

## Newsletter

25 October 2010

### Industrial relations under the new Gillard Government.

The election result is now settled with a minority labour Government. What does this outcome provide for industrial relations outcomes over the next 3 years?

The Fair Work Act will remain the same. However there are a number of areas that have not been settled and are likely to be the subject of test cases that may substantially affect the management of industrial relations. These areas are;

- The exposure to adverse action claims by employees.
- The exposure to civil penalties by breaches of the Act by employers.
- The extent that an employer must consult before introducing change.
- The limitations on the right of entry of union officials

There is a historical pattern of unions being more active in the second terms of labour Governments. This maybe due to unions seeking a return from the investment in the government, and/or a lack of discipline from unions over time, and/or differing union and government objectives. This increased activity is usually in key industries such as construction, health, education or construction, to set a benchmark rate.

The balance of Power being held by Greens in the Senate after 1 July 2011 will give the Government the ability to amend the legislation to remove the Australian Building and Construction Commission (ABCC). The removal of the ABCC and further dilution of the National Code of Practice for the Construction Industry is a likely outcome by the end of 2011. This development with the increased access by unions will expose the construction industry to increasing union activity and more rigid and increasing labour cost outcomes.

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In light of these developments, most companies will need to consider an integrated Industrial relations strategy that covers the enterprise agreement, labour costs, and contracting arrangements.

### **Enterprise Agreements – Wage Growth**

The March 2010 quarter wage trends for Enterprise agreements have been released. Wage growth in Australia across all sectors increased slightly to 4.1% per annum.

CPI for the June Qtr 2009 to June Qtr 2010 for All Groups is 3.1% up 0.2% from the March Qtr 2009 March Qtr 2010.

The important rate is the private sector outcome. There is a continued decrease in the average annual wage increases to below 4% per year. The range for bargaining for contemporary agreements should be 3.5% to 4%.

### **Average Annualised Wage Increases**

	<b>Dec Quarter 2009</b>	<b>March Quarter 2010</b>	<b>Difference</b>
<b>Enterprise Agreements approved in the quarter</b>			
<b>All Sectors</b>	3.90%	4.10%	0.2
<b>Private Sector</b>	3.90%	3.80%	-0.1
<b>Public Sector</b>	4.20%	4.60%	0.4
<b>Construction Sector</b>	5.30%	4.90%	-0.4

### **High income threshold for purposes of Unfair Dismissal and modern award coverage increases to \$113, 800.00**

The high income threshold has increased to \$113,800.00 per annum from 1 July 2010. This is the threshold for guaranteed income, which excludes employees from making unfair dismissal applications and modern award coverage. This amount is adjusted annually in line with a formula in the Fair Work Regulations which recognises wage growth.

It is important to note that the salary amount is exclusive of superannuation. The threshold amount can include non-wage / salaried benefits, such as private use of

a vehicle. In the circumstances where the non-wage benefit is prescribed in a contract of employment that is agreed by the employer and the employee, then the agreed value will be accepted as part of the salary package.

If the value of the non-wage benefit is not listed or agreed in the contract, then the value will be determined by Fair Work Australia (FWA). In the case of a vehicle, FWA is likely to value the private use based on the individual's actual private use of the vehicle. This valuing by FWA can make the value of the salary package unclear in certain cases.

If the intention is to offer the employee a package that exceeds the high income threshold, then all components of the salary package should be prescribed in an agreed contract of employment. In particular, the value of a private vehicle should reflect market expectations and be a genuinely agreed figure.

**Drayton's can assist in drafting of contracts of employment to satisfy the income threshold.**

### **Unions push for contracting clauses in agreements**

The Construction Industry unions, AWU and CFMEU, are currently pushing for the insertion of 'contracting clauses' in all new enterprise agreements in the Construction Industry. A 'contracting clause' requires the following;

- An employer to consult with the employees and union regarding any proposals to contract work with independent contractors.
- In the circumstances where work is contracted out, the employees of the contractor receive wages and conditions no less favourable than the employers' enterprise agreement.

The effect of these clauses is to require the employer to ensure that any subcontractor will pay terms and conditions no less favourable than the enterprise agreement. This applies where the application of the agreement captures the work classifications of the subcontracted works. This will be the case even where the employer does not traditionally employ such employees, or intends to, or own or operate the type of equipment necessary such as piling equipment or mobile cranes. There has been limited tribunal determination of these matters. However, the current advice is that the limitation of the effect of these clauses is achieved by excluding the work that is likely to be subcontracted.

## Paid Parental Leave Scheme

The National Paid Parental Leave scheme commences from 1 January 2011. It will provide eligible working parents with 18 weeks of pay at the weekly rate of the national minimum wage. (From 1 July 2010, around \$570 a week before tax.)

An eligible employee, being the primary care giver who meets the following Paid Parental Leave scheme work test;

- worked for at least 10 of the 13 months prior to the birth or adoption of your child, and
- worked for at least 330 hours in that 10 month period (just over one day a week), with no more than an eight week gap between two consecutive working days.

From 1 July 2011, Employers will be responsible for providing Parental Leave Pay to their eligible employees who have a baby or adopt a child from 1 July 2011, have worked in your business for 12 months or more, and are receiving eight weeks or more of Parental Leave Pay.

The employee is responsible for applying to the Family Assistance Office and on application approval, the Family Assistance Office will contact the Employer in regards to providing the necessary funding. The Employer is responsible for administering the paid parental leave funding in accordance with the employee usually pay cycle. The Employer is to withhold tax from Parental Leave Pay under the usual PAYG withholding arrangements.

For further information please visit <http://www.familyassist.gov.au> or contact Drayton's on 07 3831 7099.

## Redundancy Entitlement As of 1 January 2010

The anniversary of the commencement of the National Employment Standards in January 2011, initiates an entitlement to all employees with 12 months service. This will mean that an employer who has engaged an employee from 1 January 2010 and beyond 1 January 2011 an entitlement of 4 weeks severance is due in the circumstance of redundancy. A copy of the severance payment structure as provided by the National Employment Standards is below.

Period of continuous service	Severance pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

LOOKING FOR  
**EXPERIENCED**  
STAFF?

CONTACT CIVIL CAREER AND HAVE  
IMMEDIATE ACCESS TO INDUSTRY  
EXPERIENCED APPLICANTS.

Civil Career is an industry based recruitment and labour exchange service for CCF members. Through collective electronic and print advertising Civil Career receives a large number of industry applicants.

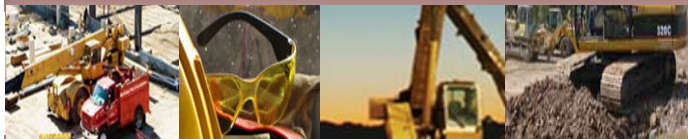
Civil Career has a database of industry experienced applicants looking for work throughout Queensland. Civil Career is currently emailing summaries of available applicants each week to all listed CCF Members. Please contact us if you would like to receive our Summaries.

When a contractor expresses interest in a certain candidate summary then Civil Career emails the candidate contact details and resume to the contractor. Interviewing, selection and recruitment procedures will still be carried out by individual contractors. Once a placement has been made the contractor advises Civil Career of the placement details.

When your next vacancies arise and you are thinking about running an advertisement, contact Civil Career and provide the details of the candidate sought. Avoid the cost of advertising and the administration of processing the applicants and answering calls.

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