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WORKPLACE RELATIONS LEGISLATION EXPRESSED AS PEOPLE...

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What is the Fair Work Act?

- July 2009 commencement of:
  - Fair Work Australia (FWA)
  - New rules on Agreement making
  - New rules on Unfair Dismissal
- 1 January 2010 commencement of:
  - National Employment Standards
  - Modern Awards
  - Transfer of most existing employers from State to Federal system
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## What is the Fair Work Act?

<table>
<thead>
<tr>
<th>THEN</th>
<th>NOW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workplace Authority</td>
<td>Fair Work Australia</td>
</tr>
<tr>
<td>Australian Industrial Relations Commission</td>
<td>includes Minimum Wage Panel</td>
</tr>
<tr>
<td>Australian Fair Pay Commission</td>
<td></td>
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<tr>
<td>Workplace Ombudsman</td>
<td>Fair Work Ombudsman</td>
</tr>
<tr>
<td>Federal Court &amp; Federal Magistrates Court</td>
<td>Fair Work Divisions incorporated into Courts</td>
</tr>
</tbody>
</table>
State Referral of Powers
State Referral of Powers

• From 1 January 2010 all sole traders, partnerships and not for profit bodies (essentially every employer save State Government and Local Government) will be covered by the Federal Workplace Legislation and NES (“no detriment rule” applies)
• If covered by a State Award, this continues until 31 December 2010 and from 1 January 2011 will be covered by Modern Award
• If there was no award under the state system and now is a modern award, then it applies automatically from 1 January 2010 with most wage rate clauses commencing from 1 July 2010 but with transitional provisions.
Fair Work Act
What applies to your Employees?
Fair Work Act – Safety Net

- National Employment Standards (NES) covers ALL Employees
  - Will override any ‘detrimental’ terms in current agreements/awards
- Modern Awards cover Employers or Employees specified in Award
- Enterprise Agreement covers the Employer and Employees specified and Employees must be Better Off Overall (BOOT) than if Modern Award covered them
1. Maximum Weekly Hours

- Standard 38 hours per week
- Plus reasonable additional hours
- May be averaged over a period of time
Reasonable Hours

- Any health and safety risk to employee
- Employee’s personal circumstances
- Needs of the workplace
- Overtime or penalty rates for extra hours
- Notice given to employee or employer
- Usual patterns of work in the industry
- Nature of employee’s role and responsibility
2. Flexible Working Arrangements

• Parents (or person with responsibility for care) of children under school age, or children under 18 with a disability, may request a change in working arrangements

• Must have 12 months continuous service

• May be refused on reasonable business grounds but we would encourage you to seek advice before rejecting any application under this provision
3. Parental Leave

- 12 months unpaid leave
- Must have completed 12 months continuous service
- Employee can request an additional 12 months unpaid leave
  - May be refused on reasonable business grounds but we would encourage you to seek advice before rejecting any application under this provision
4. Annual Leave

• 4 weeks paid per year
• Additional week for continuous shift workers
• Employers can direct employees to take annual leave if it is reasonable
• No cashing out of annual leave unless provision in award or agreement
  – If annual leave is cashed out, must have 4 weeks balance remaining
5. Personal/Carer’s and Compassionate Leave

• 10 days per year
• Award or Agreement may include provision to Cash Out leave (15 day balance remaining)
• Extra 2 days for compassionate leave per occasion
• Extra 2 days unpaid carer’s leave per occasion
6. Community Service Leave

• Jury Service
  – Only required to pay for first 10 days
  – Must pay base rate of pay
  – If employee receives jury service pay, only need to top-up pay to meet employee’s base rate of pay

• Voluntary Emergency Service
  – unpaid
  – State or Territory law may entitle employee to be paid
7. Long Service Leave

- Refers back to State Legislation
8. Public Holidays

• Employee is entitled to be absent
• Employer may request employees to work if reasonable
• Employee can refuse if reasonable
• Similar criteria to reasonable additional hours
### 9a. Employer Notice of Termination

