

EMPLOYMENT STANDARDS CHANGE AGAIN – THE RUDD WAY

The Rudd Government has released the National Employment Standards (**NES**) as part of the new employment law regime – Forward with Fairness. The NES will apply to all employees in the Federal system regardless of industry, occupation or income. Whilst Work Choices provided five minimum conditions, the NES will provide 10 minimum conditions.

1. Maximum Weekly Hours of Work

Standard working hours for a full time employee will continue to be 38 hours per week, plus reasonable additional hours. Reasonableness will be determined having regard to a number of listed factors, including penalty rates or other compensation for the additional hours worked and the needs of the business. Rules dealing with averaging of hours will not be included.

2. Requests for Flexible Arrangements

An employee who is a parent of, or has caring responsibilities for, a child under school age will be entitled to request flexible arrangements. Employees must have 12 months continuous service before they can make this request. The employee must make the request in writing and include their reasons. The employer can only refuse the request on “reasonable business grounds”, within 21 days.

No doubt, this may be considered the most controversial of the Standards for businesses who have not yet embraced workplace flexibility.

3. Parental Leave

Each parent will have a right to 12 months’ unpaid parental leave in relation to the birth or adoption of a child. In addition, if one parent sought to take a longer period of leave, they can ask their employer for an additional period of up to 12 months’ unpaid leave. The employer could only refuse this request on “reasonable business grounds”.

4. Annual Leave

As is currently the case, all full time employees will be guaranteed 4 weeks’ paid annual leave, with an extra week for shift workers. Part time employees would receive a pro rata amount. Casual employees would not be entitled to annual leave.

5. Personal, Carer’s and Compassionate Leave

All full-time employees will receive 10 days’ paid personal and carer’s leave per year of service. Employees would also be

entitled to 2 days’ paid compassionate leave per occasion. Casual employees will not receive these entitlements. If paid leave entitlements are exhausted, all employees will be entitled to 2 days of unpaid personal leave for “genuine caring purposes and family emergencies”. This unpaid leave will also be available to casuals.

6. Community Service Leave

Employees will be entitled to be absent from work to engage in prescribed community service activities, such as jury service and defined emergency service duties, as unpaid leave.

7. Long Service Leave

The NES will preserve long service leave entitlements in an AWA or workplace agreement, or where there is no such agreement, in pre-modernised awards, NAPSA’s and state or territory laws, until national uniform long service leave standards are attained.

8. Public Holidays

Employees will be entitled to be absent from work on public holidays, and to be paid for the ordinary hours they would have worked at their base rate of pay.

9. Notice of Termination and Redundancy

There are minimum notice periods in respect of a termination of employment, though no change to a serious misconduct scenario, where notice is not required to be given. The most significant implication of the NES is the introduction of a statutory entitlement to redundancy pay.

10. Fair Work Information Statement

Employers will be required to provide all new employees with a “Fair Work Information Statement” as soon as practicable after they commence employment.

SUMMARY

The Rudd Government will shortly issue a revised Award Modernisation Request to the Australian Industrial Relations Commission (AIRC) attaching the NES to assist in its task of modernising awards. The new standards will come into effect **1 January 2010**. Employers may need to review their policies and employment contracts accordingly.

If you would like any further information on this topic, please contact Ilona Teremi on 02 8239 6503 or Ilona.teremi@kreissonlegal.com.au