

CG Workplace - November Bulletin

During the past week, significant developments have occurred in the area of workplace relations. This bulletin provides a brief snapshot of those developments and the practical implications for your business.

Proposed Changes to Workplace laws

On 13 November 2006, the Federal Government announced several changes it plans to make to the workplace relations legislation and regulations. It appears the aim of the proposed changes is to remove confusion regarding certain provisions contained in the original amending legislation.

The proposed changes include:

Employee redundancy entitlements on a transmission of business

- The proposal is that redundancy provisions that existed in pre-reform State or Federal Awards or agreements be protected for a period of 12-months following the transmission of a business. The parties may agree to vary the relevant redundancy provisions.

Personal leave

- This proposed change aims to remove confusion regarding the accrual of personal leave. All personal leave for full-time employees will now be calculated on the basis of a 38-hour week and will not include (in the calculation) actual hours worked over 38 hours per week.
- Additionally, you and your employees will be able to agree to cash out personal leave, subject to certain criteria. The criterion includes, for example, that an employee retain at least 15 days accrued personal leave at all times. Put another way, an employee may only "cash-in" their personal leave once they have accrued more than 15 days leave (and must retain this minimum amount of leave).

Stand down of employees

- The proposed change enables you to automatically stand down employees without pay where work is unavailable due to factors outside of your control, including for example, a natural disaster or industrial action. This 'employer right' will only apply if it is incorporated into your employment contracts.

This will create a further issue to consider when preparing your post-Work Choices employment agreements.

Record keeping requirements

- The proposed model is meant to reflect the pre-Work Choices requirements. In very general terms, this means that you will only be required to keep a register of hours for part-time and casual employees who are paid on an hourly rate basis. In addition, for your full-time staff, you will only need to keep a record of those hours for which an employee is entitled to overtime or other penalty rates, rather than all hours worked.

An issue that will need further consideration once the proposed changes have been finalised is the record keeping requirements for full-time staff who have agreed to forgo their entitlements to penalty rates and overtime. The requirement to keep records for these employees may still apply.

High Court Ruling on Work Choices validity

On 14 November 2006, the High Court of Australia dismissed the States' and Unions' challenges to the constitutional validity of the Work Choices legislation.

The majority of the High Court (5:2 with Justices Kirby and Callinan dissenting) have now confirmed that the Commonwealth's power to make laws relating to constitutional corporations is broad. From a workplace perspective, this means that a single, unified industrial relations system is valid however this will only be achieved if the State governments hand over the relevant workplace powers to the Commonwealth.

Beyond the workplace, the decision is significant because it suggests that the Commonwealth has the power (through its ability to make laws in respect to corporations) to create laws in respect to other areas which have traditionally been the domain of the States. This includes, for example, making laws in respect to education and health. Whether or not this will happen, is a question to be answered at a later date.

For further information about any of the above issues or other issues please contact:

Danny Clifford
Clifford Gouldson Lawyers

P +7 4688 2101
E danny@cglaw.com.au

Ben Gouldson
Clifford Gouldson Lawyers

P +7 4688 2100
E ben@cglaw.com.au

Disclaimer: This Bulletin is intended to provide a general summary only and should not be relied on as legal advice.

Privacy: We collect information to assist us in performing and promoting our legal services. We do not disclose information about you to any person, unless we are required to do so by law. If you no longer wish to receive our e-mails, please e-mail mail@cglaw.com.au and type "remove" in the subject line.

Copyright: This document and its contents remain the copyright of Clifford Gouldson Lawyers.