



Workplace Alert 16 November 2006

WorkChoices - More Amendments Announced

“These changes are intended to correct some unintended consequences of the original WorkChoices amendments.”

The Federal Government announced this week proposed further amendments to the *Workplace Relations Act 1996 (Cth)* and Workplace Relations Regulations. The proposed changes arise from the Government's ongoing monitoring of the legislation and from feedback received from businesses. The changes are intended to correct some unintended consequences of the original WorkChoices amendments.

At this stage the Government has only released a summary of the proposed changes in a media release. According to the media release issued by the Minister for Employment and Workplace Relations on 13 November 2006, the proposed amendments will:

- > provide protection of some redundancy entitlements following termination of agreements;
- > alter the calculation and payment of leave entitlements;
- > provide the right to employers to stand down employees in some circumstances;
- > allow employees a limited right to cash out sick leave entitlements; and
- > alter the record keeping requirements.

Protection of Employee Redundancy Entitlements

Under the proposed changes, agreement-based redundancy entitlements will continue to operate in limited circumstances for 12 months after an agreement is terminated. Limitations include application only to redundancy entitlements contained in a federal agreement such as an Australian Workplace Agreement, Certified Agreement or Preserved State Agreement, only to those people employed at the time the agreement is terminated and only when the agreement is terminated unilaterally.

Changes to Accrual and Payment of Leave

The Fair Pay and Conditions Standard relating to accrual of annual leave and personal/carer's leave will be amended so that paid leave will not accrue in respect of hours worked in excess of 38 hours per week.

It is also proposed to amend the rules relating to payment of leave for personal/carer's leave, compassionate leave and leave for pregnant employees who cannot be transferred to a safe job to make them consistent with payment for annual leave. Payment of these types of leave shall be made at the employee's basic periodic rate of pay and shall not include penalty rates, overtime, commissions etc.



Right to Stand Down Employees

A stand down provision will be included in the *Workplace Relations Act* giving employers the right to stand down employees when work is unavailable due to factors beyond the employer's control. Such a right does not currently exist outside of workplace agreements, employment contracts or industrial instruments.

Cashing Out Personal/Carer's Leave

The *Workplace Relations Act* will be amended to allow limited cashing out of personal/carer's leave subject to the following restrictions:

- > there must be agreement between employer and employee; and
- > after cashing out, the employee must have at least 15 days of accrued personal/carer's leave remaining (for a full time employee working a 38 hour week).

The proposed changes are not intended to affect any rights of parties to cash out sick leave accrued prior to WorkChoices commencing on 27 March 2006.

Record Keeping Requirements

Record keeping requirements will be streamlined to focus on compliance with the Fair Pay and Conditions Standard, relevant industrial instruments and protected award conditions. The new model is intended to more closely reflect the pre-WorkChoices requirements.

In response to employer concerns regarding difficulties with recording hours actually worked by employees, the proposed model will only require employers to record those hours for which an employee is entitled to overtime or other penalty rates rather than all hours worked.

However, the model will require employers to keep records of hours worked by casuals and irregular part-time employees when they are paid on an hourly basis.

The deadline of 27 March 2007, by which employers must comply with the current record keeping requirements, has not been changed. Thus, employers may not be prosecuted for non-compliance with the current requirements until after that date.

When Will the Amendments Take Effect?

The office of the Minister for Employment and Workplace Relations has informed Thomson Playford that the Bill required to introduce the changes to parliament has not yet been drafted and there is currently no timetable for introducing such a Bill to Parliament. Parliament's remaining sitting days in 2006 are from 27 November to 7 December after which it will break until 6 February 2007. Therefore, it is anticipated that the proposed amendments will take effect no sooner than February 2007.

[Click here for the Federal Government's Media Release](#)

High Court Confirms WorkChoices Validity

The High Court of Australia this week dismissed challenges to the validity of the WorkChoices legislation.

This means that the *Workplace Relations Act* will continue to operate in its current form.

[Click here for the High Court's media release](#)



Contact Details

For further information in relation to this subject please contact:



Malcolm Davis - Partner

T: +61 2 8248 5831

E: mdavis@thomsonplayford.com.au



Richard Lund - Partner

T: +61 2 8248 5834

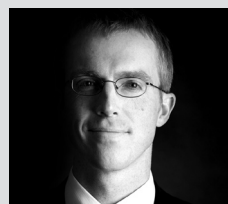
E: rlund@thomsonplayford.com.au



Gary Punch - Consultant

T: +61 2 8248 5859

E: gpunch@thomsonplayford.com.au



Stephen Clibborn - Senior Associate

T: +61 2 8248 3436

E: sclibborn@thomsonplayford.com.au



Adelaide

101 Pirie Street . Adelaide . SA 5000
T: +61 8 8236 1300 . F: +61 8 8232 1961

Melbourne

Level 40 . 140 William Street
Melbourne . VIC 3000
T: +61 3 8608 7000 . F: +61 3 8608 7199

Sydney

Australia Square Tower
264 George Street . Sydney . NSW 2000
T: +61 2 8248 5800 . F: +61 2 8248 5899
info@thomsonplayford.com.au
www.thomsonplayford.com.au



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