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## Limits on Use of Worker's Compensation Documents

Managing workers involves balancing multiple legal obligations, with such obligations often being in competition with the employer's operational interests.

Recent changes to industrial relations legislation will now impact on the use of worker's compensation documents. In particular:

- The *Industrial Relations Act* 1999 (Qld) ("the IR Act") affects the management of worker's compensation claims and the implementation of an employer's obligations pursuant to the *Worker's Compensation and Rehabilitation Act* 2003 (Qld). Specifically, the IR Act regulates the employer's use of worker's compensation claims documents.
- These documents are defined as "any document relating to the worker's application for compensation or claim for damages under the worker's compensation legislation." This is a broad definition, and, those employers with long-term injured workers will appreciate that claims documents can be extensive, including medical reports, training history, claims history and leave records.
- It is now an offence for an employer to use or obtain, or attempt to use or obtain, worker's compensation claims documents for a purpose relating to the employment of that worker.
- The documents may only be used for the management and rehabilitation of the injured worker and their return to work, and not for a subsidiary purpose related to the employment.
- These offences also apply to persons (third parties) generally in receipt of such documents.
- The intention behind these provisions is explained in the explanatory notes to the Bill by Minister Barton as being a provision to "prohibit persons from obtaining and using any documents that relate to a person's application for compensation or claims for damages for purposes related to selection for employment, including decisions to continue employment, such as in their probationary period."

### HOW THIS AFFECTS YOU

- You should ensure worker's compensation claims are managed discreetly, particularly in the case of self-insurers, and
- The data and information collected for the management of such claims should not be dispersed to the wider organisation or a third party to use for recruitment or human resources, or indeed, for a purpose not connected with the management of the claim itself.
- It is an offence to use documents other than for management and rehabilitation of injured worker.

## Industrial Action – Future Directions under WorkChoices

The right of employees and unions to take industrial action in support of claims made in respect of a proposed agreement will be maintained under the *Workplace Relations Amendment (WorkChoices) Act 2005*. However, the new provisions contained in the WorkChoices legislation (expected to take effect in March 2006) will place greater limits on the taking of industrial action and provide employers with more immediate remedies. Some of the key changes are outlined below.

### SECRET BALLOTS FOR PROTECTED INDUSTRIAL ACTION

- Employees and/or unions must make an application to the Australian Industrial Relations Commission (“AIRC”) prior to taking industrial action for a secret ballot order. Industrial action will only be protected if at least 50% of eligible employees vote, and of them, at least 50% vote in favour of taking industrial action.
- This process will be costly and time consuming for unions and employees and will allow the employer more time to reduce the impact of the strike, for example, by engaging a temporary workforce.

### ORDERS TO PREVENT/STOP INDUSTRIAL ACTION

- Currently, the AIRC *may* make an order to prevent or stop industrial action in circumstances where industrial action is happening or likely to happen.
- Under WorkChoices, the AIRC *must* make an order to stop or prevent industrial action if it appears that unprotected action is happening, threatened, impending or probable, and if it appears that unprotected industrial action is *being organised*.
- Further, under WorkChoices the AIRC *must* hear and determine an application within 48 hours, providing employers with a more immediate remedy.

### DAMAGES ARISING FROM INDUSTRIAL ACTION

- Employers will have more immediate access to the Court system following the taking of unlawful industrial action by employees and unions.

### GROUNDINGS FOR TERMINATING A BARGAINING PERIOD

- The grounds for terminating a bargaining period have expanded and the AIRC is now *required* to suspend a bargaining period where *third parties* are threatened with significant harm from industrial action.

#### HOW THIS AFFECTS YOU

- Changes are likely to act as a disincentive to unions and employees to take industrial action in the first place.
- Significantly increased powers will be available to stop industrial action once it has commenced.



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