

“VISION IN THE WORKPLACE”

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In this edition of “Visions in the Workplace” we outline the final release of the 10 National Employment Standards and review Julia Gillard’s ground-breaking request to the Australian Industrial Relations Commission to create a “catch-all” award. We also look at the recent national figures on work-related fatalities released by the Australian Safety and Compensation Council, and the loophole found in employee transmission protections with regards to qualifying periods and the barring of unfair dismissal claims.

National Employment Standards Released

The Federal Government has now released the final version of the National Employment Standards (“NES”). The NES are to be included in the first batch of awards to be modernised by the Australian Industrial Relations Commission (“AIRC”) and are set to take effect on 1 January 2010.

Ms. Julia Gillard, MP, Deputy Prime Minister and Minister for Education, Employment and Workplace Relations, and Social Inclusion said *“The NES and award modernisation are integral components of the Government’s commitment to deliver a modern Workplace Relations system to benefit all Australians.”*

The 10 NES are...

1. Maximum hours of work.
2. Requests for flexible working arrangements.
3. Parental leave for both parents.
4. Annual leave.
5. Personal/Carer’s leave and compassionate leave.
6. Community service leave.
7. Long service leave.
8. Public holidays.
9. Notice of termination and redundancy pay.
10. Fair work information statement.

The Federal Government has reaffirmed that legislation will be introduced “later this year” to give effect to the substantive legislative changes, including aspects of the NES relating to compliance, interaction with agreement making, and future reviews.

For further information on the NES or advice on preparing your contracts and agreements, contact Nick Stevens or Alicia Mataere.

Modern Awards to Cover Non-Managerial Employees in Award-Free Industries

Workplace Relations Minister, Julia Gillard, has made a further modification to her award modernisation request to the Australian Industrial Relations Commission (“the Commission”). Specifically, Ms. Gillard has requested the Commission create a modern award to cover employees who are not covered by another modern award, and who perform work of a similar nature to that which has historically been regulated by awards (the “Catch-all Award”). The idea, Ms Gillard said, was to ensure that *“basic protections such as minimum wages and meal breaks are provided to these employees.”*

The revised request requires the Catch-all Award to include provisions appropriate *“for application to employers and employees in a range of industries and/or occupations.”*

In making the Catch-all Award, the Commission must have particular regard to the object in 1(c) of the *Workplace Relations Act 1996 (Cth)*, which requires that modern awards be economically sustainable; promote flexible modern work practices, along with the efficient and productive performance of work.

In a further change, modern awards will be able to include industry-specific redundancy schemes that displace the Nationals Employment Standards (“NES”) entitlement.

Ms. Gillard also indicated to the President of the Commission, Justice Giudice that the substantive Industrial legislation would deal with issues related to the NES, including compliance, dispute resolution, interaction of the NES with agreements, and the application of the NES to award-free employees.

For further information on the award modernization process or Ms. Gillard’s request, contact Nick Stevens or Alicia Mataere.

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Work-Related Fatalities

The Australian Safety and Compensation Council (“**ASCC**”) is a council made up of government, employer and employee representatives. The ASCC leads national efforts to prevent workplace death, injury and disease, improve workers compensation arrangements, and improve the rehabilitation and return to work of injured workers. The ASCC has recently released national figures on work-related fatalities between 1 July 2006 and 30 June 2007 that were notified pursuant to the various Occupational Health and Safety (“**OHS**”) legislation throughout Australia.

During 2006-07, there were 162 notified work-related fatalities comprising 146 workers and 16 bystanders.

Five industries accounted for seven out of every ten notified work related fatalities. They were,

1. Construction: 17% of fatalities
2. Agriculture, forestry and fishing: 17% of fatalities
3. Transport and Storage: 17% of fatalities
4. Manufacturing: 11% of fatalities
5. Mining: 9% of fatalities.

The most common causes of fatalities in the workplace were,

1. Vehicle accidents: 30 fatalities
2. Being hit by moving objects: 29 fatalities
3. Being hit by falling objects: 29 fatalities
4. Falls from a height: 28 fatalities
5. Electrocution: 13 fatalities
6. Being trapped by moving machinery: 11 fatalities.

The most common diseases caused by the workplaces were,

1. Musculoskeletal disorders: 8700 in every one million workers
2. Mental disorders: 1000 in every one million workers
3. Noise induced hearing loss: 450 in every one million workers
4. Infectious diseases (including viral diseases, hepatitis and HIV): 38 in every one million workers
5. Respiratory diseases: 72 in every one million workers
6. Contact dermatitis: 52 in every one million workers.

For more information or assistance on your OHS obligations, please contact Nick Stevens or Alicia Mataere.

Loop Hole in Employee Transmission Protections

A full bench of the Australian Industrial Relations Commission (“**AIRC**”) full bench has found that employees who transfer to a new employer are required to serve a 6 month qualifying period, unless they expressly waive it, before they can claim unfair dismissal or be entitled to a redundancy pay out for their prior service.

Five aged care workers made an unfair dismissal claim after they were sacked by their new employer, Aged Care Services Australia Group Pty Ltd (“**ACSA**”), within months of taking over a home from Professional Aged Care Enterprises Pty Ltd last year. ACSA gave an undertaking when it offered employment to the transferring workers that it would recognise their prior service and that their entitlements would be maintained.

At first instance, Commissioner Dominica Whelan, AIRC ruled the qualifying period did not apply saying “*it is clear that in a transmission of business situation the Act does not treat the transferring employees in the same way as new employees who might be engaged in the transmittee.*”

However, on appeal, a majority of the Full Bench of the AIRC ruled the qualifying period applied to 5 employees, denying them the opportunity to make an unfair dismissal claim. The Full Bench concluded that none of the 5 employees had completed the qualifying period with ACSA, so it had no jurisdiction to hear the unfair dismissal claims.

In his minority decision, Commissioner Lewin, AIRC stated “*written artefacts of communications*” between the employees and ACSA before they started working with the new company constituted a written agreement that there would be no qualifying period. He stated s.647(7) should be “*read beneficially and liberally for the purposes of statutory construction.*”

For further information on qualifying periods in your workplace, contact Nick Stevens or Alicia Mataere.

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