

Are you ready for 2010?
Compliance with National Employment
Standards

Tim Longwill - Partner

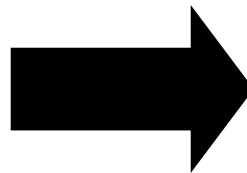
Today

- Focus on changes to be made to meet National Employment Standards
- Update on Award Modernisation and Transition to Modern Awards
- To do lists

National employment standards

NOW

1. Basic rates of pay and casual loading
2. Maximum of 38 ordinary hrs of work plus reasonable additional hrs
3. Annual leave
4. Personal leave (including sick and carer's leave and compassionate leave)
5. Parental leave



FAIR WORK ACT

1. Maximum 38 weekly hrs (plus reasonable additional hrs)
2. Right to request flexible working arrangements
3. Annual leave
4. Personal/carer's and compassionate leave
5. Community service leave
6. Long service leave
7. Public holidays
8. Parental leave
9. Notice of termination and redundancy pay
10. Information Statement

National Employment Standards

- From 1 January 2010:
 - NES will apply to all national system employees including those covered by agreements made before the new system begins
 - NES will cover every employee - right up to the CEO
 - a term in an existing award or workplace agreement will be of no effect to the extent that it is 'detrimental' compared to the NES

NES Focus - new parental leave standard

- Up to 52 weeks' unpaid leave for each parent, three weeks of which can be taken together after birth
- Right to request extra 52 weeks' unpaid leave for one parent who has already taken 12 months parental leave, subject to employer's right to refuse on 'reasonable business grounds'
- Right to be consulted while on parental leave about decisions made by employer that 'will have a significant effect on the status, pay or location of the employee's pre-leave position'

Flexibility requests

- The following employees will have a new right to request flexible work arrangements:
 - Those with more than 12 months' service who are parents or who have responsibility for the care of:
 - a child under school age; or
 - a child under 18 with a disability
- Employers have a duty to consider the request and can only refuse a request on 'reasonable business grounds'

How will the right to request work?

- Request by employee must:
 - be made in writing
 - set out details of the change sought; and
 - set out reasons for it
- Employer not obliged to grant a request, only to consider it and then to provide a written response within 21 days stating:
 - whether the request is granted or refused; and
 - if refused, the reasons for the refusal

'Reasonable business grounds'

- Phrase not defined so plenty of scope for argument
- Expression to be given its ordinary meaning
- Relevant factors include:
 - Effect on the workplace, including costs, efficiency, productivity and customer service
 - Capacity to organise work among current staff
 - Capacity to find replacement staff

Personal Leave

- 10 days
- Changes should be reflected
- Will not invalidate agreement
- Ensure your policies are compliant

Community Service Leave

- Set up requests for information from staff
- Arrange understanding from staff concerning communication and replacement
- Revisit protocols for dealing with Jury leave and other community service leave
- Have updated records starting at recruitment stage.
- Ensure not discriminatory

To do

- Redraft parental leave provisions in HR manuals
 - Be aware of how you want to do this
 - Legislation is the backstop
- Create process for determining ‘reasonable business grounds’
 - What factors to be considered
 - How decision will be made
- Create process for receiving ‘flexible work requests’
 - Ensure that the message in all documents is consistent
 - Do not promise more than consideration of request

To do

- Redraft entitlements to redundancy for employees
- Investigate access to Information Statement to Employees

Are you ready for 2010? Transitioning to Modern Awards

Tim Longwill, Partner

Brief recount – Modern Awards

- Referral from Minister
- Rationalising Awards from 3500 – 150
- Done on Industry or Occupational lines

Teething problems

- Was not just to cherry pick or rationalise
- Chipped industry and union for limiting comment to award
- “The content of the awards we have formulated is a combination of existing terms and conditions in relevant awards and existing community standards”
- “Inevitably means that some conditions will change in some states... equally some existing awards entitlements will not be reflected... because they do not currently have general application”

Transition

- Can only include terms and conditions which are state based for 5 years.
- Then “cease to have effect”

The Commission 'legislates'

