

What do the changes to the Industrial Relations system mean for your business?

The first of the Government's changes to the industrial relations system have now been proposed. This Bill could still be amended in the Senate enquiry and therefore could change, however the key features are:

1. AWAs will no longer be able to be made once the Bill becomes law.
2. A business that had at least one AWA as at 1 December 2007 will be allowed to use a new form of an individual contract called an Individual Transitional Employment Agreement (ITEA). These can continue to operate until 31 December 2009. Businesses that have not previously used AWAs will not be able to use AWAs or ITEAs.
3. The Fairness Test will be replaced with a No Disadvantage Test which ITEAs and all forms of Collective Agreements will be measured against. The No Disadvantage Test will compare the employment conditions in an Agreement with those in an applicable award or agreement. If no award or agreement applies it will be compared against the Fair Pay and Conditions Standard.
4. The Australian Industrial Relations Commission (AIRC) will create industry specific awards containing 10 employment conditions and any industry specific conditions relevant to the new National Employment Standard (see article below).



These 10 conditions will be:

- Minimum wages, classifications, incentive based payments, piece rates & bonuses
 - Types of employment (eg full time, part time, casual etc)
 - Hours of work, rostering and breaks
 - Overtime rates
 - Penalty rates
 - Annualised wages and salaries
 - Allowances
 - Leave and leave loading
 - Superannuation
 - Consultation, representation and dispute settlement.
5. The AIRC will be required to advise the Government which key industries they will prioritise for creating the first awards by 30 June 2008.
 6. Employers will no longer be required to provide new employees with the Workplace Relations Fact Sheet.
 7. NAPSAs (preserved state awards) will continue to operate until 31 December 2009 rather than being abolished on 26 March 2009 as planned under

WorkChoices. NAPSAs will therefore continue to operate until the new system comes into effect on 1 January 2010.

National Employment Standards

The Government has released a discussion paper about its proposed National Employment Standards (NES) which will replace the current Fair Pay and Conditions Standard on 1 January 2010. The Government has invited the community to comment on the proposed Standards by 4 April 2008.

The proposed standards are broadly as follows:

1. The maximum ordinary weekly hours for a full time employee will be 38 plus reasonable additional hours.
2. An employee who is a parent will be able to request flexible working hours while their child is under school age. An employer may only refuse the request on reasonable business grounds.
3. Both parents of a new born child or a newly adopted child will be entitled to 12 months unpaid parental leave. One parent can request to take 24 months of unpaid parental leave. An employer must accept this request unless there are reasonable business grounds to justify refusing the request.

focus The Fine Print

How long is a probation period?



A recent decision of the Australian Industrial Relations Commission is a useful reminder of the operation of probationary and qualifying periods in relation to unfair dismissal laws. The employee commenced employment on 31 July 2007 and her employment was terminated on 31st October 2007.

The employee argued that the three month probationary period concluded at the end of the day of 30th October 2007 and not on 31st October. The Commission agreed referring to its previously adopted interpretation of a month being: “a period commencing at the beginning of one day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month, or if there is no such corresponding day, ending at the expiration of the next month.”

This shows the importance of paying careful attention to the correct dates for probation if you have any concerns as to the suitability of a new employee.

4. Employees will be entitled to:
 - 4 weeks paid annual leave; pro rata equivalent for part time employees; 5 weeks for shift workers.
 - 10 days paid personal leave (including sick and carer’s leave); pro rata equivalent for part time employees.
 - 2 days of unpaid carer’s leave if they have exhausted their paid entitlement
 - 2 days of paid compassionate leave on each occasion when a member of the employee’s immediate family or household dies or develops an illness or sustains an injury that is life threatening.
 - paid leave to undertake jury service and unpaid leave to carry out a voluntary emergency management activity or other prescribed community service activity.
 - long service leave in accordance with the applicable award or state based long service leave provisions.
 - the standard public holidays in their state or territory.
 - notice upon termination and severance pay. The maximum payable for a business of fewer than 15 employees is 4 weeks and the maximum for other businesses is 16 weeks.

Sham contractor

Employers should be aware that the Workplace Relations Act contains provisions that deal with “sham arrangements” that represent or propose to represent an employment relationship as an independent contractor relationship. An employer entering such “sham” arrangements can expose themselves to significant penalties (\$33,000 for organisations and \$6,500 for individuals).



In order to determine whether a relationship is that of an employee or an independent contractor the courts generally apply a range of tests. The predominant aspect is that of control – i.e. who controls the work? If an employer seems to have significant levels of control over who does the work and when, where and how the work is done, the courts will tend to consider that there is an employment relationship. Employers should take care to ensure that any contractor arrangements are not just a device to avoid employment obligations.



Practical pay and conditions advice

If you are uncertain as to what you should pay your employees or what other employment conditions you should provide, ring WorkSight for practical advice and assistance.

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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.