

Welcome to our Easter Newsletter. The main feature is the commencement of the Fair Work Act on 1 July 2009. The legislation provides significant changes that need to be considered in any future employee relations practice and policy. This edition also looks at the latest information on National wage increases and public holidays.

We wish our clients and their families a safe and happy Easter



Fair Work Act Commences 1 July 2009

Who does the new Act apply to?

The new legislation applies to employers who are constitutional corporations, i.e. Pty Ltd and Limited companies and certain incorporated associations. The legislation does not apply to sole traders, partnerships or trusts. These entities remain under the state system.

What are the major changes?

Right of Entry

A union with the rules/eligibility to represent employees in a workplace will have a right of entry to that workplace. This will apply irrespective of; whether there are any union members in the workplace or the type of workplace agreement (including non-union agreement), or whether the employees desire to meet the union or not. The right of entry will be subject to the following;

- a minimum of 24 hours written notice to the employer
- any discussions with employees must be held in meal times and other breaks that are during working hours.

The existing legislation for right of entry relating to breaches of employment and workplace health and safety legislation is not affected by the Act. It is expected that unions will use this new right of entry to access non-union worksites, that effectively denied access under the previous legislation. Managers and supervisors need to be aware of the rights and limitations of right of entry to avoid abuse.

Inspection of Wage Records by Union officials

As a result of recent lobbying by employers the ability of a union to inspect time and wages records has been restricted by the new Act. A union representative cannot inspect non-member records unless the employee provides their consent in writing, or if Fair Work Australia orders access.

Unfair Dismissal

The Definition of small business will change from the 'less than 100 employees' to 'less than 15 full-time equivalent employees' (This will change to 15 total employees as at 1 January 2011). This means that a large number of employers that are not currently subject to unfair dismissal legislation may be vulnerable to unfair dismissal applications. It will be necessary for most businesses to have discipline and counselling policies and procedures to avoid the cost of unfair dismissal applications. In other words, a return to systems of counselling and warnings for poor performing employees will be required. There are new probation / qualifying periods for new employees to satisfy before an application for unfair dismissal can be made. These are as follows;

- 12 months probation / qualifying period for small business
- 6 month probation / qualifying period all other businesses

Companies should consider introducing a 'bring up' for review on all new employees consis-

What has changed with enterprise bargaining ?

- There is no capacity to make individual agreements (i.e.AWAs & ITEAs)
- The types of agreements can be; union agreements, non-union agreements, single enterprise agreements and multi-enterprise agreements.
- Multi- enterprise agreements will not need to satisfy a public interest test
- Greenfields agreements can be made with a union or unions who represent a majority of employees whose employment will be subject to the agreement. (there will no longer be employer Greenfield agreement.
- The minimum approval process for enterprise agreements will be 21 days in lieu of the current 7 days.
- It will a requirement to notify employees of their right to representation during enterprise bargaining negotiations.
- If a workplace has one union member, then the union has a right to bargain and be a party to the agreement and is the default bargaining representative.
- Fair Work Australia has power to make good faith bargaining orders against employers to enforce good faith bargaining requirements.
- Good

The Enterprise bargaining process after 1 July 2009, will be a far more complex process, in terms of documentation, notifications to employees and the potential of intervention by third parties, such as unions and Fair Work Australia.

The effect of the bargaining framework will restrict the outcomes available in bargaining, this is through the increased role of unions or the potential role of unions. Unions are conservative and will oppose bargaining proposals that depart from the usual award remuneration structures. The long term effect will be to stifle any creative initiatives in remunerating employees other than the current industrial instrument structures.

The removal of the public interest test on multi-enterprise agreements is likely to facilitate the return to project agreements and industry agreements for contractors in construction and service industries.

What will happen to current workplace agreements?

Current workplace agreements including ; union collective agreements, employee collective agreements, Greenfield union and non union agreements, ITEAs and AWAs, will remain in place until terminated or replaced with a new enterprise agreement made under the Fair Work Act.

What will happen to current awards?

The Australian Industrial Relations Commission is reviewing the current award structures with the intention to significantly reduce the number of awards by absorbing existing state awards (NAPSAs) and federal awards into broad based national industry awards.

Existing state industry awards, such as *Civil Construction, Operations and Maintenance General Award—State, Clerical Employees Award - State and Transport Distribution and Courier Award - State*, will be absorbed into national industry awards (modern award) which will apply from January 2010.

What should you do?

If you do not have a current 'in term' workplace agreement, then serious consideration should be given to making a workplace agreement prior to 30th June 2009 to avoid additional costs and formalities of the enterprise bargaining framework of the new Act .

Contact Drayton's:

**Drayton's can provide in-house briefing
and training on the new legislation
changes.**

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Queensland Public Holidays 2009

Good Friday
Friday 10th April
Easter Saturday
Saturday 11th April
Easter Monday
Monday 13th April
Anzac Day
Saturday 25th April
Labour Day
Monday 4th May

Anzac Day Public Holiday 2009 Australia Wide	
Victoria	Saturday 25th April *No day in lieu for 2009
New South Wales	Saturday 25th April
Queensland	Saturday 25th April
South Australia	Saturday 25th April
Western Australia	Saturday 25th April / Monday 27th April
Australian Capital Territory	Monday 27th April
Tasmania	Saturday 25th April
Northern Territory	Saturday 25th April

Workplace Agreements– Wage Growth

Average Annualised Wage Increases

The December 2008 quarter wage trends for collective agreements have been released. Wage growth in Australia across all sectors remains at approximately 4% per annum.

Growth in construction industry rates has fallen slightly to 4.6% per year, showing some signs that the rapid growth in industry rates over the last 2 years may be beginning to ease off.

	Sept. quarter 2008	Dec. quarter 2008
All current wage agreements		
All sectors	4.0%	4.0%
Private sector	3.9%	4.0%
Public sector	4.1%	4.1%