

## **A NEW WORKPLACE RELATIONS SYSTEM: FAIR WORK ACT 2009 (CTH)**

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The new national workplace relations system in Australia consists of the main and latest legislation, the *Fair Work Act 2009 (Cth)* which received Royal Assent on 7 April 2009. It is being supported by the *Fair Work Regulations 2009 (Cth)* which was released on 18 June 2009.

Certain elements of this new system came into effect from 1 July 2009 and the remainder of the Act will take effect from 1 January 2010.

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The following is a brief summary/overview of the main features of the new national workplace relations system:

### **A. NATIONAL EMPLOYMENT STANDARDS (NES)**

There are ten (10) minimum standards or employee entitlements that will be applicable to all employees from **1 January 2010** whether or not covered by awards, agreements or whether award or agreement free.

Effectively, these will replace the five (5) minimum standards that currently exist under the Australian Fair Pay and Conditions Standard. All contracts, policies and procedures will need to be reviewed to ensure compliance with this minimum.

1. *Basic rates of pay and casual loadings*
2. *Maximum hours of work*
3. *Annual leave*
4. *Personal/carer's and compassionate leave*
5. *Unpaid parental leave*

The NES, contained in Chapter 2, Part 2-2 of the FWA, consist of 10 legislated minimum standards (conditions of employment) applying to the employment of national system employees.

Below is a summary of the NES:

- Maximum weekly hours (Division 3)
- Requests for flexible working arrangements (Division 4)
- Parental leave and related entitlements (Division 5)
- Annual leave (Division 6)
- Personal/carer's leave and compassionate leave (Division 7)
- Community service leave (Division 8)
- Long service leave (Division 9)
- Public holidays (Division 10)
- Notice of termination and redundancy pay (Division 11)
- Fair Work Information Statement (Division 12)

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### **B. MODERN AWARDS**

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The Act provides that modern awards, which the Australian Industrial Relations Commission (AIRC) is *currently* in the process of developing, under the award modernisation process will be subject to a full review every four (4) years. However, an interim review will take place in 2012 to examine whether modern awards are operating effectively as a result of the award modernisation process.

Upon completion, modern awards will operate in conjunction with the National Employment Standards.

The award modernisation process is a 4-stage process to be completed by 31 December 2009. Therefore, modern awards do not take effect until **1 January 2010**.

Section 576J provides that the following matters may be included in modern awards:

- Minimum wages (including for junior employees, those with disability and/or those requiring training);
- types of employment (full-time, part-time, casual, shiftwork and facilitation for flexible working arrangements);
- When/how work is to be performed (rostering, hours, rest breaks and variations to working hours);
- Overtime rates;
- Penalty rates (for overtime, weekend, public holiday work and shift work);
- Annualised wage or salary arrangements;
- Allowances (car, petrol, disability - dependant on responsibilities and skills);
- Leave, leave loading and arrangements for taking leave;
- Superannuation (voluntary employee post-taxation contributions);
- Procedures for consultation, representation and dispute settlement; and
- Any matter specified in the award modernisation request to which the modern award relates.

All of the modern awards will contain a clause which allows an employer and an employee to enter into flexible work arrangements that effectively vary the modern award. However, such variation must result in the employee being better off overall than the employee would have been if no individual flexibility agreement had been entered into.

In addition, modern awards do not apply to "*high income employees*" (i.e. those with annual earnings over \$108,300.00).

A miscellaneous modern award will also be created and it will essentially apply to all employees who are not covered by any other award.

### **C. MINIMUM RATES OF PAY**

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Guaranteed, fair minimum wages are a key part of the new workplace relations system in order to establish a safety net for all employees.

Minimum rates of pay will be included in modern awards. In other words, modern awards will specify the minimum wages for all award-covered employees. This is contrary to the current position where rates of pay have been removed from awards.

