



Workplace Relations **Legal Update**



27 April 2009

A new employment law regime: Fair Work Act We have been reporting on the status of the Federal Government's Forward with Fairness legislation that was introduced into Parliament on 25 November 2008. The Fair Work Act Bill, 2008 received Royal Assent on 7 April 2009. The Fair Work Act, 2009 (Act) is a complete replacement of the Workplace Relations Act 1996.

The Act will commence on 1 July 2009 with the National Employment Standards (NES) and modern awards commencing on 1 January 2010. Further interim transitional legislation will also be introduced in the near future.

The Act establishes Fair Work Australia, the "one stop shop" designed to deal with most issues relating to the employment relationship for federally regulated employers.

Key aspects of the Act include:

- Introduction of 10 NES
- Introduction of Modern Awards
- New unfair dismissal regime
- Employees are entitled to request flexible working arrangements to care for under school age children.

- Employees are entitled to request an additional 12 months parental leave after the expiration of the first 12 months parental leave.
- All employees will be entitled to severance pay upon redundancy, with the exception of employees working for a small business.

Timetable for Fair Work Act 2009

- Mid June 2009:
 - the Government aims to pass transitional bills to deal with amendments to laws relating to the Act and possibility referrals of industrial relations power to the commonwealth.
- 1 July 2009:
 - most of the Act will take effect while the Workplace Relations Act 1996 is repealed.
 - The fair work divisions of the Federal Court and Federal Magistrates Court will come into effect.
 - Fair Work Australia will be established.
 - Matters will be transferred from the AIRC to Fair Work Australia.
 - The Fair Work Ombudsman will take over from the Workplace Ombudsman.
 - The AIRC will complete the award modernisation process.

- 1 July 2010:
 - the NES and modern awards will commence.
- 31 January 2010:
 - the Workplace Authority will cease to exist.

NES

1. hours of work;
2. flexible working arrangements;
3. parental leave;
4. annual leave;
5. personal/carers leave;
6. community service leave;
7. long service leave;
8. public holidays;
9. notice of termination and redundancy;
10. fair work information statement.

Award modernisation

- Australian Industrial Relations Commission (AIRC) is creating new industry awards.
- Modern awards will be limited in scope and will contain industry specific practices that relate to NES.
- Employees earning over \$100,000 (to be indexed) are excluded from coverage.
- To date the following industries have been identified as priority industries for the development of modern awards:
 - coal mining industry
 - glue and gelatine industry
 - higher education industry
 - hospitality industry

- metal and associated industries
- mining industry
- private sector clerical occupation
- racing industry
- rail industry
- retail industry
- rubber, plastic and cable making industry
- security industry
- textile, clothing and footwear industry
- vehicle manufacturing industry.

- Modern awards must contain a flexibility clause to allow for variation of certain award terms at an enterprise level to meet the needs of employers and employees.

Unfair dismissal

- The Act overhauls the unfair dismissal regime.
- The employer with fewer than 100 employees exemption has been removed.
- The Act contains a small business code for dismissal. "Small businesses" are defined as those employing less than 15 employees.
- The operational reasons exemption has been removed.
- The six month qualifying period remains, with a new 12 month qualifying period applying to small businesses.

- A seven day time limit for unfair dismissal applications and a 60 day time limit for applications alleging unfair dismissal have been introduced.

Enterprise bargaining

- The Act contains provisions for multi-employer bargaining where employers have a common interest, eg franchisees of the same franchise.
- Special bargaining for low paid sectors allow for multi-employer bargaining and protected industrial action is not permitted in this context, however arbitration is available.

Please contact either Sam Ingui or Kristen Lopes should you have any questions regarding the FWA.

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