

Action Towards Fairness

*The Fair Work Act has seen changes implemented from January 1 which has implications for both employers and employees alike. **David Lalic** writes*

SINCE JULY 1, 2009 employment law has been governed by *The Fair Work Act 2009* ("the Act"). The new Act has made a number of important changes to employment law. In particular, changes have been made to unfair dismissal, the making of agreements and dispute resolution. In addition, it has introduced Fair Work Ombudsman.

While many changes have already taken place, some changes were implemented on January 1 this year.

ELIGIBILITY

Who is covered by the Act? A business will be covered by the Act if it is:

- A constitutional corporation
- An employer in the Australian Capital Territory, Northern Territory and Victoria
- An employer covered by a Federal Award before 27 March, 2006, but which is not a constitutional corporation.

CHANGES MADE BY THE ACT

If you are covered by the Federal System, you are likely to be affected by the National Employment Standards and the introduction of Modern Awards, both of which came into force on January 1.

HOURS

The introduction of the National Employment Standards limits employees to working 38 hours per week plus "reasonable additional hours" averaged over 26 weeks.

This provision applies to both full time and casual employees.

When considering "reasonable additional hours" employers should have regard to the following factors:

- Whether the additional hours are a risk to the employee's health and safety
- Whether it may cause problems for the employee's personal circumstances
- The needs of the business and the other staff members' entitlements to receive overtime payments.

REDUNDANCY PAYMENTS

Further, under the National Employment Standards, all employees are entitled to receive redundancy payments if their employment is terminated for reasons of redundancy.

For highly paid employees (more than \$108,300 as at August 2009) whose termination benefits may exceed this scale, it is possible to avoid the nasty surprise of a claim of statutory redundancy.

If this issue is relevant to you, make a note to seek legal advice.

FLEXIBLE ARRANGEMENTS AND PARENTAL LEAVE

The National Employment Standards provide for flexible working arrangements and 12 months unpaid parental leave to employees with more than 12 months continuous service or for long term casual employees. Either parent may apply for this parental leave. In our following article, we will address modern awards, contracting out of modern awards and termination of employees under modern awards.

FAIR WORK INFORMATION

Employees must provide each new employee with an Information Statement at the start of their employment. This can be downloaded from

www.fairwork.gov.au

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