



Need For Employers To Review Contracts Of Employment

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The federal government's *Fair Work Act 2009* (Cth) comes fully into effect on 1 January 2010.

There are two very significant features of the new employment law regime which are directly relevant to the terms of employment contracts. Those provisions are the "National Employment Standards" and the new "Modern Awards". It is particularly significant that many occupations which were previously "award-free" will be covered by the much wider scope of the "Modern Awards", and which will extend to, for example, many professional employees. Together, they create the "safety net" of minimum conditions for all national system employees.

The National Employment Standards

The 10 matters covered by the National Employment Standards are:

1. Maximum weekly hours of work: This standard limits maximum weekly hours of work to 38 ordinary hours of work for full-time employees or to "reasonable additional" hours. Clearly, there will be a need for employers to bear in mind the risk of breaching this standard if they impose requirements which are not "reasonable". This will be particularly significant in previously award-free areas where there is a culture of long hours.
2. Requests for flexible working arrangements: This is a new requirement allowing parents or carers of children under school age, and those who have a child under the age of 18 with a disability, to request a change in working arrangements to assist with the care of the child. Employers need to be aware of their obligations, sensitive to the values reflected in that requirement, and careful in analysing and responding to, particular cases.

3. Parental leave: This standard is quite detailed but the basic concept is provision for unpaid parental leave for full-time employees who have worked for an employer for at least 12 months. However, it also applies to long-term casuals with an ongoing expectation of employment. The basis of the entitlement is responsibility for the care of the child. The periods are now considerably longer than previously.
4. Annual leave: The basic entitlement is four weeks annual leave which is accrued and paid according to the ordinary hours of work. There are some provisions for cashing out subject to certain exceptions.
5. Personal/carer's leave and compassionate leave: The basic principle is that this leave accrues at the rate of 10 days per year. It accrues at this rate and is no longer capped. There are some provisions for cashing out.
6. Community service leave: This standard creates a legal right to be absent for jury service, voluntary emergency management activity and other prescribed activity.
7. Long service leave: This leave will continue to be regulated by State and Territory legislation and Industrial Instruments. However, the federal government is working towards a national uniform long service leave entitlement.
8. Public holidays: The basic provision is that employees who are absent on prescribed public holidays must be paid their base rate of pay for the ordinary hours they would have worked on that day.
9. Notice of termination and redundancy pay: This standard is a significant change as it imposes an entitlement to redundancy for all employees. Previously, it was a "hit or miss" situation as to whether or not there was an entitlement to redundancy.
10. Fair Work Information Statement: Employers are obliged to give each employee the "Fair Work Information Statement"

before, or as soon as practicable after, the employee starts employment. The statement is to be prepared and published by the Fair Work Ombudsman.

Modern Awards

The Australian Industrial Relations Commission has been working on Modern Awards, and many of these are now available. Given that awards will now apply to many employees to whom they did not previously apply, there is a need for employers to examine existing contracts to ensure they are not in breach of the awards after 1 January 2010 and, of course, to take into account the awards when drafting contracts executed for future employment arrangements.

Need to review contracts

Employers need to be proactive to ensure they are not in breach of the new laws. ■

Andrew Knott has more than 30 years' experience in employment and industrial relations matters. He focuses on contractual, industrial, professional conduct and equal opportunity issues. In addition to his legal qualifications, Andrew is a Certified Professional, Australian Human Resources Institute. Andrew's principal clients are in the education sector, namely the Queensland Teachers' Union and the Queensland Independent Education Union. He also advises and represents both employers and employees in commercial, non-profit and government organisations.