

Introduction of Workplace Agreement Fairness Test

On 4 May 2007 the Federal Government announced the introduction of a Fairness Test to apply to Australian Workplace Agreements and Collective Agreements. While the legislative amendments will not be introduced into Parliament until June, the changes will be retrospectively enforceable from 7 May 2007. Agreements lodged prior to this date will not be subject to the Fairness test.

The Fairness Test will require that a number of protected Award conditions are maintained or adequately compensated for in a Workplace Agreement. This will be assessed in a similar fashion to the old no-disadvantage tests.

Compensation will often take the form of higher wages or salary and the Test will take into consideration the business's location, economic circumstances, industry and other factors.

The Fairness Test will apply to all AWAs where the employee is earning less than \$75,000 per year and which modifies or removes any protected award condition. The Test will also apply to any Collective Agreement in an industry covered by an Award.

The protected award conditions are:

- penalty rates, including for working on public holidays and weekends;
- shift and overtime loadings;
- monetary allowances;
- annual leave loadings;
- public holidays;
- rest breaks; and
- incentive-based payments and bonuses.

The Fairness Test assessment will be conducted by the Office of the Employment Advocate, to be renamed the Workplace Authority. The assessments will take place following lodgement of an agreement and employers will be notified of any failure to meet the requirements of the test. Variations to the agreement to meet the standard will need to be agreed upon between the employer and employee(s) within 14 days or the agreement will be rendered void.

Pre-lodgement assessments will also be available through the 'Workplace Authority' in a similar manner to the prohibited content reviews that the OEA currently performs.

All clients of Drayton's Workplace Consulting involved with ongoing AWA lodgements will be contacted in the immediate future regarding this issue.

If any assistance is required in complying with these new requirements please contact Drayton's.

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