

EMPLOYEE RELATIONS UPDATE – OCTOBER 2006

CASHING OUT ANNUAL LEAVE

On 22 September 2006 the Federal Government amended the *Workplace Relations Regulations 2006*. The amendments serve to clarify how the *Workplace Relations Act 1996* operates. Specifically, the latest regulation amendment clarifies Section 233 of the Act.

This section allows employees to forgo an entitlement to take an amount of annual leave credited to the employee by an employer if:

- a provision in a workplace agreement binding the employee and the employer entitles the employee to forgo the entitlement to the amount of annual leave; and
- the employee gives the employer a written election to forgo the amount of annual leave; and
- a provision in a workplace agreement binding the employee and the employer entitles the employee to receive pay in lieu of the amount of annual leave at a rate that is no less than the Australian Fair Pay and Conditions Standard (AFPCS) employee's basic periodic rate of pay at the time that the election is made; and
- the employer authorises the employee to forgo the amount of annual leave.

However, during each 12 month period, an employee is not entitled to forgo an amount of annual leave credited to the employee by an employer that is equal to more than 2 weeks of the nominal hours worked by the employee for the employer during the period.

An employer must not:

- require an employee to forgo an entitlement to take an amount of annual leave; or
- exert undue influence or undue pressure on an employee in relation to the making of a decision by the employee whether or not to forgo an entitlement to take an amount of annual leave.

If, under this section, an employee forgoes an entitlement to take an amount of annual leave, the employer must, within a reasonable period, give the employee the amount of pay that the employee is entitled to receive in lieu of the amount of annual leave.

The amendment puts in place a clear distinction between Pre Reform Leave and Post Reform Leave.

Pre Reform Leave is leave that was accrued *prior* to the introduction of WorkChoices on 27 March 2006. Pre Reform Leave does not need to be dealt with under the rules of the AFPCS with regards to cashing it out, therefore there is no limit to the amount an employee and employer can agree to cash out. In the majority of circumstances however, an Australian Workplace Agreement will be required in order to facilitate the cashing out of this leave.

Post Reform Leave (that is leave accrued after 27 March 2006) must be cashed out in line with the rules outlined above.

What should you do?

If cashing out annual leave is of interest to your organisation and your employees, you may wish to consider the benefits of facilitating this provision for both Pre and Post Reform Leave, through the introduction of workplace agreements.

M.J. Smith and Partners employ qualified specialists in the field of Employee Relations who have extensive experience in a wide range of industries and workplaces. This experience ensures that we will be able to assist you to meet compliance issues in your workplace.

For further information about the above provisions, please contact the MJ Smith and Partners office in your state.

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