

Employment Law Update

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Changes to Employee Relations Laws

The Federal Government is currently in the process of replacing the current Workplace Relations Act 1996 (Cth) with the Fair Work Act 2009 (Cth) (the Act). There are many sweeping changes in the Act that employers should make themselves aware of as soon as possible. As such, it is critical that all employers understand the obligations that will be imposed upon them by the Act.

Any employer who requires immediate advice on their compliance requirements should contact our office.

The Act is to be implemented in two phases – the

first on 1 July 2009 and the second on 1 January 2010.

As of 1 July 2009, the following parts of the Act will come in to force:-

1. Unfair Dismissal;
2. Enterprise Bargaining;
3. Transmission of Business; and
4. Discrimination Laws.

The main changes in the Unfair Dismissal and Enterprise bargaining areas are set out below. The transmission of business and discrimination laws will be dealt with in the next update



Enterprise bargaining

The Act changes the role that unions play in the enterprise bargaining process. Under the Act, a single employer is entitled to make enterprise or collective agreements with its employees. In addition, multiple employers are permitted to make an enterprise or collective agreement with their employees.

Unions are only entitled to become parties to enterprise agreements if they represent one or more employees from a workplace.



During the month of July, we will be running seminars on the employment law changes and answering questions which you may have. These seminars are free and any clients of yours are welcome to attend. To register your interest please phone 03 9600 3411 or email emichael@citypacific.com.au

Unfair dismissal

Where an employee is dismissed in circumstances that are "harsh, unjust or unreasonable", the employee may make a complaint to the AIRC that they have been unfairly dismissed. Currently, there is a small business exemption to a claim for unfair dismissal. Under the WorkChoices system, the exemption is provided to all employers with less than 100 employees.

From 1 July 2009, the unfair dismissal exemption will only apply to employers who have less than 15 full time equivalent employees.

In order to determine whether your business falls within the exemption, you are required to perform the following calculation:-

(average ordinary hours worked by all employees over the four (4) week period immediately prior to the termination of the employee)

38

The above calculation will provide the number of full time equivalent employees working in your business. If this number is less than 15 then your business is exempt from the unfair dismissal laws and vice versa.



The Federal Government has indicated that from 1 January 2011, the laws will be amended so that the exemption will be based on a headcount of employees (i.e. if you have 15 or more individual employees regardless of the number of hours which they work then you will be subject to prosecution under the unfair dismissal laws).

In addition to the above, an employee must have also completed six (6) months of employment.

Alternatives to Redundancies

The current economic forecasts have caused several of our clients to seek advice on varying cost reduction paths to enable their businesses to cope with the short term downturn and in doing so to reduce the impact of changes on their most valuable asset – their staff.

There are varying ways of retaining employees while still being able to reduce the ongoing cost of business. These can include changing annual leave entitlements, requesting employees reduce their wages, requesting staff to move from full time to part time or even to transition employees to independent contractors.

Annual Leave

Employees do not always use their full annual leave entitlements in every calendar year. As such, the annual leave balances of employees can accrue to large amounts and represent significant liabilities to employers.

In this update we deal only with the options of Annual Leave and Reduced Wages. Changing

employees from Full Time to Part Time and/or Employees to Independent Contractors will be dealt with in the next update

There are two (2) ways in which an employer can request that an employee take their annual leave entitlements:-

1. Currently, the Workplace Relations Act 1996 (Cth) (the Act) allows an employer to request that a full time employee who has accrued at least eight (8) weeks annual leave take up to one quarter of that leave.

For example, if a full-time employee has accrued ten (10) weeks (i.e. 50 days) of annual leave then the employer is permitted to direct the employee to take up to one quarter of that leave (i.e. 12 ½ days).

2. An employer is also entitled to ask their employees to agree to take annual leave during quiet times. However, an employer can do no more than ask; an employee is entitled to refuse if their entitlement is less than eight (8) weeks.

Reduced Wages

Another option to prevent redundancies may be to negotiate wage reductions with staff. Employers are not permitted to vary a fundamental term of an employment agreement without the consent of the employee.

Employers are able to negotiate with employees to reduce their remuneration. Often the best way to do this is through open and frank meetings with employees and informing them of:

1. the amount that the employer is required to cut from the budget; and
2. that reducing remuneration is a way to limit or prevent redundancies.

It is important to note that should the consent of the employee not be received then the employer would be liable for a breach of contract claim.

An arrangement where an employee agrees to reduce their remuneration should be documented in an amended employment agreement. We recommend that any changes be discussed with our office before they are put in to force to ensure that they do not breach any of the employer's obligations under the Act.

Employment and Industrial Relations

We understand the need to provide clear, concise and timely advice. Whether it is in engaging a contractor, negotiating an enterprise bargaining agreement, drafting employment contracts or managing reductions in staff levels – the needs are the same, focused lawyers who understand the issues and are attentive to clients' needs.

City Pacific Law Firm can provide expert services in:

- Employment Law and Workplace Relations;
- Equal Opportunity and Discrimination;
- Privacy; and
- Occupational Health and Safety;

We provide advice in respect of managing disputes, including disputes in respect of executives, the interaction of Awards and contracts, infringement of intellectual property, wrongful dismissal and discrimination.

City Pacific Law Firm's employment and industrial relations services include:

Employment Agreements:

- Drafting contracts of employment including:
 - Individual Agreements;
 - Enterprise Bargaining Agreements; and
 - Fixed Terms Employment Agreements
- Drafting and advising on post employment restraints and enforcement of restraints;
- Advising on:
 - termination of employment agreements including, strategy, negotiation and drafting Deeds of Release and representation in matters related to dismissal from employment;
 - existing employment agreements;
 - audit and drafting of policies in relation to the internet, use of email, salary packaging, bullying, sexual harassment and discrimination;
 - Interpretation of awards and agreements;

Employment Disputes:

- Advising and acting for both employers and employees in unfair dismissal, discrimination and breach of contract matters;
- Workplace investigations and audits (including fraud);
- Advising on industrial disputes including industrial union right of entry, strikes and lock outs;

Other Employment Matters:

- Transmission of business arrangements, staff transfers and any other employment related issues arising from acquisitions or restructures;
- Taxation issues including:
 - a. PAYG Withholding;
 - b. Superannuation Guarantee Charge;
 - c. Payroll tax;
 - d. Personal Services Income.
- Advising:
 - on privacy issues and surveillance of employee;
 - employers on confidentiality and protection of intellectual property;
 - on the engagement and termination of senior staff;