Employment Standards (NES) will be operational from 1 January 2010. The NES will replace the existing Fair Pay and Conditions Standard and will apply to all employees in Australia who come within the constitutional coverage of the federal system.

The NES includes maximum weekly hours, requests for flexible working arrangements, parental leave and related entitlements, annual leave, personal/carer's leave and compassionate leave, community service leave, long service leave, public holidays, notice of termination and redundancy pay. The NES also requires employers to provide new employees with the Fair Work Information Statement which will be published by the Fair Work Ombudsman.

Where can I find information about the Fair Work Act

Following the commencement of Fair Work Australia the pay scales for pre-reform awards and NAPSAs can now be found at <http://www.fairwork.gov.au/Pages/default.aspx>

Other new websites

The Fair Work Australia website <http://www.fwa.gov.au/>

The Fair Work Ombudsman <http://www.fwo.gov.au/Pages/default.aspx>

Fair Pay Commission

The Fair Pay Commission has announced that minimum rates of pay for award based employees will not be adjusted this year. The decision is based on the view of the Fair Pay Commission that there was a likelihood that an increase in minimum wages would result in some job losses for low paid workers. While the decision was welcomed by some employer groups, the ACTU and Federal Government criticised the decision which affects the lowest paid workers in Australia. This decision was the last to be made by the Fair Pay Commission, with Fair Work Australia conducting the next review of pay rates and allowances in modern awards early next year. Any increases announced in that decision will be effective from July 2010.


Balanced and practical workplace solutions

WorkSight provides balanced and practical workplace solutions to help your business run more smoothly.

Contact WorkSight if you need advice on:

- Correct rates of pay and meeting your obligations
- Making an agreement
- Award interpretation
- Investigating workplace conflict
- Mediation between employees
- Dealing with employee problems
- Dismissal options
- Restructuring your staffing profile

This newsletter is intended to provide a general outline and is not intended to be and is not a complete or definitive statement of the law on the subject matter. Further advice should be sought before any action is taken in relation to the matters described in this newsletter.



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