

## COUNTING DOWN ....LESS THAN 7 WEEKS UNTIL FAIR WORK REPLACES WORK CHOICES

The Fair Work Act 2009 passed by the Australian Parliament in March of this year will commence operation on 1 July 2009. Two important areas of the law will change on that date requiring employers to also change the way they manage employees. Unfair dismissals will once again be every employer's issue, and enterprise bargaining outcomes will be controlled by unions.

### A new 'Fair dismissal system'

On 1 July the new *Fair Dismissal System* opens up the system to all employees, although an employer of less than fifteen *effective full-time* employees will be classified as a small business and required to comply with a different set of rules – the Small Business Fair Dismissal Code.

The consideration of whether or not a dismissal has been harsh, unjust or unreasonable will include:

- The validity of the reason for dismissal based on the conduct or capacity of the person;
- Whether the person was warned about the performance or conduct;
- The opportunity to respond to the allegations
- The impact of the size of the employer's business and their access to expertise in human resource management; and
- The participation of a support person or representative for the dismissed employee.

*Genuine operational reasons* for a dismissal, i.e. reasons of an economic, technological, structural or similar nature related to the employer's business, are no longer acceptable grounds to quash an application of unfair dismissal.

*Redundancy* will not be considered unfair dismissal unless the employee could reasonably have been re-deployed within the organisation or a related entity. This is a new dimension to the law of dismissal and a potential trap for the uninformed employer.

Employees of a *small business* must have been employed at least 12 months before qualifying to make an application of unfair dismissal. All other employees must have been employed at least six months. The other exclusions currently under the law will continue to apply.

A dismissal of an employee of a small business will not be unfair if it was *consistent* with the Small Business Fair Dismissal Code. The Code has not yet formally been declared by the Minister. However, according to information published on <http://www.workplace.gov.au/> in the circumstance of an underperforming employee, the Small Business Fair Dismissal Code will require the employer to give the employee a:

- valid reason, based on the employee's conduct or capacity to do the job,
- warning that the employee is at risk of being dismissed and
- reasonable chance to rectify the problem.

Multiple warnings are not required. It is desirable, but not necessary, for a warning to be in writing.

The Code also sets out the circumstances in which a summary dismissal (a dismissal without notice or warning) is warranted, including cases of theft, fraud and violence.

### Enterprise bargaining rules

New rules regulating the negotiation and making of enterprise agreements will also commence on 1 July 2009. *Good faith bargaining*, a concept new to Australian employment law, may force many reluctant employers to the bargaining table. Fair Work Australia will have power to order ballots of employees to assess their interest in collective bargaining and it may issue orders requiring an employer to meet confer and disclose information relevant to making an enterprise agreement.

The employer and employee collective agreement option will no longer exist. Unions will be the default bargaining representative in all negotiations for an enterprise agreement.

Agreements may include a wider range of subject matter than allowed under current laws. For example, payroll deduction of union fees and trade union training leave.

Agreements will not be approved unless they pass either the 'No disadvantage test' or from 1 January 2010, the 'Better off overall test'.

Further information and resources on the new system are available to subscribers to [Employee relations online for Employment services](#). Clients of Maguire Consulting may also access information by contacting [Paul Maguire](#).

## **Fair Work (Transitional provisions and consequential amendments) Bill**

The Fair Work (Transitional provisions and consequential amendments) Bill will be debated when the Australian Parliament resumes on 25 May 2009. The Bill deals with the transition from the current set of employment laws to the full implementation of its Fair Work Act on 1 January 2010 and beyond. In particular, the Bill proposes that Australian Workplace Agreements, certified agreements and collective agreements made under Work choices will continue in force until replaced by an enterprise agreement or otherwise terminated by the parties. However, the national employment standards will apply to all employees including those under such agreements. The Bill also establishes the interim arrangements for approval of agreements prior to the commencement of the national employment standards, modern awards and the definition of a small business for the next two years.

