

Where employers stand on WorkChoices

As widely reported in the media, late last month the Government gave employers a six month reprieve from the compliance requirements of WorkChoices. That was news to many business operators who were unaware of the compliance requirements to start with.

As with any change, the transition from legislative theory to practical application is often complex and despite the seeming simplicity of WorkChoices, many questions remain.

Outlined below we tackle a few of the key WorkChoice issues. However, employers should be cautious before initiating radical change as while you may be within the letter of the law, the law remains untested. It's important to ensure that firstly, your business and employees are covered by WorkChoices. Secondly, that the action you are initiating is an accurate interpretation of the legislation. If there is any confusion, seek professional advice from an industrial relations specialist.

What are the compliance requirements for employers?

The workplace relations regulations contain detailed requirements outlining how employee records are maintained. Employees must be issued with payslips and records need to be kept for a minimum of seven consecutive years.

While these compliance requirements started on 27 September this year, the Government has softened its stance by providing a six month period of grace. During that time no employer will be prosecuted for failure to comply. Employers have until 26 March 2007 to comply before workplace inspectors start issuing fines for non-compliance.

Of significance to many employers is the need to keep detailed records of an employee's overtime. Under the regulations, where:

- The employee is entitled to overtime, the employee's daily starting and finishing times need to be accurately recorded.
- The employee's base annual salary is less than \$55,000, the total number of hours worked each day by the employee regardless of overtime need to be recorded.

Alternatively, employers can advise employees in writing of their understanding of the employee's normal working hours and leave it to the employee to advise if that understanding is incorrect. Averaging of hours is also possible if the employer and employee can reach an agreement and this agreement is in writing.

No special record keeping requirements relate to employees whose base salary is \$55,000 where there is no entitlement to overtime.

Prescriptive record keeping requirements also extend to an employee's general employment information and type of work, an employee's salary, leave, superannuation, and termination. Details can be found in Section 19 of the Workplace Relations Regulations 2006. The regulation is available on the internet from www.comlaw.gov.au.

What businesses are covered by WorkChoices?

WorkChoices applies to all employers who are "constitutional corporations" which means all trading, financial and foreign corporations within the meaning of the Australian Constitution.

A "trading or financial corporation" is any company, incorporated association or other corporation that engages in significant trading activities. Many not-for-profit corporations have been found to be trading corporations, including local councils, public universities, hospitals, benevolent or charitable organisations, and emergency services providers. Notably, even not-for-profit associations incorporated under State or Territory incorporated associations legislation (usually indicated by "Inc" at the end of the organisation's name) may be defined as trading corporations.

As to what is actually "trading", this term has been deemed to mean any activity that involves some notion of buying or selling and that generates revenue. Corporations have been found to be trading corporations in circumstances where:

- The corporation has as its primary or dominant activity a non-trading activity;
- The corporation does not trade for profit;
- The trading activities are not motivated by private gain but purely to earn revenue; and
- The corporation is a sporting, religious or governmental body.

Unfortunately, there is no definitive answer as to whether a corporation's trading activities are sufficiently "significant" as to make it a trading or financial corporation, it is all a matter of degrees.

In addition to covering constitutional corporations, WorkChoices covers all employers in Victoria, the Northern Territory and the Australian Capital

Territory. This is due to the fact that Victoria referred its industrial relations powers to the Federal Government several years ago and there are specific powers in the Australian Constitution with respect to Territories.

If your business operates as a sole trader, partnership, unincorporated association, or non-corporate trust, the existing State Awards continue to apply.

What are the minimum employment conditions?

The Australian Fair Pay and Conditions Standard sets down five minimum standards:

1. A federal minimum wage, minimum award classification rates of pay, and casual loadings set by the Australian Fair Pay Commission;
2. Four weeks paid annual leave per year (five weeks for continuous shift employees) up to two weeks of which can be cashed out in a workplace agreement;
3. Ten days paid personal/carer's leave per year and two days compassionate leave per occasion;
4. Up to 52 weeks unpaid parental leave (maternity, paternity and adoption); and
5. Maximum ordinary hours of work limited to 38 hours per week (which can be averaged over twelve months in an agreement or award) and reasonable additional hours.

Minimum wages are set by the Fair Pay Commission and are based on pay scales. The first minimum wage decision is expected before 30 November.

These minimum standards apply in a slightly different way in Victoria. The Office of the Employment Advocate has some excellent information on how Victorian employers are covered by WorkChoices.

It's important that all employers understand where they stand in relation to WorkChoices and seek advice before acting on any radical change.

For more on WorkChoices see www.workchoices.gov.au and the website of the Office of the Employment Advocate www.oea.gov.au

Business missing out on thousands in tax concessions

Business operators are missing out on thousands of dollars in tax concessions because many have a limited view of what qualifies as research & development (R&D).

A lot of businesses undertake R&D but simply overlook claiming the concession. To claim the concessions you have to register with AusIndustry before lodging your tax return. If a business lodges a tax return prior to having registered for R&D, they miss out on the opportunity.

Now is a good time to seek advice to see if your business activities are eligible.

There are two alternative types of concessions available:

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- *The R&D Tax Offset* - A 37.5c cash rebate for each eligible dollar of R&D expenditure. This is particularly good for companies as it is in effect a payment of cash by the Government for having undertaken R&D; and
- *The R&D Tax Concession* - A general concession allowing eligible companies to deduct 125% of eligible R&D expenditure. The tax concession is good for companies to help reduce tax payable or increase carry forward losses for future years. However, for companies that are not currently paying tax and therefore accumulating losses, they should, if possible access the Tax Offset instead.

The concessions apply to any R&D activity as long as the business and the activity meet the basic eligibility requirements. To be eligible, the R&D activities must be systematic, investigative and experimental which:

- Involve innovation or high levels of technical risk; and
- Are carried on for the purpose of acquiring new knowledge or creating new or improved materials, products, devices, processes or services.

To narrow that down, ask yourself:

- Was there a requirement to carry out testing/ trialling /prototyping etc?
- Did the company employ/contract experts to address specific technical problems?
- Is the company developing leading technology in its industry?
- Were there technical failures/problems that needed to be addressed?
- Was the company improving a process to provide better output?
- Did the company need to address industry changes due to legislative requirements?

If you answered 'yes' to any of the above, your client might be eligible to access the R&D system. For more information about accessing the R&D tax concessions talk to us today.

