

EMPLOYEE RELATIONS UPDATE – MAY 2005

SUPERANNUATION CHOICE LEGISLATION

Eligible Employees

From 1 July 2005, employers will be required to offer choice of superannuation fund – to eligible employees only. If you make superannuation contributions for your employees under the terms of the following industrial instruments, they are not eligible employees and you do not need to offer choice of superannuation fund:

- A state award;
- A state certified agreement; or/and
- An Australian Workplace Agreement

That is, an employee covered by state law or a state industrial agreement is not entitled to choose a fund outside of what the award or agreement already provides.

Alternatively, eligible employees do include:

- Those employed under a Federal award; and
- Employees who are not covered by an award.

As such, if you employ any employees under a federal award you must offer choice whether or not that award requires contributions to be made to a specific superannuation fund. Similarly, employees not covered by an Award are entitled to be offered choice.

Depending on the employment arrangements, some staff may have choice of superannuation funds, while others will be limited to the funds identified in the relevant Award/s or Agreement/s.

While this is currently the case, you should also be aware that the Minister for Revenue has announced that the Government will be introducing an amendment to the choice legislation to allow the Commonwealth to override State Awards in respect of Superannuation from 1 July 2006. In summary, unless a certified agreement that specifically limits choice is implemented, all employees will have access to choice from 1 July 2006.

Employer Obligations

Employers are obligated to:

- identify if you have eligible employees;
- provide eligible employees with the *Standard Choice Form* by 29 July;
- maintain records that demonstrate you have met your obligations; and
- comply, by making contributions to the fund chosen by the employee (penalties may apply).

Further information

MJ Smith and Partners can provide more detailed advices specifically in relation to an employer's obligations to implement choice. Please don't hesitate to contact Kylie Reed at kylie@mjsp.com.au should you require assistance.