

WORKCHOICES

An article written by Chantal Lester, performgroup.

Like it or not... it looks like WorkChoices is here to stay. Even if the Labor party wins the election late next year, it is unlikely that they will gain control of the Senate; which in any event doesn't change till July 2008.

Understanding WorkChoices can be mind boggling at first, but it is important for you to be aware of the main changes and new requirements to determine how they will affect you and your organisation. Remember that there is a three year transition period for businesses to move over to this national system so it may be time for you to start thinking about reviewing your workplace agreements.

Here is a summary of the main changes that WorkChoices has introduced. We hope you will find it helpful.

MAIN CHANGES AT A GLANCE:

1. Agreement-making process

- (a) Agreements negotiated at the workplace level and lodged with Office of the Employment Advocate (OEA).
- (b) Minimum conditions of employment as set out in the Australian Fair Pay and Conditions Standard to be included in all agreements.
- (c) Agreements must contain dispute settlement provisions. A default model DSP is contained in the Act.
- (d) Agreements must state a required notice of termination.

2. Australian Fair Pay and Conditions Standard

- (a) Paid **Annual Leave** of four weeks p.a (pro rata and cumulative) is available to permanent full time and part time employees. Additional annual leave of one week is available for shift workers. Two weeks of annual leave p.a (or the part time equivalent) can be cashed out at the

employee's request, provided this is a term in the workplace agreement.

- (b) 10 days p.a. (pro rata and cumulative) paid Personal/Carer's Leave (including sick leave) is available for permanent employees. An additional two days of unpaid carer's leave (per event) can be claimed in the event that all paid entitlements are exhausted. Casual employees are also eligible to receive this unpaid carer's leave. Provided there is a term in the workplace agreement, employees may request to cash out accrued personal/carers leave provided that at least the protected amount (3/52 of the nominal hours worked over previous 12 months) remains available.

- (c) Two days of paid **Compassionate Leave** (per event) is available for permanent employees to visit a seriously ill or dying relative, or to attend a funeral.

- (d) 12 months of unpaid **Parental Leave** (including maternity, paternity and adoption leave) available after 12 months of continuous service. This is available for permanent employees and eligible casual employees.

- (e) Maximum **ordinary working week** of 38 hours (can be averaged over 12 months). An employee can refuse to work additional hours which is deemed unreasonable.

- (f) An employee is entitled to a paid day off on a designated **public holiday**, however an employer may request that the employee work. The employee may then refuse to work (and take the day off) providing they have "reasonable grounds".

- (g) **Minimum wage** rates as determined by the AFPC.

3. Awards

- (a) Awards will still exist, but conditions may be negotiated away.

(b) No new awards will be introduced, unless as the result of award simplification.

(c) Allowable matters under awards have been reduced.

4. Unfair Dismissal

(a) Employees of a business which employ less than 100 employees are excluded from pursuing unfair dismissal claims.

(b) No unfair dismissal claims are valid within the first six months of service.

(c) No unfair dismissal claims for those employees that are made redundant.

(d) Unlawful dismissal provisions still apply. Unlawful dismissal is the dismissal based on a prohibited reason. To view a list of prohibited reasons click [here](#). N.B Dismissing an employee for refusing to participate in negotiation or variation to a workplace agreement is unlawful.

5. Unions

(a) Union officials must pass a 'fit and proper' test to gain right of entry in which unions must specify reasons for entry.

(b) Employers may dictate location of workplace meetings

6. National System based on corporations' power

(a) All employees of "constitutional" corporations are covered by WorkChoices.

(b) Trusts, partnerships and sole traders need to consider incorporation to use the new system, otherwise state laws apply.

At the most obvious level, the WorkChoices Act represents a major shift in the way employment conditions are set in Australia. The reforms fundamentally change a system that has operated in Australia for more than a century.

For more information on WorkChoices, please contact Chantal Lester at [performgroup](#) on 03 9602 3206 or send an email to admin@performgroup.com.au. Alternatively visit www.workchoices.gov.au.