

WorkChoices and your business What does it really mean for employers?



Practical Advice - Commercial Outcomes

Cynthia Maclou – Senior Solicitor
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WorkChoices and your business

What does it really mean for employers?

WorkChoices

A simpler system?

WorkChoices and your business

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Agenda

- Who is covered by WorkChoices
- Terminations – Unfair Dismissal
- Minimum Standards under WorkChoices
- The transition to WorkChoices
- Agreement Making
- Record Keeping

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What does it really mean for employers?

“WorkChoices” – a national system mainly based on the Corporations power

Who is covered

- Trading, financial and foreign corporations
&
- All employers in Victoria, the ACT & the NT

Who isn't covered

- Partnerships, sole traders (unless there is a subsequent incorporation)

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Unfair Dismissal

Corporations with 100 employees or less

- All employees are excluded from pursuing unfair dismissal claims
- 100 employees based upon a head count – include full-time, part-time, and long term casuals
- Head count also includes the dismissed employee
- Also includes employees of “related bodies corporate”

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Corporations with more than 100 employees

- Unfair dismissal jurisdiction continues to apply BUT some employees still cannot bring unfair dismissal claims:
 - 6 month “qualifying period” required before employee is eligible to bring a claim for unfair dismissal (or shorter or longer period by written agreement)
 - Seasonal employees excluded
 - Casuals and trainees
 - Salary ceiling - \$98,200 (subject to indexation)

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Unfair Dismissal Exclusion for ALL Employers (regardless of size)

- Terminations due to “genuine operational requirements” are excluded
- Definition is “economic, technological, structural or similar nature”

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Unlawful Termination

- All employees protected against unlawful termination
- If an employer is sued for unlawful termination they must prove no “prohibited reason” for dismissal
- Unlawful termination claims are costly to defend
- Penalties for unlawful termination:
 - 6 months pay
 - reinstatement

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Fair Pay and Commission Standard

STATUTORY CONDITIONS STANDARDS

- Minimum Wage Rates
- Maximum number or ordinary hours
- Annual Leave
- Parental Leave
- Personal Leave

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Minimum Wage rates

- AFPC adjusts the standard Federal Minimum Wage

Annual Leave

- 4 weeks per year (an additional week for shift workers)
- May cash out two weeks per year by agreement

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Maximum number of ordinary hours

- 38 hours per week plus “reasonable additional hours”
- Can be averaged over 12 month period by agreement
- Employee may refuse “unreasonable” additional hours

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Paid Personal Leave / Carer's Leave

- 10 days per year can be used for sick leave or carer's leave
- 2 days paid compassionate leave per year per occasion to a maximum of 10 days
- If compassionate leave exhausted, can take 2 days unpaid leave per occasion
- No limit on the number of occasions (will be unpaid leave)
- Cumulative if unused
- Employer can ask for documentation even for 1 day's sick leave and it can be given by a "health care provider"

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Transitional Matters

- Commenced on 27 March 2006
- Intention is to move to a Federal System in 5 years time
- Current instruments such as Federal Awards, Federal Agreements (collective and AWAs), State Awards, State Agreements still relevant during transitional period but must be reviewed in light of WorkChoices.

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Federal Awards

- “Allowable Matters”
- “Non Allowable Matters”
- “Preserved matters”
- “Non Allowable matters” preserved if more generous than Standard

State Awards

- From 27 March 2006 become “Notional Agreements Preserving State Awards” (NAPSA)
- Prohibited Content unenforceable and may be removed by OEA
- Some NAPSA terms preserved if more favourable than Standard.

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Agreement Making

- Simpler and faster process
- Provide employees with an Information Sheet and copy of agreement to consider over 7 days
- AIRC no longer considers agreement – now lodge with Employment Advocate
- Approved within 14 days
- Workplace Agreement commences on lodgement

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- Agreement must:
 - match or exceed the minimum requirements of the Australian Fair Pay and Conditions Standard
 - have a nominal expiry date which cannot exceed 5 years
 - Contain procedures for settling disputes
 - Include any protected award provisions such as rest breaks, annual leave loadings

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Record Keeping

- Prescriptive record keeping obligations for employers
- Employers have until 27 March 2007 to ensure they are compliant
- Records must be kept for:
 - Base Salary less than \$55K and no overtime – total hours worked
 - Base Salary less than \$55K and overtime – starting and finishing times and hours worked
 - Base Salary equal to or greater than \$55K and overtime – starting and finishing times
 - Base Salary equal to or greater than \$55K and no overtime - not required as an hours record.
- Record keeping obligations may be watered down

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- Salary does not include bonuses, incentive based payments (eg commission), loadings, allowances, penalty rates, superannuation or similar entitlements
- Where employee is part time (with items referred to above excluded) assume fulltime equivalent for salary purposes.

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Questions?

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