



The *Fair Work Act 2009 (Act)* has entirely replaced the *Workplace Relations Act 1996 (WorkChoices)*. The majority of the Act becomes law on 1 July 2009.

What becomes law on 1 July 2009.....

Unfair Dismissal

As of 1 July 2009, unfair dismissal laws will apply to all employers. Employees will have 14 days to lodge a claim with Fair Work Australia (replacing the Australian Industrial Relations Commission) for any termination on or after 1 July 2009.

Employees who have been employed by a small business employer (less than 15 fulltime equivalent employees) for less than 12 months or by any other employer for less than 6 months will not be entitled to access unfair dismissal laws. Further, high earners who earn over \$100,000 per annum (unless covered by an award or enterprise agreement) will not be covered by unfair dismissal laws.

Aside from these exceptions, unfair dismissal laws will generally apply across the board. Employers who were not previously covered by unfair dismissal under WorkChoices will need to ensure that dismissals are not "harsh, unjust or unreasonable" and that procedural fairness is followed at all times.

Employers will no longer be able to retrench an employee for "genuine operational reasons". Employers will now need to show that there has been a "genuine redundancy". To show this employers will need to be able to demonstrate that;

1. the employer no longer requires the job to be done by anyone because of changes in the operational requirements of the enterprise;
2. the employer has complied with the obligation to consult about redundancy under any applicable award or enterprise agreement; and
3. it was not reasonable possible to redeploy the employee within the enterprise in all of the circumstances.

Small businesses will be required to comply with the Small Business Fair Dismissal Code (**Dismissal Code**). If compliance is satisfactory the dismissal will be deemed to be fair. The Dismissal Code requires only one warning (either verbal or in writing).

Enterprise Agreements

There will be no distinction between union and non-union agreements. There will only be a single type of enterprise agreement to be made between employers and employees. A relevant union can contact Fair Work Australia and request in writing to be covered by the agreement. Enterprise Agreements must pass the "Better Off Overall Test" (**BOOT**).

New Bargaining Regime

Employers must engage in good faith bargaining with unions that have majority support at the workplace.

New Institutional Framework

Fair Work Australia will replace the Australian Industrial Relations Commission, the Australian Fair Pay Commission and the Workplace Authority. The Fair Work Ombudsman will replace the Workplace Ombudsman.

Industrial Action

Industrial Action will be unlawful during the nominal expiry period of an Enterprise Agreement. Industrial Action will require a secret ballot.

Right of Entry



The major difference to WorkChoices is that unions with coverage can now hold discussions with prospective members even where there is no Award or Enterprise Agreement coverage at the enterprise.

Transfer of Business

The test is now whether the work the employee performs is the same or substantially the same as the work the employee performed for the old employer and whether there is a "connection" between the old employer and the new employer.

If so - the Award or Enterprise Agreement transmits not just for 12 months but until it is terminated or is otherwise replaced.

What becomes law on 1 January 2010.....

National Employment Standards

Employees will be covered by the National Employment Standards (**NES**) as of 1 January 2010. The NES will expand upon the 5 Australian Fair Pay and Conditions Standard (**Standard**). Employees will be entitled to request flexible working arrangements where they have carer responsibilities, to request an additional 12 months unpaid parental leave (fathers are now able to take the initial 12 months leave instead of the mother), to be paid for jury service and to take unpaid community service leave, to be paid redundancy pay of up to 16 weeks on a sliding scale depending upon the employee's years of service with the employer and to be provided with a fair work information statement. Please note that employers will be able to refuse a request for flexible working arrangements or for an additional 12 months unpaid parental leave on "reasonable business grounds."

Be prepared to revise your standard letters of offer and update your processes and procedures to deal with requests for flexible working arrangements.

Award Modernisation

The AIRC is currently in the process of creating new modern awards. The AIRC aims to considerably reduce the 3000 awards in existence to around 100 and to group all awards for the one industry together. The new modern Awards will come into force on 1 January 2010.

Check out the proposed structure of the modern award affecting your industry or workplace.

Contact:

Should you have any further questions or would like to discuss the new Fair Work Act 2009 further, please contact us and we will put you in touch with a member of Madgwicks' Workplace Relations team.