<table>
<thead>
<tr>
<th>Years of Continuous Service</th>
<th>Notice Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than 1 year</td>
<td>1 week</td>
</tr>
<tr>
<td>More than 1 year but less than 3 years</td>
<td>2 weeks</td>
</tr>
<tr>
<td>More than 3 years but less than 5 years</td>
<td>3 weeks</td>
</tr>
<tr>
<td>More than 5 years</td>
<td>4 weeks</td>
</tr>
<tr>
<td>If over 45 years old and at least 2 years of continuous service</td>
<td>Additional 1 week</td>
</tr>
</tbody>
</table>
9b. Redundancy

• Excludes
  – Employees with less than 12 months continuous service
  – Employers who employ less than 15 employees
  – Employers who apply to FWA because obtain other acceptable employment for employee or can’t pay
### Redundancy Pay Period

<table>
<thead>
<tr>
<th>Employees period of continuous service</th>
<th>Redundancy Pay Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>At least 1 year but less than 2 years</td>
<td>4 weeks</td>
</tr>
<tr>
<td>At least 2 years but less than 3 years</td>
<td>6 weeks</td>
</tr>
<tr>
<td>At least 3 years but less than 4 years</td>
<td>7 weeks</td>
</tr>
<tr>
<td>At least 4 years but less than 5 years</td>
<td>8 weeks</td>
</tr>
<tr>
<td>At least 5 years but less than 6 years</td>
<td>10 weeks</td>
</tr>
<tr>
<td>At least 6 years but less than 7 years</td>
<td>11 weeks</td>
</tr>
<tr>
<td>At least 7 years but less than 8 years</td>
<td>13 weeks</td>
</tr>
<tr>
<td>At least 8 years but less than 9 years</td>
<td>14 weeks</td>
</tr>
<tr>
<td>At least 9 years but less than 10 years</td>
<td>16 weeks</td>
</tr>
<tr>
<td>At least 10 years</td>
<td>12 weeks</td>
</tr>
</tbody>
</table>
10. Fair Work Information Statement

- Provided to each new employee from 1 January 2010
- Prepared by Fair Work Ombudsman
- Statement provides information on legislation and employees rights at work
- Available from Fair Work on-line website
Modern Awards
Modern Awards

• Employee’s Exempted
  – Covered by Enterprise Awards
  – Employees not traditionally covered

• Employees who can Opt Out of Application
  – High Income Employees with a guarantee of annual earnings (> $108,300 to June 2010 and indexed annually)

• Reviewed every 4 years
Modern Awards

- Award employees must be employed under the Modern Award from 1 January 2010
- Rates of pay will need to meet the Modern Award after 1 January 2010, unless there are transitional provisions.
Modern Awards

- Types of employment
- Arrangements for when work is performed
- Overtime and penalty rates
- Annualised wage or salary arrangements
- Allowances
- Leave and leave loadings
- Superannuation
- Procedures for consultation, representation and dispute settlement
- Pay and conditions for outworkers
- Individual flexibility arrangements
Modern Awards

Transitional Provisions

• Rates of pay, casual or part-time loading, Saturday, Sunday, public holiday, evening or other penalty, shift allowance/penalty as per award-based transitional instrument until 30 June 2010

• Then transition up or down to meet Modern Award equivalent from 1 July 2010
Modern Award - Variations

• Examples include:
  – Nurses Award 2010
  – Medical Practitioners Award 2010
  – Health Professionals and Support Services Award 2010
  – Clerks Private Sector Award 2010
Unfair Dismissal

• Employee completed minimum employment period of:
  – 6 months
  – Or 12 months for small business with less than 15 full time equivalent employees (before 1 Jan 2011)

Period of employment is actual service (i.e. leave without pay is not counted)

• If casual
  – Been employed on a regular and systematic basis
  – Have a reasonable expectation employment would continue
• Eligible for Unfair Dismissal if:
  – Covered by Modern Award or Enterprise Agreement; or
  – Not covered by Modern Award or EA & is not a high income employee (currently $108,300 indexed).
How is a Dismissal Unfair?