## **A NEW WORKPLACE RELATIONS SYSTEM: FAIR WORK ACT 2009 (CTH)**

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Under the new workplace relations system, minimum wages and casual loadings will be set and adjusted by a specialist *Minimum Wage Panel* within the newly established body, Fair Work Australia. The panel will review the minimum wages annually. Updated rates of pay will take effect on or before **1 January each year**.

When setting and adjusting the minimum wages, the Minimum Wage Panel will take the following into consideration:

- the performance and competitiveness of the national economy (e.g. productivity, business competitiveness and viability, inflation and employment growth);
- promotion of social inclusion through increased workforce participation;
- relative living standards and the needs of the low-paid;
- the principle of equal remuneration for work of equal or comparable value; and
- providing a comprehensive range of fair minimum wages for junior employees to whom training arrangements apply and employees with disability.

Fair Work Australia will be able to vary award wages outside of its annual review in limited circumstances if it is satisfied that:

- there are work value reasons that justify the variation where the variation is occurring as part of a four-yearly review of modern awards; or
- if the variation is outside the four-yearly review and annual wage review processes, that there are work value reasons that justify the variation and it is necessary in order to achieve the modern awards' objective of a fair and relevant safety net.

The Minimum Wage Panel will also make a national wage order for employees who are not covered by a modern award.

### **D. CREATION OF FAIR WORK AUSTRALIA AND FAIR WORK OMBUDSMAN**

Fair Work Australia will replace the agencies/bodies that currently administer the *Workplace Relations Act 1996* (Cth) as part of a "one stop shop" and independent umpire to oversee the new national workplace relations system.

By **1 January 2010**, **Fair Work Australia** will replace the existing agencies/bodies, namely the Australian Industrial Relations Commission (AIRC), the Australian Industrial Registry, the Australia Fair Pay Commission, the Australian Fair Pay Commission Secretariat and the Workplace Authority.

The **Office of the Fair Work Ombudsman** will replace the existing agencies/bodies, namely the Workplace Ombudsman by **1 January 2010** and the Australian Building and Construction Commission by **1 February 2010**.

Specialist Fair Work Divisions will be created in the Federal Court and the Federal Magistrates' Court. These divisions will hear matters arising under the new workplace relations laws and exercise the judicial powers including in a new informal small claims jurisdiction for claims up to \$20,000.00. It will also adjudicate cases failing to comply with an award or NES obligation.

The new workplace relations system will also allow entitlements under a common law contract of employment that relate to subject matters described in the National Employment Standards (e.g. leave and notice of termination and redundancy) or

## **A NEW WORKPLACE RELATIONS SYSTEM: FAIR WORK ACT 2009 (CTH)**

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modern awards (e.g. wages, penalty rates and allowances) to be enforced in the Federal Court and the Federal Magistrates Court. This will make it easier for employers and employees to enforce related entitlements at the same time.

Both Fair Work Australia and the Office of the Fair Work Ombudsman commenced operation on the **1 July 2009**.

### **E. TERMINATION OF EMPLOYMENT - UNFAIR DISMISSAL**

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Unfair dismissal is a dismissal that is harsh, unjust or unreasonable. If an employee is made redundant, and the redundancy is genuine, then the dismissal will not be unfair.

The new workplace relations system has removed the exemption created under WorkChoices for unfair dismissal claims for employers who employ less than 100 employees.

The new unfair dismissal laws talk about the following:

- Who is eligible to make an unfair dismissal claim?
- Time limit for lodging an unfair dismissal claim
- What are the exemptions?
- What are the remedies available (i.e. reinstatement or capped compensation)?
- How will the new law affect small businesses?

The new unfair dismissal laws came into effect from **1 July 2009**.

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### **WANT TO KNOW MORE?**

We are ready to assist with any queries that you may have with respect to the new workplace relations system.

For more information regarding possible implications of the new workplace relations system for you and your Business, please do not hesitate to contact Jeannette Eid or Derrick Ting and their team.