

New industrial laws



The federal government has introduced the *Fair Work Act 2009* (the Act), which replaces existing industrial relations laws throughout Australia. Martin Belfield, Master Builders Manager Industrial Relations, gives a brief summary of the key changes.

Most of the new laws will come into effect from 1 July 2009, except for the National Employment Standards and modern awards, which will take effect from 1 January 2010.

Enterprise agreements

Types of agreements

There is no longer a distinction between union and employee collective agreements. The Act provides for three types of enterprise agreements:

1. Single enterprise agreements for a single employer, or more if there is a single interest (such as a joint venture)
2. Multi-enterprise agreements for two or more employers – strict rules aimed at low paid industries
3. Greenfield agreements for new enterprises, including new construction work.

Content of agreements: what is allowed?

The content of an agreement must pertain to the relationship between the employer and employees (for example hours, wages, leave). It may include job security type conditions, such as staffing levels, conditions for engaging labour hire/contractors and maximum engagement periods of casual employment.

The content may include matters relating to relationship between employer and union, for example trade union training leave, union representatives in dispute procedures, union notice boards, delegates leave and union role in inductions.

An agreement can operate for up to four years.

Content of agreements: what is not allowed?

- Prohibition on engaging contractors or labour hire
- Banning casual employment
- Donations
- Use of particular suppliers/products
- Removing management prerogatives to select or engage certain clients/customers
- Obligations to social causes, such as climate change initiatives

- Bargaining agents' fees.

Bargaining representatives

An employer may elect a representative (for example Master Builders) and employees may elect a representative (union or non-union).

If the employer is the initiating party, the employer must give employees at least 21 days written notice of the proposal to make an enterprise agreement and advise the employees that they may appoint a bargaining representative.

If a union is not appointed by the employees and the union has at least one member in the enterprise, the union is deemed to be the bargaining representative. An employer must not refuse to bargain with a bargaining representative.

Prior to lodgement of the agreement, a union bargaining representative may give notice to Fair Work Australia (FWA) that the union is to be covered by the agreement. This option is available to the union bargaining representative even where the representative has not participated in the bargaining.

Good faith bargaining

The bargaining representatives must negotiate in good faith. Good faith bargaining is broadly described and requires representatives to:

- Disclose and discuss relevant information
- Attend and participate in meetings
- Respond to proposals in a timely manner
- Give genuine consideration to proposals and claims
- Recognise the other bargaining representatives
- Allow consultation with employees.

Good faith does not mean a bargaining representative must make concessions in negotiations or make an agreement.

Pattern bargaining test

Employers must be satisfied the union bargaining and claims are not pattern bargaining.

If pattern bargaining is occurring, the employees cannot take protected industrial action and the employer is under no obligation to continue to bargain in good faith.

If challenged, the onus is on the union representative to prove the union and members are genuinely trying to reach agreement with the employer in respect to the employer's enterprise.

Bargaining orders

FWA may issue a bargaining order on application of a bargaining representative. For example, if an employer refuses to meet with an employee bargaining representative to discuss a wage claim by the majority of employees. These orders will require specific action to be taken to facilitate bargaining and will reinforce requirements to bargain in good faith.

Industrial action

Protected action

Protected industrial action is available during negotiation for single enterprise agreements.

Protected action is not available if the initiating party is not genuinely trying to reach agreement or the claims include non-permitted matters. A secret ballot of employees to approve the action must be held before protected action can occur.

Unfair dismissals

From 1 July 2009, employees can make a claim for unfair dismissal if they were:

- Employed for more than 12 months service by a small business (fewer than 15 employees), or
- Employed for more than six months service by an employer with 15 or more employees.

Employees cannot make an unfair dismissal claim if they were:

- Paid more than \$106,000 per year (excluding superannuation)
- Irregular casuals, fixed term, fixed task, trainees, or
- Employed by a small business and dismissed in accordance with the Small Business Dismissal Code.

The *Fair Work Act 2009* replaces existing industrial relations laws throughout Australia and will come into effect from 1 July 2009.

If the termination is found by FWA as harsh, unjust or unreasonable, it may order reinstatement, or if that is impracticable, order compensation be paid for up to six months pay.

Unlawful termination claims may also be made to FWA, including termination for reasons of age, sex, marital status or race. These applications are not limited by employer size.

Right of entry

Much of the right of entry laws remain unchanged. However, the FWA has removed the requirement that the union be a party to an award or agreement that applies to the workplace.

To access a workplace, a union official needs to have a member or a person eligible to be a member, engaged at the site or premises. A union officer cannot inspect the pay records of a non-union employee.

National Employment Standards

From 1 January 2010, the ten National Employment Standards will apply to all employees and cannot be reduced by awards or enterprise agreements:

1. Maximum weekly hours (38 hours, plus reasonable overtime)
2. Right for parents to request flexible work arrangements

3. Parental leave – 12 months unpaid for each parent (modified)
4. Annual leave
5. Personal/carer's and compassionate (paid and unpaid)
6. Community service leave (unpaid), including jury service (paid)
7. Long service leave
8. Public holidays
9. Notice of termination and redundancy pay
10. Fair Work Information Statement for new employees.

Modern awards

New 'modern awards' will be introduced from 1 January 2010.

The Australian Industrial Relations Commission (AIRC) is rewriting the federal and state awards to create a series of key industry awards throughout Australia.

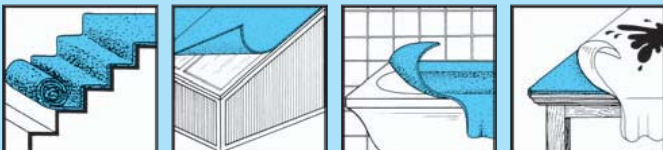
A new on-site construction award, covering building, civil and engineering construction, will replace the current awards in those sectors. High income employees, who are guaranteed annual earnings exceeding \$106,000 (to be confirmed by regulation and indexed), will be exempt from modern awards.



We are developing a series of fact sheets about the new laws, which will be available soon on our website at www.masterbuilders.asn.au. Information briefings will be also held at all Master Builders' offices in the coming months. For more information, contact the Workplace Relations team on (07) 3225 6407.

FLOORLINER

Manufactured with a foil top and a non slip base to protect floors, baths, tables and stairs from paint spills, scratches and stains.



• Non Slip • Re-usable • No Fixing Down

- “Standard” with plastic top for all dried floors
- “Absorb” with 3 ply barrier to soak up spills
- “Solprotec” for freshly sealed floors/rising vapour
- “Froma” for fresh concrete against swirls, gouges etc.

SOUND ABSORPTION



TSF SELF-ADHESIVE NONWOVENS IN STRIPS

- Step sound absorber on beams and stairs
- Protection for nosing of stairs
- Sound absorption for room separations

For Free Samples contact EMP Industrial Australia
1st Floor, 1394/1396 High Street, Malvern 3144 Vic. Australia
Tel: 03 9500 1819 Fax: 03 9500 1883

Info@empind.com.au



Lodge your Worker Service Returns online by 31 July 2009

www.qleave.qld.gov.au

Use QLeave's website to:

- update your contact details
- start or end a worker
- view current workers
- complete your Worker Service Return

For username and password help contact:

Free Call 1800 803 491

Email members@qleave.qld.gov.au



www.qleave.qld.gov.au