

Drayton's

Workplace Consulting

Newsletter

20 December, 2009

This is our December edition of the Drayton's Newsletter. This period marks 6 months of the operation of the Fair Work Act 2009. This edition will report on the experience with the new enterprise agreement making process and the commencement of the National Employment Standards and Modern Awards.

This is our final newsletter for the year, and we wish our clients and their families a Merry Christmas and a prosperous New Year.



Fair Work Act 2009 'Enterprise Bargaining So Far'

The enterprise bargaining process under the new Act has become a lengthy and complex process. The Act requires a minimum notice period of 3 weeks to employees of their representational rights, before a ballot to approve a proposed agreement. The lodgement process requires the submission of a range of documentation. It is our experience that a reasonable time period of at least 5 weeks will be needed to notify employees and lodge the agreement with FWA.

It is unclear at this stage, to predict the typical length of time for an approval by FWA of an enterprise agreement. The experience to date has been 6-8 weeks and longer in cases where the application is opposed by a party.

Drayton's can assist in the drafting and lodgement of your enterprise agreement.

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Modern Awards Commence 1 January 2010

From 1 January 2010 the Modern Awards will operate with the National Employment Standards (NES) to regulate minimum wages and conditions of employment for most industries.

The modern awards that may affect Drayton Clients that commence on 1 January 2010 will be in the industries of;

- Construction
- Clerical/ Administration
- Transport
- Manufacturing

This not an exhaustive list, and our office can assist in your individual case.

The impact of a modern award will be as follows;

- If your company is already covered by an enterprise agreement or workplace agreement, then the base rate of the modern award will override the enterprise agreement if it is greater than the enterprise agreement. All other conditions of the enterprise agreement will remain.
- If you are currently under an award such as a state award, the Modern award will apply from the date of the order (1 January 2010 in most cases) for the rates of pay and conditions of employment.

There is a transitional period for wage rates between an employer's existing enterprise agreement or award and the modern award which will be usually over a 4 year period.

Finally, modern awards can in some cases capture employee classifications that have not traditionally been regulated by awards and who traditionally paid salaries. An example of these are forepersons and supervisors in the Construction Industry and some office people. It may be necessary to create an individual flexibility arrangement, a revised common law contract of employment to maintain these salary / remuneration arrangements. Please call Drayton's if you require assistance.

National Employment Standards

The National Employment Standards (NES) will become set of minimum employment conditions for all Pty Ltd companies. The NES will override any existing entitlement in a transitional agreement where the current agreement entitlement is detrimental to the NES.

The NES are set out in the *Fair Work Act 2009* and comprise 10 minimum standards of employment. In summary, the NES involve the following minimum entitlements:

1. **Maximum weekly hours of work** – 38 hours per week, plus reasonable additional hours.
2. **Requests for flexible working arrangements** – allows parents or carers of a child under school age or of a child under 18 with a disability, to request a change in working arrangements to assist with the child's care.
3. **Parental leave and related entitlements** – up to 12 months unpaid leave for every employee, plus a right to request an additional 12 months unpaid leave, plus other forms of maternity, paternity and adoption related leave.
4. **Annual leave** – 4 weeks paid leave per year, plus an additional week for certain shift workers.
5. **Personal / carer's leave and compassionate leave** – 10 days paid personal / carer's leave, two days unpaid carer's leave as required, and two days compassionate leave (unpaid for casuals) as required.
6. **Community service leave** – unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service.
7. **Long service leave** – a transitional entitlement for certain employees who had certain LSL entitlements before 1/1/10 pending the development of a uniform national long service leave standard.
8. **Public holidays** – a paid day off on a public holiday, except where reasonably requested to work.
9. **Notice of termination and redundancy pay** – up to 4 weeks notice of termination (5 weeks if the employee is over 45 and has at least 2 years of continuous service) and up to 16 weeks redundancy pay, both based on length of service.
10. **Provision of a Fair Work Information Statement** – employers must provide this statement to all new employees. It contains information about the NES, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, rights of entry, transfer of business, and the respective roles of Fair Work Australia and the Fair Work Ombudsman.

Modern Award to apply to Construction Industry from 1 January 2010

A modern industry award will apply in the construction industry from 1 January 2010. The award will apply across all sectors of building, civil and mechanical construction. It will remove the existing sector awards as follows;

- Civil Construction operations and maintenance award – State
- National Building and Construction award and the Building Construction Industry Award- State
- National metal onsite Engineering Award and state engineering awards applying on site.

This means the award will apply to every employer in the construction industry that is not subject to an enterprise agreement.

The construction industry includes housing, landscaping, concreting, minor road works, swimming pool construction, and earthworks.

The modern industry award is being modelled on existing national construction awards and has the following features;

- A rostered day off in each 4 week cycle,
- Redundancy payments to apply toll terminations including resignation
- A travel allowance even in circumstances where a vehicle is provided
- Wet weather payments to 32 hours per month.
- Potential award coverage of supervisors and forepersons.

This award will become the minimum standard for any enterprise agreements made after 1 January 2010. This means that the 'better off overall test' will be applied against this award. If your business is not subject to an enterprise agreement, it maybe worthwhile considering the alternatives.

A copy of the draft award can be made available by contacting our office.

What to do in 2010

- The NES applies from 1 January 2010 to all employees (Junior yard person to CEO). Consider reviewing your contracts of employment to ensure that the NES is applied
- The Modern award applies from 1 January 2010. If you do not have an enterprise agreement, consider making one. If you do have an enterprise agreement, please ensure the wage rates are equal or better than the modern award rates.
- Union activity is increasing. Consider the current and potential exposure to union activity your company may have and any strategies to minimise risk from such an exposure.
- Transfer of business rules have changed. If there are two or more employing entities in a corporate structure there may be limitation in transferring employees from one entity to another without attracting the enterprise agreement or award of the first entity. This structure may need to be reviewed.
- Unfair dismissal is back. Consider training of supervisors to ensure compliance with legislation.

Queensland Public Holidays 2009/2010

- **Christmas Day**—Friday, 25 December
 - **Boxing Day**—Monday, 28 December
 - **New Year's Day**—Friday, 1 January
- **Australia Day**—Tuesday, 26 January
 - **Good Friday**—Friday, 2 April
 - **Easter Saturday**—Saturday, 3 April
 - **Easter Monday**—Monday, 5 April

Average Annualised Wage Increases			
	March quarter	June quarter	Change in AAW I% Points
	2009	2009	
Wage agreements in the quarter			
All sectors	4.6%	3.9%	- 0.7
Private sector	4.6%	4.0%	- 0.6
Public sector	4.3%	3.9%	- 0.4
Workplace Agreements Wage Growth			

The June 2009 quarter wage trends for agreements have been released. Wage growth for the quarter in Australia across all sectors has decreased by 0.7 to 3.9 % per annum. The trends for the September quarter 2009 have been delayed in publishing and are expected to be released by DEEWR in late January.

In January's Issue

- **The process of creating Individual Flexibility Arrangements**
- **Transitional information for current State Systems Entities (i.e. Sole Traders, Partnerships and Trusts) moving to the National System.**