

Workplace Relations Alert July 2010

One year after the commencement of the first parts of the Fair Work Act, 1 July marks the final phase of the new laws: the commencement of modern award rates, subject of course to the complicated five year 'phasing-in' process set out in the awards' transitional provisions.

Recent important decisions, and announcements, further complete the picture by updating salary caps and wage rates, and clarifying aspects of modern award provisions.

Decision on modern award provisions

On Friday 25 June 2010, the Full Bench of Fair Work Australia provided further clarification on overtime penalties under modern awards, and employers' ability to absorb modern award increases into over-award payments.

Overtime – to phase-in or not to phase-in?

Several unions, led by the Australian Manufacturing Workers Union (AMWU), sought to have the Manufacturing and Associated Industries and Occupations Award (Manufacturing Award) varied to clarify that overtime rates were to be included in the transitional arrangements. As discussed in our *April Alert* the only award conditions that are subject to phasing-in are:

- minimum wage rates and piecework rates (including junior rates)
- casual loadings
- part-time loadings
- Saturday, Sunday, public holiday, evening or other penalties, and
- shift allowances/penalties.

The unions had argued that 'overtime' should be included within the category of 'other penalties'. The issue obviously would impact on other modern awards, as most contain identical transitional provisions.

FWA rejected the AMWU's application, finding that the Australian Industrial Relations Commission (in drafting the transitional provisions) had intended to exclude hours of work and overtime from being phased-in.

Accordingly, it is now clear that overtime is not subject to phasing-in. This means that modern award overtime rates have been in place since 1 January – so employers should check immediately whether they are complying with those rates.

Absorption – what is permitted?

The same case before FWA considered the meaning of the 'absorption' clause of the Manufacturing Award, which reads as follows:

The monetary obligations imposed on employers by this award may be absorbed into overaward payments. Nothing in this award requires an employer to maintain or increase any overaward payment.

FWA said that the meaning and effect of the absorption clause was 'beyond doubt': that wage increases (such as the increase effective today) can be absorbed into over-award payments. In other words, if you are currently paying your employees more than the applicable award rate, then depending on how far over the award the payment is, you may not need to pass on all (or any) of today's \$26/week increase. The ability to absorb may, however, be affected by terms of your employment contract – employers need to be careful in assessing what is permissible.

New unfair dismissal caps and minimum wages

The following important changes will also take effect from 1 July 2010:

- the income limit for making unfair dismissal claims will increase from the current threshold of \$108,300 per annum to \$113,800 (this includes: wages, agreed money value of non-monetary benefits and amounts applied in any way as the employee directs; but does not include superannuation, bonuses, commission or overtime);
- the unfair dismissal compensation cap will increase from the current cap of \$54,150 to \$56,900, and
- modern award rates will increase by \$26 per week, and the National Minimum Wage will increase to \$569.90 a week.

These are important changes that will have an impact on, amongst other factors, identifying who can make unfair dismissal claims and calculating labour costs.

Please contact us if you require any assistance interpreting these changes in respect of your business.

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