

Employment Update

"WorkChoices One Year On: It isn't getting easier..."

March 2007

Today is the first anniversary of the commencement of the Federal Government's "WorkChoices" Legislation.

There is no doubt that WorkChoices is the biggest single set of alterations to Australian employment laws since Federation, but in reality we are only one year into what will be at least a three year transition period. That transition is meant to be from the previous system of awards/registered agreements and compulsory arbitration of Industrial disputes, to a system which, for most of the population, will be based on workplace agreements and a few statutory minimum standards.

And of course, WorkChoices is intensely controversial politically, and is set to be a major issue in the Federal election later this year.

But after a year one of WorkChoices what can we say is clearer, and what remains befuddling?

First, the WorkChoices legislation is constitutionally valid - the High Court upheld its validity on 14 November 2006.

Secondly, unfair dismissal rights have been significantly curtailed - not only for employees employed by companies with not more than 100 employees, but also employees with less than 6 months service or employees dismissed for "genuine operational reasons".

Thirdly, most employees have obtained enhanced personal leave and carers leave rights as part of the WorkChoices "Fair Pay and Conditions" standard.

Fourthly, not-for-profit corporations are struggling with the following:-

- (i) The uncertainty that remains as to whether they are covered by WorkChoices, and
- (ii) Complying with WorkChoices without embracing all aspects of it until its application to not for profits is clarified (which involves very careful juggling of both old State awards standards and the minimum obligations set down by WorkChoices).

Fifthly, the campaign against WorkChoices by the (now re-elected) NSW Labor Government has resulted in an ongoing uncertainty over the interaction of WorkChoices and State Government legislation, such as in the areas of child employment and union rights of entry in connection with Occupational Health and Safety matters.

Sixthly, employers who have traditionally operated under a State Industrial system remain unsure, in many instances, whether they should move to the Federal WorkChoices system or wait and see what is the ultimate resolution of the current intense political debate.

The political situation is of course significantly contributing to the current ongoing uncertainty. If the Howard Government is re elected, we will no doubt see further modifications of WorkChoices, probably for years to come (although its essential character will remain). But if there is a change of government at the Federal level, we are likely to see substantial further changes to employment law, most likely in these areas:-

- (a) Restoration of compulsory arbitration of Industrial disputes by the Australian Industrial Relations Commission;

- (b) Abolition of the Australian Fair Pay Commission and restoring national wage cases conducted and decided by the Commission;
- (c) Abolition, or at least serious limitations on the use of Australian Workplace Agreements ("AWAs");
- (d) Reintroduction of unfair dismissal rights for those deprived of them by WorkChoices.

Carroll & O'Dea's Employment & Industrial Law Group has been working intensively and extensively with our clients to work through the forest of problems, uncertainties and issues that WorkChoices have presented for so many of those clients. With WorkChoices one year old, we will soon be conducting complimentary briefings for our clients, on all of the above matters and many other aspects of the "WorkChoices experience".

The details of the Briefings are as follows:

- n Tuesday 1 May 2007 - specifically for "not for profit" organisations;
- n Tuesday 8 May 2007 - commercial enterprises, big, small and medium

Both briefings will take place at our City office, 18th Level, St James centre, 111 Elizabeth Street Sydney.

Briefings will start at 4.30pm and we shall aim to finish at 6.00pm. Light refreshments will be provided.

Clients will be emailed further information about these briefings in the weeks to come.

Please note that places will be limited, so make sure you secure your seat promptly by contacting Monique Dileo on 8226-7306 or by email on mdileo@codea.com.au.

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