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EMPLOYMENT & INDUSTRIAL RELATIONS UPDATE – TEN NATIONAL STANDARDS

In addition to the Transitional Legislation introduced by the Government which will abolish AWAs (see our February alert), the Government has released an Exposure Draft of its ten National Employment Standards (the “**Standards**”) that are expected to commence on 1 January 2010. The Government is calling for public feedback on the Standards.

The Standards are consistent with the Government’s Forward with Fairness Policy Implementation Plan and will represent the key minimum entitlements for all employees under the new system. Once enacted, the Standards will be secured in legislation so that they cannot be excluded or modified in a way that undermines the safety net.

TEN NATIONAL STANDARDS

The Standards consist of 10 legislated minimum conditions of employment for all employees covered by the federal system. The proposed Standards will establish a simple legislative framework of minimum entitlements and will operate in conjunction with the reformed award system to provide a safety net of minimum entitlements for all employees.

We have provided an outline of the Standards as follows:

1. Maximum weekly hours

The Standards provide that an employee’s hours of work for an employer must not exceed 38 hours in a week. This provision is subject to the rule that an employer may require an employee to work reasonable additional hours in the week.

2. Requests for flexible working arrangements

The proposed flexible working arrangements Standard applies if the employee is a parent of a child under school age or has a responsibility for the care of a child under school age.

The employee may make a request for flexible working arrangements in writing to their employer setting out the details of the change sought and the reasons for the change. The employer must give the employee a written response to the request within 21 days.

An employer can only refuse a request on “reasonable business grounds” and it will also be open to the employer or employee to suggest a modification to the employee’s request that might be more easily accommodated by the employer.

3. Parental leave and related entitlements

The proposed parental leave Standard provides each parent employee with an entitlement to be absent from work for separate periods of up to 12 months of unpaid parental leave. Unpaid parental leave must be taken in association with the birth of a child to an employee or their spouse or the adoption of a child below school age.

4. Annual leave

The proposed annual leave Standard provides that for each year of service, employees (other than casual employees) are entitled to 4 weeks of paid annual leave and shift workers are entitled to an additional week of leave.

5. Personal, carers and compassionate leave

The Standard provides that employees, other than casual employees, are entitled to ten days of paid personal/carer's leave for each year of service, 2 days of paid compassionate leave per occasion (e.g. on the death or serious illness of a family or household member) and 2 days of unpaid carer's leave per occasion to be used for genuine purposes or family emergencies if paid carer's leave is exhausted.

6. Community service leave

The proposed community service leave Standard provides an employee with a right to be absent from work to engage in prescribed community service activities such as jury service and emergency service duties.

7. Public holidays

The Standard also protects public holidays and provides that employees can refuse to work public holidays on reasonable grounds and will be entitled to be paid if they take the day off.

8. Fair Work Information Statement

Employers will be required to provide the Fair Work Information Statement to all employees. The statement will contain information about the Standards, modern awards, agreement making, the right to freedom of association and the role of Fair Work Australia.

9. Notice of termination and redundancy

The Standards provide that all employees who are employed in workplaces with 15 or more employees and are made redundant will be entitled to redundancy pay calculated in accordance with the AIRC's 2004 Termination Change and Redundancy Decision.

10. Long service leave

Until a national standard for long service leave is developed, long service leave entitlements under NAPSAs or state or territory laws will be preserved.

PROGRESS OF THE STANDARDS & TRANSITIONAL LEGISLATION

Interested stakeholders have been given until 4 April 2008 to make submissions to the Government about the draft Standards so that the legislation implementing the Standards can be prepared for Parliament's consideration.

Meanwhile, the Transitional legislation abolishing AWAs has been referred to the Senate Employment, Workplace Relations and Education committee for inquiry. The committee is now expected to issue its report before Easter.

HOW DOES THIS AFFECT YOU?

When the Standards are enacted the 10 minimum conditions will be guaranteed in legislation so that they cannot be excluded or modified in a way that undermines the safety net.

You have until 4 April 2008 if you would like to make submissions on the draft standards.



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