

ALERT

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Fair Work Act reforms

As part of the government's commitment to 'improve the Fair Work laws', it has introduced the Fair Work Amendment Bill 2014 (Cth) (**FW Bill**) into parliament. The FW Bill proposes to amend some key aspects of the *Fair Work Act 2009* (Cth) (**FW Act**), including altering and/or removing some of the changes that only took effect on 1 January this year.

Our next HR Forum will focus on these FW Act reforms and will be held on Thursday 8 May 2014. If you are interested in attending this free forum, please respond to our invitation early – places are limited!

Employers (particularly those negotiating enterprise agreements) should be aware of the proposed changes, which are summarised briefly below:

Individual Flexibility Arrangements (IFAs)

Under the proposed changes, flexibility terms in all enterprise agreements will be required to provide:

- a 13 week notice period to unilaterally terminate the IFA (to align with the IFA termination notice that is contained in all modern awards);
- as a minimum, that IFAs may vary arrangements about when

work is performed, overtime rates, penalty rates, allowances and leave loading (to effectively stop unions from restricting what IFAs can deal with);

- that the IFA contains a statement from the employee regarding why the employee believes the arrangement meets their needs and leaves them better off overall.

IFAs will, however, permit non-monetary benefits to be taken into account in assessing whether the employee is better off overall under the terms of the IFA.

Employers will have a defence against an alleged contravention of a flexibility term if the employer reasonably believed that the requirements of the term were complied with at the time of agreeing to a particular IFA.

Protected action ballot orders

The FW Bill proposes to insert a new requirement that will prevent employees from taking protected industrial action unless bargaining has commenced (either voluntarily or because a majority support determination has been obtained).

Right of entry

The FW Bill proposes to:



- repeal a number of the amendments made to the FW Act last year, such as the requirement for an employer to facilitate transport and accommodation arrangements for union officials exercising entry rights at work premises in remote locations, as well as the provisions relating to the default location of discussions (and reinstate pre-existing rules);
- provide new eligibility criteria for determining when a union official may enter the premises (critically, union officials may only enter premises if the union is party to an applicable enterprise agreement or (if there is no agreement) where the employee has invited them); and
- expand the Fair Work Commission's (**Commission**) capacity to deal with disputes about the frequency of visits to the premises for the purpose of discussions.

Transfer of business

The FW Bill proposes that the transfer of business provisions will not apply in circumstances where an employee (on his or her own initiative) becomes employed with an associated entity of his or her former employer.

Unfair dismissals

Under the proposed changes, the Commission will not be required to hold a hearing or conduct a conference when determining whether to dismiss an unfair dismissal application where the application has no reasonable prospects of success, is frivolous or vexatious, or where the former employee has unreasonably failed to attend, comply with directions or discontinue an application after a settlement agreement has been reached.

Unpaid parental leave

The FW Bill proposes to introduce a requirement for an employer and an employee to hold a meeting to discuss a request for extended unpaid parental leave, before the employer can refuse the employee's request. This amendment does not impose any further obligation on the employer to accept the request.

Annual leave loading on termination

The FW Bill proposes to restore the historical position that annual leave loading is not payable on termination of an employee's employment unless it is expressly provided for in an applicable industrial instrument.

Leave on workers' compensation

The FW Bill proposes to reconcile inconsistencies across the various jurisdictions by amending the FW Act to clarify that an employee is not entitled to take or accrue any type of leave while they are absent from work and receiving workers' compensation. This will be particularly beneficial to those employers covered by the Commonwealth and Queensland jurisdictions.

Greenfields agreements

The FW Bill proposes to establish a new process for the negotiation of greenfields agreements by, among other things, extending the good faith bargaining rules to the negotiation of greenfields agreements and providing an optional three-month negotiation timeframe that enables the employer to apply to the Commission to approve an agreement where agreement could not otherwise be reached with the relevant union.

The Commission will also have to be satisfied that the agreement

provides for pay and conditions that are consistent with the prevailing standards and conditions within that industry.

Conclusion

Interestingly, a number of pre-election announcements were not contained in this FW Bill, such as the Coalition's suggestion that it would introduce a filtering system for bullying complaints. It may be that a further Bill will be put forward.

This FW Bill will (if passed) significantly alter the FW Act – again – making it difficult for employers to stay abreast of legislative changes. We will keep you informed of the progress of the FW Bill.

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