

## KEY CHANGES TO INDUSTRIAL RELATIONS LAWS

- Greatly expanded exemption from unfair dismissal laws  
⇒ Has exempted businesses with less than 100 employees
- Fair pay commission  
⇒ Has taken over the role of Australian Industrial Relation Commission ("AIRC") in setting minimum pay and standards which has reduced the powers of AIRC.
- Access to agreements with employees has been made simpler either as a collective or on an individual basis.
- Transmission of Business.
- Dealing with Industrial Disputes.

### Unfair Dismissal Laws

Any employee can make an unfair dismissal claim unless:

- They are engaged under a contract of employment for a specified period of time or specified task;
- They are dismissed while serving a period of probation or qualifying period (the standard being 3 months);
- They are a casual engaged for a short period as described in the Act;
- They are a trainee as described in the Act;
- They are not employed under an award, certified agreement or AWA and their remuneration exceeds the specified amount (currently \$94,900)

The opportunity for an employee to make an unfair dismissal claim, has been **severely limited** by the recent changes to the Act.

The above exclusions continue to apply;

- A new category whereby any employee who is engaged by an employer that employees not more than 100 employees is prevented from accessing unfair dismissal laws;
- An additional amendment prevents terminated employees from claiming that the termination was harsh, unjust or unreasonable if the termination was for **genuine operational reasons** or reasons that include "**genuine operational reasons**"
- Employees are still able to bring an application for unlawful termination if the dismissal was related to a prohibited ground including a breach of equal opportunity law or absence through injury or illness or discrimination based on union membership.

### **Fair Pay Commission and Fair Pay Standard**

The standard is an entitlement to the following:

- a minimum rate of pay;
- weekly hours of work;
- annual leave;
- personal leave; and
- parental leave

Awards continue to operate under the new system however they will be subject to further simplification and rationalisation.

### **Workplace Agreements**

- The maximum term of the agreements has increased from three to five years
- There are six types of agreement now available.
- In the event an AWA agreement is terminated, preserved award conditions must be complied with.

Under the Australian Fair Pay & Conditions Standard

- Cannot contract out of the Standard;
- Must review contracts against the Standard;
- The Standard will override less favourable award conditions;
- Workplace agreements no longer need to meet the “no disadvantage” test, nor be certified by the AIRC.
- The Standard is the only comparator against which workplace agreements are tested.

Varying Existing Contracts of Employment

- Employers must check hours of work are 38hrs or reasonable extra hours
- Employers must inform staff of new rights
- Where employees or employers wish to vary existing contracts or create new contracts the consent of both parties is required

### **Transmission of Business**

Awards and Agreements under the previous system will only bind a new employer which is a successor, transmittee or assignee of the previous employer if employees transfer from the old employer to the new employer.

### **Protected Industrial Action when bargaining for Agreements**

Protected action is only available to employers in the context of bargaining for agreements, but only if intended industrial action has been approved in a secret ballot.

**For further details please contact Adrian Riccioni on 9739 7377 or Frank Lamari on 9344 1700**

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