

March 2006

Business News

Legal Issues update for Canberra Businesses

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Volume 2, Issue 1

Work Choices – Take a 5 minute Small Business Check now!

FAQ s: *Check if your firm needs to make any changes to comply with the new Work Choices amendments ...*

With so much information around about the new Work Choices amendments we thought it would be helpful to provide readers with answers to some of the more common questions we receive about the new employment laws. After all, a five minute check now could pay dividends in the long run. This article by Tal Williams ...

Will the new law apply to my business?

Yes, if you are a corporation or if you operate in the ACT. The date of commencement is likely to be March 2006.

What is a constitutional corporation?

The law will apply to an entity that is a "corporation" which is a "trading or financial" corporation.

Examples of corporations include companies limited by guarantee, proprietary limited companies, bodies incorporated under the Associations Incorporation Act, and Government-owned corporations. State government, partnerships, sole trader and unincorporated associations are not corporations.

Who now decides how much I pay staff and what their hours are?

Many matters currently dealt with in awards, such as minimum wages and working hours, will now be set by the Australian Fair Pay and Conditions

Standard (AFPCS). The AFPCS has not yet been drafted.

A new arbitrator, the Australian Fair Pay Commission, will be responsible for the adjustment of minimum wages, a job currently done annually by the Australian Industrial Relations Commission (AIRC). The AIRC's role in agreement making will become very limited and it will no longer have conciliation and arbitration powers.

How will employment conditions change?

1. *Corporation with existing federal award or agreement.* The existing federal award or agreement will continue to apply in its current form until its expiry date. The parties must then negotiate to establish a new agreement.

Continued over ...



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What's Meritas? *Meritas is an international alliance of business law firms working together across jurisdictions to provide clients the best of both worlds; a local legal partner with full services capabilities and the cost efficiency of personal attention unmatched by mega law firms.*

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5 Minute Business Check continued...

2. Corporation with existing State award. The corporation will be drawn into the federal jurisdiction immediately. The state award will be recognised in the federal jurisdiction as a "Notional Agreement Preserving State Award". The notional preserved terms will override the AFPCS only to the extent that the preserved terms are more generous.

If unhappy with the state award, the corporation can negotiate a federal agreement immediately upon commencement of the legislation. If no federal agreement is negotiated, the Notional Agreement Preserving State Award will cease to exist after three years and the minimum standards, which are required to be offered to employees, are the standards in the AFPCS.

3. Corporation with existing state certified agreement. The state certified agreement becomes a "Preserved Statement Agreement". The preserved agreement will override the AFPCS. The agreement will be recognised and treated as a federal agreement under the federal legislation. A new federal agreement will have to be negotiated after the state agreement's nominal expiry date.

What if I make future agreements?

New employment agreements need not be approved by the AIRC. Once agreement is reached, the agreement must be filed in the Office of the Employment Advocate along with a statutory declaration by the employer. There will be no analysis of the terms of the agreement and it will take the force of law upon lodgement.

Will my staff still be able to take industrial action?

The grounds on which employees are currently entitled to legitimately take industrial action will be limited. For example, employees are currently entitled to take protected industrial action if it is alleged there is a health and safety risk at the workplace. The employer must prove there is no health and safety risk to obtain an order that the employees return to work.

What happens with all the old awards?

The 4,000 awards that currently exist will be reduced to 400 over the next few years.

Is it dangerous to fire my staff?

An employee whose employment is terminated is excluded from making an application for reinstatement if the employee:

- (a) is a seasonally-employed employee;
- (b) has worked for the employer for six months or less;
- (c) was terminated for operational reasons such as redundancy;

(d) is employed by an employer with less than 100 employees. The 100 employees includes full-time, part-time and casuals employed for greater than 12 months. There is no prohibition against breaking a business into a number of employers each with less than 100 employees. Transmission of business

The general principle remains that if the business changes hands, the rights and terms of employment of the business's employees transfer to the new business owner.

How can we help you?

We can provide advice on:

- Australian Workplace Agreements and how they will affect your business;
- What Act governs annual leave, sick leave, long service leave, etc;
- Whether a Collective Agreement is a positive for your business.

For more information please call Tal Williams on 6201 8900.

No Pain - No Gain !

Cancer Council Relay for Life

For the 5th year, Snedden's staff will be running and walking for 24 hours around the AIS track at Bruce from 7th to 8th April, to support the annual ACT Cancer Council Relay for Life. Our staff enjoy the pain, (yes even walking at 3.00 am is fun!) as it is an important part of our community support programme.



If you would like to join us on the track, or assist in the fundraising please don't hesitate to call Nick Tebbey on (02)62018900 or ntebbey@sneddenhall.com.au.



ADVICE ABOUT PARKING:

As a result of new buildings being constructed on the blocks opposite to our office, some parking hints may be handy! We recommend the paid parking area accessed from London Cct, between the Canberra City Police Station Headquarters (adjacent to the Law Courts), and Rydges Lakeside Hotel.