Employers who intend to continue to apply collective agreements certified by the Australian Industrial Relations Commission and workplace agreements made since 27 March 2006, that do not cover all of the matters covered by the National Employment Standards (NES) will automatically be bound by the NES from 1 January 2010.

## **Working from home and why?**

Almost a quarter (24% or 2.4 million) of people employed in November 2008 worked some hours at home in either their main or second job, according to figures released today by the Australian Bureau of Statistics.

According to the ABS press release '*catching up on work*' was the main reason given and this was reported by over one-third (34%) of people who worked at home in their main or second job, followed by '*wanting an office at home/no overheads/no rent*' (22% of people).

Men who worked some hours at home were most commonly managers or professionals (both 31%), followed by technicians and trade workers (18%).

Women who worked some hours at home were most likely to be professionals (39%) followed by clerical and administrative workers (23%).

The main reason for working from home was '*wanting an office at home/no overheads/no rent*' (37%), followed by '*operating a farm*' (21%) and '*flexible working arrangements*' (15%).

The proportion of employed people who worked only or mainly at home in their main or second job, remained unchanged from November 2005 to November 2008 at 8%.

[\[More\]](#)

## **Concessional super contribution cap cut to \$25,000**

The Government has announced important changes to the limits on concessional contributions to superannuation in its 2009 Budget.

It will cut the superannuation concessional contributions cap to \$25,000 per year (from \$50,000 per year) from 1 July 2009. The transitional concessional contributions cap for those aged over 50 will be cut to \$50,000 per year (down from \$100,000). The transitional cap is not indexed and from 1 July 2012, it will revert to the lower cap of \$25,000.

Concessional super contributions are taxed at 15% and come from pre-tax earnings, and include Superannuation Guarantee (SG), salary sacrifice, and deductible self-employed contributions.

## **What about non-concessional contributions?**

Non-concessional super contributions come from after-tax money, and include personal contributions and eligible spouse contributions. The non-concessional cap is currently \$150,000 per annum, or \$450,000 over three years (per individual across all super funds) if under 65.

According to the Budget papers this cap will remain unchanged for the moment. The planned increase to \$165,000 on 1 July 2009 was scrapped. In future, this cap will remain set at six times the concessional cap (currently \$25,000 per year).

## Super co-contribution maximum reduced from \$1,500 to \$1,000

The Australian government also announced in the 2009 federal budget that it will temporarily reduce the superannuation government co-contribution rate from \$1.50 for every one dollar made as an eligible personal contribution, to dollar for dollar.

For the period 1 July 2009 to 30 June 2012, the matching rate is 100% (i.e. dollar for dollar), up to a maximum of \$1,000 per annum for a \$1,000 personal contribution – the maximum will be reduced by 3.333 cents for each dollar over the lower income threshold

Further plans to increase the co-contribution up to \$1.25 for every dollar and then return it to \$1.50 for every dollar by 2014–15 have also been announced.

Eligibility criteria for receipt of the Government co-contribution remain unchanged.

[\[More\]](#)

## Super and ordinary time earnings

The Australian Taxation Office has just released the new Superannuation Guarantee Ruling SGR 2009/2 defining ordinary time earnings for the purpose of calculating minimum super contributions. The new Ruling will apply from 1 July 2009 and replaces Superannuation Guarantee Ruling SGR 94/4.

[\[More\]](#)

## Award modernisation quarterly report

The Australian Industrial Relations Commission has published its March 2009 Quarterly Report listing progress on its activities toward the modernisation of Australian awards.

The report provides a neat summary of the list of industries and awards that have been 'modernised' as well as the timetable to modernise the remaining industry and related awards.

[\[More\]](#)

## Labour Price Index shows strong growth in wages

The price of labour through wage increases increased on average 4.2% over the twelve months

to March 2009. Increases in the original indexes through the year to March 2009 at the industry level ranged from 2.8% for communication services to 5.7% for mining.