- Not just state based differences but can make transitional decisions relating to other conditions which are not appropriate for a "Modern Award"

Provisions in model clause

- Minimum wages
- Junior wages
- Training and disabled employee provisions
- Casual and part time loadings
- Saturday and Sunday public holiday loadings
- Penalties and shift allowances

Model Transitional Provisions

- Absorption
 - Any increase absorbed into overaward payments
 - No requirement to maintain overaward rates or make increases

Approach by Commission

- Take home pay reductions
 - Will not apply to employees employed post 1.1.10
 - Phased reduction of pay for existing employees
 - Can make claim under Act – take home pay order
 - No similar employer offset

Review

- Can have provisions reviewed
- Flexibility for 4 year Award Review Plan

Timing – wages and conditions

- Applies both to increases and reductions
- 5 instalments – 12 months apart – 20% each
- Starting 1 July 2010

Wages – if rates now lower

Pre 1.7.2010 = NAPSA rates

From 1.7.2010 = New rates – 80% (new rate–current rate)

From 1.7.2011 = New rates – 60% (new rate-current rate)

From 1.7.2012 = New rates – 40% (new rate-current rate)

From 1.7.2013 = New rates – 20% (new rate-current rate)

Example

New rate = \$22.00/hour

Current rate = \$20.00/hour

From 1.7.2010 = \$22.00 – 80% (22-20)
= \$20.40

From 1.7.2011 = \$22.00 – 60% (22-20)
= \$20.80

etc

Wages – if rates now higher

Pre 1.7.2010 = Existing rates

From 1.7.2010 = New rates + 80% (New rate–current rate)

From 1.7.2011 = New rates + 60% (New rate–current rate)

From 1.7.2012 = New rates + 40% (New rate–current rate)

From 1.7.2013 = New rates + 20% (New rate–current rate)

Example

Current rate = \$22.00

New rate = \$20.00

From 1.7.2010 = \$20.00 + 80% (22-20)

= \$21.60

From 1.7.2011 = \$20.00 + 60% (22-20)

= \$21.20

etc

Notes

- Must factor wages increases into calculations
- Where expressed as a percentage work out actual dollar amount then apply

New loadings and penalties

To 1.7.2010	– no loading
from 1.7.2010	- 20%
from 1.7.2011	- 40%
from 1.7.2012	- 60%
from 1.7.2013	- 80%

Also note....

- Will be included in Awards
- Apprenticeships in Queensland will continue if more favourable until 2014
- If moving from one classification to another identify rates applicable and apply same formula
- Superannuation
 - A default fund
 - Either as specified in Award or
 - As current @ 12.9.2008

Model clause including phasing

- Textile Clothing Footwear & Associated Industries Award
 - Manufacturing & Associated Industries and Occupations Award
 - Clerks – Private Sector Award
 - General Retail Industry Award
 - Cotton Ginning Award
 - Horticulture Award
 - Nursery Award
 - Pastoral Award
 - Silviculture Award
 - Wool Storage Sampling and Testing Award
 - Building and Construction General Onsite Award
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Model clause including phasing continued...

- Electrical Electronic & Communication Contracting Award
 - Joinery and Building Trades Award
 - Mobile Crane Hiring Award
 - Plumbing and Fire Sprinklers Award
 - Banking Finance Insurance Award
 - Graphic Arts Printing & Publishing Award
 - Aged Care Award (nauseous allowance (1.7.2010))
 - Health Professionals & Support Services Award
 - Nurses Award
 - Road Transport and Distribution Award
 - Waste Management Award
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Model Clause not including phasing

- Hospitality Industry Award
- Racing Industries Award
- Fast Food Industry Award
- Hair & Beauty Award
- Pharmacy Industry Award
- Information & Communications Technology Award
- Road Transport (Long Distance Operation) Award
- Transport (Cash in Transit) Award

Conclusion

- Strategies
 - For non agreement employees
 - For agreement employees

To Do:

- Identify Modern Award Applicable
- Ensure coverage
- Identify Transitional Provisions
- Identify what can be absorbed – allowances and wages
- Plan to implement over time allowed

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