- Harsh, unjust or unreasonable
- Dismissal was not a genuine redundancy
  - Employer no longer required persons job to be performed
  - Complied with Award/EA consultation procedures
  - Unreasonable to be redeployed
Small Business Fair Dismissal Code

• A Small Business is:
  – Employers with less than 15 full-time equivalent Employees
• Can terminate an employee in accordance with the “Code”
• Minimum employment period of Employee extended to 12 months
Unfair Dismissal Process

- Application lodged within **14 days** of dismissal

FWA will:
- Conduct initial inquiries
- Hold informal conference
- Seek mediated resolution
If not resolved, may proceed to arbitration
Remedies

- Reinstatement
- Re employment to another role
- If reinstatement is inappropriate compensation
- Compensation capped at 6 months remuneration
Your Questions Answered
Q: How do I determine and decide if a Modern Award applies to my workplace?

A: Every Modern Award has a “coverage” clause. Some awards are industry awards (i.e. apply to everyone in an industry), eg Aged Care Industry Award and others apply to specific classifications or types of employee) eg Nurses Award.
Q: If a Modern Award is applicable to my workplace, how will the remuneration aspects of the Modern Award apply to how we pay those employees?

A: You need to ensure your business pays the minimum wage set out in the relevant Award. However, most modern awards have transitional provisions which apply to wages and penalty payments.
Q: What do we need to know in relation to the minimum wage under the Fair Work Act?

A: That is the minimum you can pay someone in Australia where there is no applicable award. At the moment it is $14.31 per hour (or $543.78 per week for full-time employees).
Q: What are the flexibility provisions under the Fair Work Act and National Employment Standards and how should they be applied in the workplace. What are the compliance issues for employers?

A: Most modern awards have flexibility provisions that enable the employer and employee to agree on changing some of the provisions of the awards. However, the employee must be Better Off Overall.
Q: What is the definition of “immediate family” for the purposes of considering compassionate leave?

A: Immediate family is defined as:

- Spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or

- Child, parent, grandparent, grandchild or sibling of the spouse or de facto partner of the employee.
Q: What is the definition of additional reasonable hours for employees whose minimum or standards hours are defined either through Agreement/Award/contract? What should an employer be mindful of when managing additional reasonable hours of?

A: There is no definition. However, there is some guidance provided in relation to what should be considered in determining if additional hours are reasonable. Please see attached handout.
Q: How will executive and senior management contracts be impacted by the Fair Work Act? What are severance conditions based on?

A: The National Employment Standards apply to all employees.
Severance payments must be at least those in the NES. If there was no entitlement to severance payments prior to the NES, then service with the employer (for severance payments) is only deemed to commence from 1 January 2010.
Q: How is the $108,300 salary amount as excluded from the Modern Award coverage to be applied? Is it based on actual earnings or in the case of part-time employees, based on what they would have earned if they were full time?

A: It is not an automatic exclusion.

Existing employees or employees who during their employment are paid above the nominated salary level may opt out of Award coverage provided there is a guarantee of earnings.

There is a calculation for part-time employees.

New employee’s may be engaged subject to agreeing to a guarantee of earnings and not being covered by the relevant Award.
Q: Have or will % loadings to casual employment/contracts change?

A: The minimum loading for casuals in modern awards is 25% for ordinary time work, however, each award should be referred to for the exact percentage. The Minimum Wage Panel determine a base percentage for casuals who are award free which is currently 20%.
Q: How are the new redundancy provisions to be applied to maximum term contracted employees, Award and Agreement employees?

A: Award and Agreement employees will be entitled, on redundancy, to either the NES or an Award or Agreement redundancy entitlement, which ever is greater.

Maximum term employees will not be entitled to redundancy provision, provided the contract ends through the effluxtion of time.
Q: If we think we are compliant with the National Employment Standards, is that all we have to do? Should we be reviewing our human resource policies to ensure we are compliant?

A: Yes, we would encourage every employer to review all their employment instruments and HR policies and procedures to ensure they comply with the new legislation.
More Questions?

- Open Forum for More Questions
For further information

Or if you have any questions regarding the presentation the Presenter, Peter Fletcher can be contacted at:

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