The Australian Bureau of Statistics Labour Price Index measures changes in the price of labour services resulting from market pressures, and is unaffected by changes in the quality or quantity of work performed. It is unaffected by changes in the composition of the labour force, hours worked, or changes in characteristics of employees (e.g. work performance).

[\[More\]](#)



### New in 2009

The industrial relations landscape is set to change and all employers will have to manage employment obligations under a new, tougher regulatory environment in 2009.

Therefore Maguire Consulting is pleased to announce a new specialist advice service created specifically for employers that unravels the complexity of employment regulation in Australia and enables you to easily comply with your legal obligations.

The employee relations online subscription service covers all employee relations issues including: industry pay rates, award conditions, leave and holidays, workplace agreements, termination of employment, employee tax and superannuation, health and safety.

Subscribers receive exclusive access to:

- fact sheets explaining employers' obligations under Australian employment laws
- downloadable guides, checklists, model policies, procedures and templates to apply in their own business
- a 1300 priority telephone line and e-mail access to expert advice
- regular updates and bulletins explaining changes to pay rates, award conditions, employment standards and state and federal laws.

### Who should subscribe?

Employee relations online is tailored exclusively to employers and their industry groups.

Employment services businesses can access employee relations online now. Other industries will come online as interest arises.

Visit [employeerelationsonline.com.au](http://employeerelationsonline.com.au) and take the tour. If the service interests you contact us and we will see how employee relations online can best be tailored to your needs.

Contact [info@employeerelationsonline.com.au](mailto:info@employeerelationsonline.com.au)

## AROUND THE STATES - What's making news in state jurisdictions?

### New South Wales

#### Workplace guide to managing influenza pandemic

The New South Wales Office of Industrial Relations has published a guide and fact sheet to help employers and employees to plan ahead and be better equipped to respond in the event of an influenza pandemic.

[\[More\]](#)

#### Know the deal video competition

Cash prizes are available to participants in the *Know the Deal* video competition. The competition, which closes on 31 July 2009, is designed to help young people learn about workplace rights and responsibilities, while meeting syllabus outcomes.

Contestants must produce a two minute video advertisement which delivers at least one key message about workplace rights and promotes the 'Young people at work' website.

[\[More\]](#)

### Victoria

#### Ways2work

The Victorian government has published a new website designed to inform employers and employees on how to balance work and family commitments. The site, amongst other things, provides useful information and resources summarising the employer's legal obligations.

[\[More\]](#)

## Queensland

### Review of parental leave

The Queensland Industrial Relations Commission is reviewing the effectiveness of parental leave provisions in the Queensland Industrial Relations Act. A discussion paper was released on 8 May and members of the public are invited to provide submissions to the enquiry.

[\[More\]](#)

## Western Australia

### Work flexibility

More than 190 people attended the morning Work Life Balance seminar run recently by the Labour Relations division of the Department of Commerce. Titled 'Flexibility in a tough environment', the seminar was addressed by three experts in the field of Work Life Balance. Keynote speaker Professor Barbara Pocock, the inaugural Director of the Centre for Work + Life at the University of South Australia, left the audience in no doubt the landscape of the Australian workplace is changing rapidly in the current economic climate.

[\[More\]](#)

## South Australia

### Resolving apprenticeships disputes

Under the Training and Skills Development Act 2008 (the 'TSD Act') the South Australian Industrial Relations Commission assists apprentices/trainees and their employer with the resolution of disputes between parties to a training contract. It also has power to deal with:

- Grievances by one party to the training contract about the conduct of the other party to the training contract;
- The suspension of an apprentice or trainee on the grounds of serious and wilful misconduct;
- A challenge by an employer to a compliance notice issued by the Training and Skills Commission on the grounds that it has complied with the compliance notice.

The Commission has published a guide to the procedures that employers may find useful.

[\[More\]](#)