



LEGAL ALERT

CHANGES TO EMPLOYMENT LAW TAKING EFFECT ON 1 JANUARY 2010

On 1 January 2010 the *Fair Work Act 2009* ("the Act") will commence full operation.

The Act makes significant changes to the regulation of industrial relations in Australia. Some parts of the Act commenced operation in 1 July 2009 including unfair dismissal laws and enterprise bargaining requirements. The following legal alert sets out the major changes introduced by the Act which will commence operation from 1 January 2010.

Key Changes from 1 January 2010

The two main changes which come into effect from 1 January 2010 are the introduction of Modern Awards and 10 new minimum employment conditions known as the 'National Employment Standards' ("NES").

1. Modern Awards

Modern Awards will completely replace almost all of the existing Federal and State awards.

Additionally, even if an employee is not currently covered by an award, a Modern Award may cover that employee. In particular, there will be a Miscellaneous Modern Award which will effectively apply to employees who are not covered by any other modern award (subject to some important exclusions such as managerial employees).

For a full list of all of the Modern Awards which have been published to date, please [click here](#). The process of finalising all Modern Awards is due to be completed on 31 December 2009.

Modern Awards contain terms about matters including minimum wages, overtime, penalty rates, allowances, type of employment, arrangements for when work is performed, annualised wage arrangements, leave, superannuation, consultation and dispute settlement.

What will change under modern awards?

As Modern Awards are a consolidation of each of the State and Federal Awards in a particular industry, it is highly likely that at least some of the terms of the Modern Award will be different from the currently applicable State or Federal Award.

However, where the Modern Awards provide different pay rates and penalty rates from those under the currently applicable award, most modern awards contain transitional provisions which phase in the change.

Can Modern Awards be excluded?

High income earners (over \$108,300 per annum) are not automatically excluded from Modern Awards, however, it is possible to agree to exclude a Modern Award provided certain preconditions are met.

Additionally, all Modern Awards will contain a term which allows employers and employees to enter into an Individual Flexibility Agreement ("IFA"). Under an IFA, provided the employee is better off overall, certain terms of the Modern Award may be excluded to suit the individual needs of the employer and employee.

Further, some modern awards include a provision which allows an employer to elect to pay employees an annual salary in satisfaction of the minimum hourly pay rates, penalty rates, allowances and annual leave loading contained in the Modern Award. However, if none of the above exclusions apply, employees must be provided with all of the terms set out in Modern Awards regardless of how much they are paid.

2. The NES

The NES sets out 10 minimum standards of employment which are applicable to all employees, including employees covered by AWAs, collective agreements or awards.

The NES provides some minimum conditions which are relatively similar to the previous minimum conditions under the Workplace Relations Act 1996. Those conditions are annual leave, personal leave, compassionate leave, public holidays, long service leave, notice of termination and maximum weekly hours of work (although this is slightly different).

The significant differences between the NES and the current minimum conditions include:

Redundancy pay

Currently, only employees covered by awards or agreements containing a right to severance pay are entitled to receive a severance payment in the event of redundancy. The NES entitles almost all employees to receive severance pay. The amount of severance pay depends on the employee's length of service but can be as high as 16 weeks pay. However, employees of small businesses are excluded.

Community Service Leave

This entitlement is completely new. Employees will now have the right to take community service leave in order to undertake jury service or other community service activities such as working for the SES or CFS. If the leave is for jury service, it is paid leave (at least in part). There is no limit on the number of days which may be taken as community service leave except that the period of leave must be 'reasonable' (unless it is jury service in which case there is no limit).

Right to request flexible working arrangements

Employees who have the care of a pre-school aged child or a disabled child may request flexible working arrangements. The working arrangements may be a change in hours of work, patterns of work or place of work. An employer can only refuse such a request on reasonable business grounds.

Right to request additional 12 months parental leave

As is currently the case, employees retain the right to 12 months unpaid parental leave under the NES. However, under the NES an employee will have the right to request an *additional* 12 months parental leave. An employer can only refuse such a request on reasonable business grounds.

Fair Work Information Statement

New employees (i.e. employees who start after 1 January) must be provided with a Fair Work Information Statement which sets out the employee's entitlements under the NES and modern awards. The Statement can be downloaded from Fair Work Online at www.fairwork.gov.au.

What should companies do as a result of the introduction of the Act?

Companies will need to ensure that their contracts of employment and policies and procedures satisfy their obligations under the NES and Modern Awards. If companies do not do so, they risk significant penalties of up to \$33,000.00 per breach.

For a checklist of steps which your company should undertake to ensure compliance, please [click here](#).

If you require advice or any further information, please contact:

Julia Swift

Associate, Employment

T +61 8 8228 1105

E JSwift@cowellclarke.com.au

Sam McGrath

Partner, Employment

T +61 8 8228 1164

E SMcGrath@cowellclarke.com.au

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