

# PROPOSED AMENDMENTS TO WORKCHOICES

Several further amendments to the WorkChoices legislation and regulations have been proposed by the Australian Government this week.

These amendments will:

- address the burden imposed by record keeping obligations;
- protect redundancy entitlements;
- address issues relating to accrual of annual leave and personal/carer's leave under the Australian Fair Pay and Conditions Standard;
- provide a right for employers to stand down employees due to lack of work where this is outside the employer's control; and
- enable the cashing out of sick/personal/carer's leave.

## Record Keeping Requirements

The onerous record keeping requirements under WorkChoices would be reduced to more closely reflect pre-WorkChoices obligations. The current obligations are subject to a moratorium on prosecution for breach until 27 March 2007.

The proposed changes will mean that employers will have to keep records relating to:

- superannuation contributions made on an employee's behalf;
- copies of any agreement made under the Australian Fair Pay and Conditions Standard, such as an agreement to cash out leave or averaging arrangements; and
- issuing of payslips as per current WorkChoices requirements.

Employers will **not** have to keep records of the hours worked by each employee. Rather, records need to be kept regarding only hours that are overtime, attract a penalty, or are worked by irregular part time or casual staff. Records would need to show each employee's rate of pay, any loadings, penalties, allowances, etc. that are payable and the accrual and granting of leave and the leave balance of each employee.

## Redundancy Entitlements

The proposed amendments will extend the life of redundancy entitlements of a terminated agreement for a period of twelve months after cessation of the agreement. This would apply where the agreement was terminated unilaterally and was not replaced by a new agreement. This reflects the arrangements relating to transmission of business.

## **Leave Accrual and Payment**

Under the proposed amendments accrual of annual leave and sick/personal/carer's leave will be capped under the Australian Fair Pay and Conditions Standard. Leave will not accrue on hours worked over 38 hours per week. Also, overtime will not be included when calculating leave accruals. Sick/personal/carer's/compassionate leave will be paid at the employee's basic rate of pay. This means that the employee will no longer get paid what they would expect to be paid if they worked, i.e., overtime, certain allowances etc., but the base hourly rate. This now reflects the arrangements applying to annual leave.

## **Stand Down of Employees**

A default stand down provision has been proposed. Currently, outside of an award or agreement arrangement, there is no ability to stand down employees due to lack of work where this is beyond the employer's control. The proposed amendment would allow employers to stand down employees without pay where work is unavailable and this is outside the employer's control, for example, where there has been a natural disaster, fire, industrial action, etc.

## **Cashing Out Leave**

The proposed amendment would allow employees to cash out certain entitlements under the Australian Fair Pay and Conditions Standard. This would be at the request of the employee and with the agreement of the employer. A full time employee would need to retain a sick/personal/carer's leave balance of at least fifteen days.

The details regarding the above proposed changes are yet to be seen, but we will continue to keep you updated as further information becomes available.

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