

FAIR WORK ACT 2009

The Fair Work Act has now passed through Parliament. This Act and the various supporting legislation will mean significant changes to employment and industrial relations within Australia. Implementation of the first round of changes occurred on 1 July 2009, with further changes being introduced by way of the Modern Awards and National Employment Standards on 1 January 2010.

HAVE YOU THOUGHT ABOUT...

There are a range of things that employers should consider in determining whether they are ready, and whether they should be taking steps to clarify the terms and conditions in their workplace. These are just a few:

What do your policies say?

- Do they accommodate, where necessary, requirements as per the National Employment Standards?
- Do they provide enough flexibility to meet the needs of your business, particularly in relation to parental leave and flexible return to work requests?

What do your contracts of employment say?

- Do they include the components of the National Employment Standards?

Have you reviewed your procedures in relation to termination for poor performance/ conduct and redundancy?

- Do they meet the procedural fairness test?
- Do they provide a useful and legislative compliant guide for your managers/ supervisors?

Are you ready for Union Right of Entry?

- Do you know what the new right of entry laws provide for?
- Do you have a procedure and protocol to deal with right of entry?
- Have you reviewed your time and wages records?
- Do you keep more than is necessary on your internal files which might be accessed on right of entry?

Do you have expired industrial 'instruments', AWAs, ITEAs, certified agreements?

- When do they expire?
- Are you aware of the new bargaining framework?
- Are you aware of the default union representation?
- Have you considered the new BOOT test (Better Off Overall Test – previous the No Disadvantage Test) for passing new collective agreements?

A FAIR DISMISSAL CODE FOR SMALL BUSINESS

The Small Business Fair Dismissal Code commenced on 1 July 2009.

The Fair Dismissal Code applies to small business employers with fewer than 15 employees. Each full-time, part-time and regular casual employee will count as one employee.

Small business employees cannot make a claim for unfair dismissal in the first 12 months following their appointment. If an employee is dismissed after this period and the employer has followed the Code then the dismissal will be deemed to be fair.

Employees who have been dismissed because of a business downturn or their position is no longer needed cannot bring a claim for unfair dismissal. However, the redundancy needs to be genuine. Re-filling the position with a new employee is not a genuine redundancy.

The Code sets out the circumstances in which a summary dismissal (a dismissal without notice or warning) is warranted, including cases of theft, fraud and violence.

For under-performing employees, the Code simply requires the employer to give the employee a valid reason, based on the employee's conduct or capacity to do the job, why the employee is at risk of being dismissed and a reasonable chance to rectify the problem. Multiple warnings are not required. It is desirable, but not necessary, for a warning to be in writing.

The Code sets out a process for dismissal which recognises that employees need a fair go. It contains basic principles that any reasonable person would regard as fair. If an employee is not performing satisfactorily it is only right that they should be warned and have the opportunity to improve their performance.

A simple checklist has been developed to help small business employers to comply with the Code.

For more information, support in this process or to find out more about the Code, please contact Kerry Brinkley on (07) 3839 1233 or kerry@mjsp.com.au