

# INDUSTRIAL RELATIONS ALERT

## Introduction

After spending almost two years adjusting to WorkChoices, employers will soon have to revisit the process following the election of the Rudd Labor Government.

At this stage it is difficult to be precise about how the new Government's system will differ from the present system. Labor has released some policy documents which give us a general indication of what to expect, however, the detail will only be known once Labor releases its legislation. The incoming Minister for Workplace Relations, Julia Gillard, has said that the changes will be made in two pieces of legislation. The first "Transition Bill" will be introduced in February 2008, and will deal with abolishing Australian Workplace Agreements. The second piece of legislation will be released around June 2008, and will concern Labor's changes to the unfair dismissal provisions of the current legislation.

At this stage, the major differences under the new system appear to be:

- The different bodies that regulate the industrial relations system, including the Australia Industrial Relations Commission ("AIRC"), will be combined into one body, called Fair Work Australia;
- Australian Workplace Agreements ("AWAs") will be phased out and parties will not be able to enter into new AWAs; and
- The exemption from unfair dismissal claims for employers with less than 100 employees will be abolished.

What follows is a summary of what we may expect in specific areas under the Labor government.

## Fair Work Australia

At present, the necessary functions in the industrial relations system are performed by the AIRC, the Australian Fair Pay Commission, the Workplace Authority, the Workplace Ombudsman and the Australian Building and Construction Commission. These will be replaced by one body called Fair Work Australia which will perform the following functions:

- Assist parties to resolve workplace disputes;
- Hear and resolve unfair and unlawful dismissal claims;
- Facilitate collective bargaining and enforce good faith bargaining;
- Review and approve collective agreements;

- Set and adjust minimum wages and award conditions;
- Monitor and ensure compliance with workplace laws, awards and agreements;
- Regulate unions and other registered industrial organisations; and
- Provide information about workplace matters.

## **Safety Net**

The government's legislation will include 10 national employment standards which will act as a safety net for all employees:

### **1. *Hours of Work***

The standard working week for a fulltime employee will remain 38 hours plus reasonable additional hours.

### **2. *Parental Leave***

Both parents will be entitled to separate periods of up to 12 months of unpaid parental leave. This means parents together can take up to 2 years unpaid parental leave. A parent may request up to an additional 12 months of unpaid leave, which can only be refused on reasonable business grounds.

### **3. *Flexible Work for Parents***

Parents will be entitled to request flexible work arrangements until their child reaches school age. Such requests may only be refused on reasonable business grounds. There is no greater detail as to what this may mean for employers.

### **4. *Annual Leave***

All employees except casuals will be entitled to 4 weeks' paid annual leave. This will be paid pro rata for part-time employees. Shift workers will receive an additional week of paid leave.

### **5. *Personal and Compassionate Leave***

All non-casual employees will be entitled to 10 days' paid personal leave, including carer's leave. This will be paid pro rata for part-time employees. The entitlement of up to 2 days' paid compassionate leave on the death or serious illness of a member of the employees family or household remains.

All employees will also be entitled to up to 2 days' unpaid personal leave for genuine caring purposes and family emergencies.

## **6. *Community Service Leave***

Employees will be entitled to leave for prescribed community service activities such as jury service or emergency services duties.

## **7. *Public Holidays***

Public holidays will be guaranteed and penalty rates or other compensation will be given where an employee works on a public holiday. The compensation will be set out in the applicable award.

## **8. *Information in the Workplace***

Employees must provide all new employees with a “Fair Work Information Statement”.

## **9. *Termination of Employment and Redundancy***

The policy contains scales for minimum notice periods prior to termination and redundancy pay, according to the employee’s length of continuous service. The top amount of redundancy pay is 12 weeks for employees with 10 years’ or more continuous service. Employers with less than 15 employees are not required to make these redundancy payments.

## **10. *Long Service Leave***

Labor will not create Federal long service leave entitlements, but does intend to work with the States to create nationally consistent long service leave entitlements.

## **Collective Agreements**

Under Labor, there will be no AWAs or statutory individual contracts. Collective agreements will also be retained.

Collective agreements must be lodged with Fair Work Australia for approval which is required to be given within 7 days. The collective agreement can then operate for up to 4 years.

The Labor Government will remove restrictions on agreement content and the bargaining participants will therefore be free to reach agreement on whatever matters suit them. This means that there will no longer be a requirement to ensure that prohibited content does not exist in a workplace agreement prior to lodgement.

The other requirements are that:

- the bargaining is conducted in good faith;
- that there are no unlawful terms in the agreement;
- that employees are better off overall against the safety net;
- that a majority of employees vote in favour of the agreement.

### **Industrial Action**

As currently the case, industrial action will not be protected except in particular circumstances during the bargaining period for a collective agreement. Industrial action taken during the term of a workplace agreement or in pursuit of pattern bargaining will not be protected. A secret ballot of employees will be required prior to industrial action.

Those affected by unprotected industrial action can seek remedies with Fair Work Australia and the courts.

### **Unfair Dismissal**

Labor will abolish the present restriction on unfair dismissal claims being brought by employees of employers with less than 100 employees. Under Labor, the following employees would be eligible to bring unfair dismissal claims:

- An employee who has been employed for 6 months and whose employer employs 15 or more employees;
- An employee who has been employed for 12 months; and
- An employee who is not covered by an award but who earns annual remuneration in an amount less than the indexed threshold.

Unfair dismissal claims must be brought within 7 days of the dismissal. The present requirement is for an employee to lodge an unfair dismissal claim within 21 days of the dismissal.

For further information please contact

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