

## EMPLOYEE RELATIONS UPDATE – JUNE 2006

### WORKCHOICES AMENDMENTS

A number of amendments have been made to the WorkChoices Regulations which become effective from 5 June 2006. The following information provides a summary of the key amendments:

#### **Record-Keeping Obligations**

After significant lobbying from employer groups, record keeping requirements in regard to an employee's nominal hours, annual leave and personal leave have been relaxed. Under the new Regulations, employers are now required to keep records only in relation to the following matters:

- daily starting and finishing times where overtime is payable to the employee under an industrial instrument (ie. an award or agreement); and
- the total number of hours worked by an employee, being hours that the employee was required or requested to work, where the employee's 'base annual salary' is less than \$55,000.

The term 'base annual salary' is defined as the annual salary specified in a written instrument, but does not include:

- incentive-based payments or bonuses
- loadings
- monetary allowances
- penalty rates
- employer contributions for superannuation; and
- any other similar separately identifiable entitlement.

Although these requirements come into effect on 5 June 2006, employers still have a three month grace period before they can be prosecuted for breaches.

#### **Comparison Table**

A preserved award term about annual leave, personal/carer's leave and parental leave continues to apply to an employee if it is 'more generous' than the AFPCS. Existing regulation 10.3 (Part 10, Chapter 2) explains how to determine whether an employee's preserved award entitlement is more generous than the AFPCS. That regulation provides that the 'more generous' test is based on the effect of an individual employee alone (rather than the effect on employees generally) and that a higher preserved award entitlement is 'more generous' than the AFPCS if it provides a higher quantum of entitlement. This item makes a minor technical amendment to the regulation by replacing each reference to 'total quantum' with 'total *annual* quantum'.

#### **Cashing out of personal / carer's leave**

The circumstances in which workplace agreements or contracts of employment may provide for amount of paid personal/carer's leave and paid compassionate leave to be cashed out have been altered. The AFPCS is now enshrined as providing a more favourable outcome than a workplace agreement or contract of employment that permits the cashing out of any of the AFPCS's minimum entitlements to paid personal/carer's leave or paid compassionate leave. The AFPCS will therefore prevail over a provision in a workplace agreement or contract that purports to allow cashing out any of the AFPCS's minimum entitlements to such leave.

Where a workplace agreement or contract of employment provides for a greater amount of paid personal/carer's leave or paid compassionate leave than the AFPCS, an employee is permitted to cash out some or all of the amount of leave by which the agreement or contract exceeds the AFPCS.

### **OHS Legislation**

The *Workplace Health and Safety Act 1995 (Qld)* has been added to the list of prescribed occupational health and safety legislation in relation to rights of entry. This means that the exercise of right of entry powers in Queensland (in relation to occupational health and safety) must now comply with the WorkChoices requirements.

### **Ordinary Hours**

This amendment provides that the guarantee of a maximum of 38 ordinary hours of work in the Australian Fair Pay and Conditions AFPCS (AFPCS) does not apply to an employee whose employment is subject to a transitional award or a common rule, for a period of 3 years from 27 March 2006. This means that transitional awards or common rules may provide for ordinary hours of work in excess of 38 hours.

### **Application to vary or set aside redundancy pay obligation**

#### ***Transitional award***

The Australian Industrial Relations Commission has been granted a new power to determine (in limited circumstances) an application to vary or set aside an obligation under a transitional award to pay redundancy pay. The Commission may determine the application if it is satisfied that the alternative employment is 'acceptable'. Determining acceptability involves an objective assessment requiring the Commission to consider a range of factors, including pay and hours of work.

#### ***PSA or NAPSA***

The Commission has also been granted the power to determine an application to vary or set aside an obligation under a Preserved State Agreement (PSA) or Notional Agreements Preserving State Award (NAPSA) to pay redundancy pay. The Commission may only determine applications where a term of a PSA or NAPSA previously allowed an employer to make an application to State industrial authority to have redundancy pay obligations varied in circumstances where the employer found alternative employment for the redundant employee.

### **Other matters**

In addition to the above matters, the Regulations make amendments to other provisions in relation to:

- exclusion of Victorian laws;
- eligible courts;
- piece rate employees – annual leave; and
- clarification of the powers of workplace inspectors.

**For further information about the above amendments or any aspect of WorkChoices, please contact Kylie Reed, Partner on (07) 3839 1233 or on e-mail, [kylie@mjsp.com.au](mailto:kylie@mjsp.com.au)**