

EMPLOYEE RELATIONS UPDATE – MAY 2006

WORKCHOICES – RECORD KEEPING

The aim of the recent amendments to the *Workplace Relations Act 1996* (Workchoices) is to introduce a simpler system of Industrial Relations. This may be the case in areas such as agreement making, but, there is one area that has become more regulated. All employers now have stricter controls on Record Keeping. Whilst traditionally employees have been keeping records for award employees the amendments extend this requirement to non award employees.

Following is a brief summary of your obligations. In general, an employer must maintain a record of each employee and keep that record for seven years from the date the entry was made. This record must be stored in such a way that will allow a workplace inspector to determine an employee's entitlement and that the employee is receiving them. The record must be legible and in English.

General

Each record will need to contain the following information:

- The name of the employer
- The name of the employee
- The employee's date of birth
- The name of the "instrument" under which an employee's entitlements are formulated
- Whether the employee is full time or part time and specify the number of hours to be worked by the employee each week
- The employee's employment status
 - Permanent
 - Temporary, or
 - Casual, and
- The employee's date of commencement with the company

Hours

For employees with an annual salary less than \$55,000, records must be kept of their total hours worked, nominal hours, and variations to those hours, regardless of whether they are covered by an industrial instrument. Those employees who are able to earn overtime must have records kept of the daily start and finish times, as well as their total hours worked.

Those employees earning greater than \$55,000 and who are entitled to overtime through a common-rule award are also required to have records kept containing the daily start and finishing times and total hours worked. Employees in this category may include administrative and middle management employees who are covered by an award and perform duties in the award classification.

However, in response to employer concerns, an amendment will be made relating to employees earning \$55,000 or more per annum who are NOT covered by an award or agreement. No records for hours will need to be kept for these employees. This means employers will NOT have to record daily start and finish times for these employees.

If an agreement has been made in writing to average an employee's hours over a set period then a record of that agreement must also be kept.

Pay Records

The record of the Employees Pay must contain:

- The basis on which the rate of pay is determined
- The gross rate of pay expressed as an hourly rate
- The details of any incentive based payment to which the employee is entitled
- The period to which the payment relates
- The total remuneration received by the employee for that period including gross and net amounts
- The dates on which the employee was paid
- Deductions, if any, from the employee's remuneration and the name of the fund or account into which the deductions were paid.

Annual Leave

The record must contain:

- The rate of the employees accrual of annual leave
- The date the employee is credited with annual leave
- The balance of the employee's entitlement to annual leave from time to time
- The amount of annual leave taken by the employee
- The amount paid to the employee while on annual leave.

If the employee decides to forgo an entitlement to take an amount of annual leave the employer must keep:

- A copy of the employee's written election
- A record of the rate of payment for the amount of annual leave forgone and when that payment was made.

If the employee is a shift worker the employer must keep a record of:

- The periods the employee was a shift worker, and
- The date the employee was credited with any additional leave to which they are entitled as a shift worker.

Personal Leave

The record must contain:

- The rate of the employee's accrual of personal leave
- The date the employee was credited with personal leave
- The balance of the employee's entitlement to personal leave
- The amount and type of personal leave taken by the employee
- The amount paid to the employee while on personal leave.

Other Leave

If an employee is entitled to other leave, the record must contain the type of leave and include similar details of that leave in line with those outlined above.

Superannuation Contributions

The record must contain:

- The amount of superannuation contributions made by the employer on the employee's behalf
- The period over which the contributions are made
- The dates the contributions are made
- The name of the fund the contributions are paid into
- The basis on which the employer became liable to make the contributions including:
 - The record of any employee election of a fund, and
 - The date of any such election.

Termination of Employment

The record must contain:

- Details of whether an employee's employment was terminated:
 - By consent
 - By notice
 - Summarily
 - In some other manner
- The name of the person who terminated the employee's employment.

Pay Slips

The employer must provide each employee with a pay slip within one (1) day of the payment being made. The pay slip must contain the following information:

- The employer's name
- The employee's name
- The employee's classification under each instrument from which the employee derives their entitlements
- The date the payment was made
- The period to for which the employee was paid
- If the employee is paid at an hourly rate:
 - The ordinary hourly rate
 - The number of hours in the period the employee was engaged at that rate; and
 - The amount of the payment made at that rate
- If the employee is not paid by the hour:
 - The rate as at the latest date to which the payment relates as an hourly rate
- The gross amount
- Any amount paid as an incentive including bonuses, loading, allowances, penalty rates
- The net amount
- Details for each amount deducted including the name, number of the fund or account into which the payment was made
- If a superannuation contribution was made the name of the fund into which the contribution was made and the amount.

Penalties

Current maximum penalties for a breach of record keeping requirements are:

- \$550 for individuals
- \$2750 for companies.

Infringement Notices

Under the amendments Workplace Inspectors are now able to issue on the spot infringement notices if they have reasonable grounds to believe that a person has contravened a particular requirement, such as record keeping. The penalties will be 1/10th of the value a court may impose for both individuals and companies.

These infringement notices can only be issued from 27 September 2006, to allow employers time to adjust to the new requirements.

What should you do?

It is recommended that as an employer you review you current time and wages record keeping and payroll processes.

For assistance regarding your record keeping obligations, please contact the MJ Smith and Partners office in your state.

Queensland – Kylie Reed
Email: kylie@mjsp.com.au
Phone: (07) 3839 1233

New South Wales – Steven Smith
Email: steven@mjsp.com.au
Phone: (02) 9233 6855