



Hall & Wilcox
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Forward with Fairness:

Labor's proposed IR system and its impact on the workplace in 2008 and beyond

The Labor government's Forward with Fairness industrial relations (IR) policy will replace the current Work Choices system. The new IR system will be rolled out in two separate stages: the Transitional Bill which Labor hopes to pass in early 2008, and the Main Bill which will introduce the substantive changes on 1 January 2010.

Transitional period: what employers need to know now

Initially, there will be a transitional period from 1 January 2008 to 31 December 2009.

During the transitional period, Labor will introduce a Transitional Bill that will abolish the use of Australian Workplace Agreements (**AWAs**), start a process of award simplification and introduce new individual statutory agreements titled Individual Transitional Employment Agreements or **ITEAs**.

Agreement making: Employers can continue to use current collective agreements during the transitional period. AWAs continue to apply and can be entered into until the Transitional Bill commences operation. Current rules will continue to apply to the termination of AWAs during the transitional period.

Employers will be able to use ITEAs if they had AWAs in place by 1 December 2007, for new employees or for existing employees who are covered by an AWA (the government has indicated this date is subject to change). ITEAs must not disadvantage an employee against the application of a collective agreement, an award, or the Australian Fair Pay and Conditions Standard. ITEAs will have a nominal expiry date of no later than 31 December 2009.

During the transitional period AWAs and ITEAs must reflect any adjustments to minimum wages.

Substantive changes

Fair Work Australia: a one-stop shop: On 1 January 2010, Fair Work Australia (**FWA**) will commence operation as an independent umpire to oversee Labor's IR system. FWA will replace the current Work Choices bodies which will cease to exist. It will perform a range of functions including umpiring unfair and unlawful dismissal claims, approving collective agreements and setting minimum wages and award conditions.

Agreement making: From 1 January 2010, collective agreements (CAs) will be at the centre of agreement making. Employers will no longer be able to make individual statutory contracts, including AWAs or ITEAs. Employers will still be able to use common law employment contracts.

Some of the main features of the CA process will include:

- ♦ employers must bargain collectively with employees in good faith and inform them of their representation rights;
- ♦ bargaining participants can agree on any lawful matters that suit them;
- ♦ CAs will be approved 'on the papers' within 7 days and can operate for up to 4 years;
- ♦ employees can request union participation; and
- ♦ flexibility clauses will be available.

Minimum entitlements from 1 January 2010

- ♦ National Employment Standards

Labor intends to introduce 10 National Employment Standards. Briefly, they include: a 38 hour working week; 2 years' parental leave; flexible work for parents; 4 weeks' paid annual leave; personal, carer's and compassionate leave; community service leave; public holidays; Fair Work Information Statement; notice of termination and redundancy pay; and uniform long service leave entitlements. An exposure draft was released recently and is open for public feedback until 4 April 2008.

- ♦ Award simplification and flexibility arrangements

New awards, underpinning Labor's collective bargaining regime, will commence on 1 January 2010 and will provide a further 10 minimum employment conditions relating to minimum wages, rostering arrangements, overtime and penalty rates, etc. Interestingly, the new awards will contain flexibility clauses that will allow arrangements to meet the individual needs of employees and employers.

Further, employees employed **before** 1 January 2010 who earn more than \$100,000 may remain covered by an award or can negotiate a new arrangement. However, new employees who commence **after** 1 January 2010 and who will earn more than \$100,000 will be covered by the 10 National Employment Standards, not an award, and therefore will be able to be employed pursuant to common law employment contracts.

Unfair dismissal: Labor proposes to widen current unfair dismissal rights from 1 January 2010. An unfair dismissal claim will be available to employees who are award-covered, or earn less than the salary cap, and who:

- ◆ have been employed for at least 6 months if their employer has 15 or more employees; or
- ◆ have been employed for at least 12 months if their employer has less than 15 employees.
- ◆ Until these changes commence, the current unfair dismissal laws will continue to apply.

The time to act is now

Now is the time to evaluate the agreements you are currently using to see whether you can continue to use them going forward, and if not, to assess the alternatives. Although Labor plans to have its new IR system in place by 1 January 2010, it is likely that more changes can be expected sooner than later, so employers will need to watch for changes as they occur.

This article was written by Karl Rozenbergs, Partner and Sylvia Florescu, Lawyer.

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