

WORKPLACE AGREEMENTS – THE NEW FAIRNESS TEST

MJSP clients who are covered by WorkChoices need to be aware of a recent amendment introduced by the Federal Government. A new Fairness Test will apply to **all** federal workplace collective or individual Australian Workplace Agreements (AWAs) lodged on or after **7 May 2007**.

The test – akin to what we previously knew as the ‘No Disadvantage Test’ – will apply to:

- All AWAs lodged on or after 7 May 2007 which cover employees earning less than \$75,000 per annum in Award covered industries; and
- All collective agreements lodged on or after 7 May 2007 which cover employees in Award covered industries.

Any agreements lodged prior to 7 May 2007 will not be required to meet the Fairness Test.

An agreement must include fair compensation for the modification or removal of any or all protected award conditions. These conditions are:

- Penalty rates including for work on public holidays and weekends;
- Shift and overtime loadings;
- Monetary allowances;
- Annual leave loadings;
- Public holidays;
- Rest breaks; and
- Incentive – based payments and bonuses

The new Workplace Authority (the renamed Office of the Employment Advocate) will be responsible for deciding whether an Agreement passes the Fairness Test. They will consider both monetary and non-monetary compensation offered, relevant to what has been paid under the relevant Award. Should the Agreement not pass the test, the Workplace Authority will issue advice to both the employer and employee about acceptable compliance. The employer and employee will have 14 days to agree on an amended Workplace Agreement and if the Agreement is not changed, it will be rendered void.

Since the introduction of WorkChoices in March 2006, Workplace Agreements had only to ensure that they met the five (5) minimum Fair Pay and Conditions Standards. While the amendments appear to reflect a substantial change to agreement making under WorkChoices, the specific detail of the amendments is yet to be drafted. MJSP will keep you updated when further detail is released.

For further information about the Fairness Test, please contact Kylie Reed, Partner, on (07) 3839 1233 or via email, kylie@mjsp.com.au