



FAIR WORK ACT



FACT SHEET

The Rudd Labor Government's *Fair Work Act* came into effect from 1 July 2009. Some of the changes will take effect as at 1 July 2009 and some will not take effect until 1 January 2010. Some of the key features of the new laws are set out below. This is a summary and is far from exhaustive. Also being new law it is untested.

The legislation is a vast improvement on *Work Choices*. As we learnt however during the *Work Choices* era, we cannot rely on legislation alone to secure workplace rights. It is only by working together across workplaces and industries that we secure improvements in wages and conditions, fairness, safe and healthy working environments and a strong voice in our industry's future.

If you require more information, would like information bulletins for your co-workers or a workplace presentation, please contact your ASU Office.

SAFETY NET

The new safety net for workers will be their relevant 'modernised' Award (see more below) and ten National Employment Standards (NES). The NES will apply from 1 January 2010. The ten standards cover –

- ◆ maximum weekly hours of work;
- ◆ the right to request flexible working arrangements for parents with children under school age;
- ◆ parental leave;
- ◆ annual leave;
- ◆ personal/carer's leave and compassionate leave;
- ◆ community service leave;
- ◆ public holidays;
- ◆ notice periods and redundancy pay; and
- ◆ provision of statement to employees setting out their rights and entitlements under new laws.

MODERN AWARDS

The Australian Industrial Relations Commission has been charged with creating new Awards predominantly based on industries (however there will still be a general clerical award) which will apply Australia wide. This will considerably reduce the number of Awards that exist. The nature of the process means that some Award conditions may improve and others will reduce. In the clerical award for instance, as the Act currently stands, when a worker earns \$44,000 and above, they are exempted from certain Award provisions – your ASU is however lobbying strongly to have this removed. The new Awards will take effect from 1 January 2010.

The Awards must also contain a 'flexibility clause' which will allow individual employers and employees to negotiate individual arrangements on specified matters. However such arrangements must leave the employee better off overall and provide for termination of the agreement on arrangements by either party with notice.

Employees earning a guaranteed income of over \$100,000 will be exempt from Award coverage.

COLLECTIVE BARGAINING

There will no longer be a distinction between Union and non-Union agreements. If a Union has members at a particular workplace then it is entitled to be named in the Agreement.

If employees wish to be represented by their Union in negotiations then the employer must negotiate with the Union.

If more than 50% of employees want a collective agreement in their workplace then the employer must agree to negotiate in 'good faith' which means they must genuinely endeavour to reach agreement (as must the Union and employees). Fair Work Australia (see below) can enforce 'good faith' bargaining.

Collective agreements must leave employees "better off overall" than the relevant award and NES. From 1 January 2010 the NES can over-ride any provisions that are less than the NES.

Multi-employer agreements are permissible. There is a special 'low paid' stream which allows Fair Work Australia in some circumstances to arbitrate an agreement outcome for workers and employers in industries where collective agreements have not been a feature.

Most (but not all) restrictions on what can be bargained for have been lifted however all matters on which you bargain must pertain to the employer/employee relationship.

Statutory individual contracts (eg AWAs) are no longer permissible although existing ones can be allowed to run their course.

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UNFAIR DISMISSAL

Rights have been restored for workers to take unfair dismissal actions against their employer. However if you are employed in a business with less than 15 employees your rights are more limited in that you need to have 12 months service (as opposed to 6 months for larger employers) to access unfair dismissal provisions and the employer only needs to demonstrate they complied with the new 'Fair Dismissal Code' to justify termination (although unlawful dismissal provisions still apply).

If you work for an employer with more than 15 employees then your unfair dismissal rights are mostly restored to what they were pre *Work Choices*. Unfair dismissal provisions do not apply if you earn more than \$100,000 per annum (indexed) and if you are not covered by an Award.

Employees have 14 days from the date of dismissal to lodge an unfair dismissal claim.

TRANSMISSION OF BUSINESS

The rules relating to transmission of business have strengthened; relevant Awards and Agreements follow the employees and new employees are also covered.

PROTECTION TO EXERCISE WORKPLACE RIGHTS

An employer must not take adverse action against an employee for exercising a workplace right. Workplace rights include –

- ◆ the right to be absent from work when sick;
- ◆ the right to refuse to enter an individual flexibility agreement;
- ◆ exercising rights as an OHSW representative or Union Representative (where the role is recognised in an Award or Agreement);
- ◆ engaging in industrial activity;
- ◆ joining and being represented by a Union; and
- ◆ participating in lawful industrial activities or making a complaint in relation to an employee's employment or participating in proceeding under workplace laws

Unions are able to enforce workplace rights on an employee's behalf.

PROTECTED INDUSTRIAL ACTION

As under *Work Choices*, protected industrial action can only be taken during bargaining for a new Agreement and where the old Agreement (if any) has passed its expiry date.

Any protected industrial action must have been authorised by a secret ballot of the employees concerned and any protected action must occur within 30 days of the declaration of the ballot. Fair Work Australia (see below) has the power to terminate or suspend industrial action in certain circumstances and in some cases is able to arbitrate a settlement.

RIGHT OF ENTRY FOR UNIONS

Right of entry provisions have been slightly improved. Provided they have a permit and give at least 24 hours notice, Union officials can enter workplaces to –

- ◆ investigate breaches of the Act, awards and agreements (there are some parameters around this);
- ◆ hold discussions with members or potential members during mealtimes or other breaks; and
- ◆ exercise right of entry under relevant State or Territory OHSW law.

Unions can now enter any premises where they have members or potential members, regardless of whether those persons are covered by an award or agreement binding on the Union.

Employers can provide better right of entry (eg, paid time meetings) if they choose. The above are just the minimum provisions.

ESTABLISHMENT OF FAIR WORK AUSTRALIA

Fair Work Australia will effectively replace the Australian Industrial Relations Commission from 1 January 2010. Its role will include –

- ◆ setting and adjusting award wages;
- ◆ reviewing and if necessary varying awards;
- ◆ making bargaining orders (see Collective Bargaining above);
- ◆ approving agreements;
- ◆ supervising the authorisation and taking of industrial action;
- ◆ conciliating disputes;
- ◆ arbitrating disputes where parties agree or agreements provide for arbitration and in other limited circumstances; and
- ◆ determining unfair dismissal claims.