



Fair Work Bill 2008 – What do the changing laws mean for my business?

There has been much discussion over the past weeks and months about the proposed changes in IR Laws and the effect that it will have on businesses, particularly during very tough economic times.

While much discussion happens in the office and over the dinner table, even more discussion is of course happening between key stakeholders such as Unions, Business Groups and different political representatives.

Many laws will come into effect on July 1 2009 and with this date coming around quickly, employers are asking "What does this mean for my business?"

What's instore?

The government has introduced the first of 2 transitional bills to deal with the new federal workplace relations system as set out in the Fair Work Bill 2008.

The first transitional bill has 3 main components:

- It repeals the previous legislation (i.e. the *Workplace Relations Act 1996*) (other than Schedule 1 and 10) and now calls it the *Fair Work (Registered Organisations) Act 2009*.
- It makes transitional arrangements to move employers, employees and organisations from the old system to the new system
- It makes consequential amendments necessary for the operation of the new Fair Work Bill i.e. it allows the establishment of the Fair Work Divisions of the Federal Court and the Federal Magistrates Court.

The second transitional bill deals with amendments to Commonwealth statutes and the referral of powers, if any, by the states.

July 1 2009 Changes...

General Protections

Under previous legislation employees were granted protections regarding discrimination, freedom of association, unlawful termination and sham independent contractor arrangements.

The Fair Work Bill requires that any current or prospective employee does not suffer any adverse action such as dismissal or prejudice such as being declined a promotion because of prohibited attributes such as race, sex, disability, religious affiliation and so on. This has been expanded to include reasons such as carer or family responsibilities.

This is further enforced with the National Employment Standards (NES) relating to Flexible Work Arrangements due to carer responsibilities being introduced in Jan 2010.

What does this mean for your business?

Employers will need to ensure they have thorough policies and procedures for dealing with employees about many matters such as recruitment, performance management, flexible work requests, termination and redundancy and so on. Gold Seal has a suite of HR/IR materials dealing with these matters and the helpline can be contacted for further assistance.

Unfair Dismissal



The most significant changes for Employers will be the changes to unfair dismissal laws effective July 1 2009.

Previously an employee could only make an unfair dismissal claim if the business they worked in employed more than 100 and they had been with the business for more than 6 months.

During the transition period the **new legislation states that employees can now lodge unfair dismissal claims against an employer if the business has more than 15 full time* (see note below) employees and they have been employed for more than 6 months. If the business has less than 15 full time employees, the worker must have been employed for 12 months or more in order to make an unfair dismissal claim.**

If an employee is a non-award employee or is not covered by a collective agreement and they earn more than \$100,000 they cannot claim for unfair dismissal.

If the business genuinely makes redundancies then an employee cannot claim unfair dismissal.

The employee will in most cases only have 7 days to lodge a claim, with the preferred remedy being reinstatement and if this is not possible, compensation in lieu of reinstatement.

A Fair Dismissal Code for businesses with less than 15 employees has been created. When assessing a claim for unfair dismissal, Fair Work Australia will consider the employer's compliance with the code.

What does this mean for your business?

The importance of Performance Management will increase so that employees underperforming have an opportunity for improvement as dismissal will not be as easy as it was under previous legislation. Again, employers will need thorough documentation to deal with Performance Counselling matters and if this is unsatisfactory, to demonstrate fairness in the dismissal process. Gold Seal has a suite of HR/IR materials dealing with these matters and the helpline can be contacted for further assistance.

Gold Seal is currently creating a template based on the Fair Dismissal Code for use by Employers with less than 15 employees. This will be available in the coming months, ready for the changes in law commencing July 1 2009.

** It should be noted that the definition will change from 1 January 2011 to 15 employees whether they be full time, part time or casual.*

New Bodies

The Workplace Ombudsman and Workplace Authority will be replaced by the Fair Work Ombudsman as of July 1 2009.

Fair Work Australia will be an independent statutory body responsible for many functions:

- Facilitating collective bargaining
- Approving enterprise agreements
- Adjusting minimum wages and award conditions
- Entertaining unfair dismissal claims
- Dealing with industrial action and settling workplace disputes.
- Using its broad powers to resolve disputes in an informal and non-adversarial way through compulsory conferences, conciliation and mediation, and can make binding unfair dismissal decisions



The Australian Fair Pay Commission, responsible for reviewing the Federal Minimum Wage and Award Pay scales, will cease to exist from July 31 2009.

The AIRC and Australian Industrial Registry will cease to exist on 31 December 2009.

The new divisions of the Federal Court and Federal Magistrates Court will operate from July 1 2009.

What does this mean for your business?

This change in structure will not require any action from businesses but should create a better working model for employers when obtaining advice and information relating to workplace relations matters. Gold Seal operates a helpline service to provide advice and support via phone or email.

Modern Awards

Modern awards will replace existing awards and will cover a specific occupation or industry. The modernisation process is still underway with all modern awards to be effective Jan 1 2010. However effective July 1 2009 all existing awards and all new modern awards will not apply to High Income employees, i.e. those earning more than a guaranteed amount (\$100,000 pa but indexed annually).

What does this mean for your business?

Employers will need to ensure they have thorough employment agreements detailing employee entitlements and obligations as the relevant award will no longer apply to high income employees. Gold Seal has a Common Law Agreement Template available and is recommended for employees in this situation.

Agreements

Any business bargaining for a collective agreement at July 1 2009 will be required to restart the bargaining and industrial action process under the new Fair Work Act requirements which include good faith bargaining.

Good faith bargaining requires that all parties will:

- Attend and participate in meetings at reasonable times
- Disclose relevant information in a timely manner
- Respond to proposals made by other bargaining representatives in a timely manner
- Give genuine consideration to the proposals of other bargaining representatives and provide reasons for responses to the proposals
- Refrain from capricious or unfair conduct that undermines freedom of association or collective bargaining

Good faith bargaining does not require parties to make concessions or sign an agreement if they do not agree with the terms. It is about the process and conduct of the parties during negotiations.

What does this mean for your business?

Any employer currently negotiating a collective agreement will need to be mindful of the requirements under the new legislation regarding bargaining in case their bargaining period extends beyond July 1 2009.

Changes for 2010...

Wages and Awards



Fair Work Australia will take responsibility from the Australian Fair Pay Commission in determining the minimum wages which will now be included in awards. A review of award wages will occur every 4 years.

Where an employee's take home pay is reduced as a result of the award modernisation, a take home pay order will be introduced to ensure the employee is not worse off.

Where an employee's take home pay is increased as a result of the modernisation process the AIRC may 'phase in' pay increases so as not to cause financial hardship for businesses.

National Employment Standards (NES)

January 1 2010 will see the introduction of the 10 NES which will work in conjunction with the modernised awards to set a safety net for employees. Those employees earning more than \$100,000 will not be covered by the relevant award.

The proposed NES include:

- Maximum weekly hours of work
- Requests for flexible working arrangements
- Parental leave
- Annual leave
- Personal/Carer's leave
- Community Service leave
- Long Service leave
- Public Holidays
- Notice of termination and redundancy pay
- Fair Work statement

Some of the NES include significant changes such as an extension on Parental Leave from 12 months to 2 years and an entitlement to redundancy pay for all employees.

Stay tuned for further updates or contact Gold Seal directly for assistance.

Further Assistance

For assistance or guidance on these or any HR/IR matters contact 03 9510 5100 or email hrservices@goldseal.com.au