ALERT

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Case Study - Why tailor an Enterprise Agreement when I can get an Industry Agreement for $500?

Enterprise Agreements

An Enterprise Agreement (**EA**) is a legally binding document with serious consequences for an employer who fails to comply with it (whether deliberately or not). Employers must be very cautious about just accepting terms that a union or group of employees wants in an agreement. If the clause is not viable or sustainable from either a productivity or financial perspective, employers must stand firm. Having a clause that does not work for your organisation will not only cost your business money during the life of the agreement, but could also continue to haunt you for some time to come. Clauses in your EA can create an industrial precedent that can be difficult and in some cases (depending on your industry) impossible to remove.

Be careful

Cornwalls has recently been involved in helping a client resolve an issue where the short term gain in having a 'cheap agreement' did not pay off in the long term. This client had an industry standard EA that included contributions to a redundancy and portable long service leave scheme. The EA had a clause that required the contributions to be made to a particular division of the redundancy fund. That division covered an industry in which the employer was not operating and the rates for that division were significantly higher than the rates for other divisions of the same fund. The weekly payments made for accruals of severance pay and sick leave were four times higher than the accruals required to be made under the National Employment Standards (**NES**) and underlying Award. The 'overpayments' (in terms of the NES requirements) made by the employer in respect of its employees amounted to hundreds of

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thousands of dollars. The employer had no option but to continue to make the payments because it was legally required to pay to the fund due to the provision in the EA.

Seek advice

The employer in this case believed it was only paying the NES requirements. No one had ever explained the effect of the clause in the EA or that the payments to the fund were considerably in excess of the NES requirements. There are limited prospects of removing this clause in future EAs and it would have been better to refuse to include the provision at the outset or, if that was not possible, to renegotiate the amounts payable or the fund to which the payments were made. The employer was effectively deprived of this decision-making process because it was not advised of the issue at the time. While the employer had saved $3,500 to $4,500 on the drafting of the EA, clauses in that agreement had amounted to additional payments of hundreds of thousands of dollars. There is no doubt that the employer saved itself money and hassle during the agreement-making process, but at the same time unnecessarily incurred a very significant liability that will continue into the future.

Comment

Each workplace has its own operational requirements; two businesses in the same industry do not operate in the same way. These differences need to be reflected in your EA. Your EA is a legally binding document and you need to understand the legal effect of all clauses and whether any clause will create an unworkable industrial precedent for the future. This advice needs to be informed by an up to date knowledge of the constantly evolving law in this area and the bargaining process. At Cornwalls, we have a team of lawyers experienced in providing this advice and partnering with employers during the bargaining process.

Contact: Employment & Industrial Relations team

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