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workplace relations | law alert

Stop press! Government introduces fairness test to workplace agreements

What a difference an impending election makes. Following a couple of weeks of intense media coverage of industrial relations, the Prime Minister has announced changes to WorkChoices effective immediately.

What are the changes? Essentially, they mean that workplace agreements can only be registered if they pass a Fairness Test. Until now, no such test existed and technically any new employee could be engaged under an Australian Workplace Agreement on the minimum conditions contained in the Australian Fair Pay and Conditions Standard. Now this has been limited. There is no draft legislation yet but here are the changes as announced by the Prime Minister:

- all workplace agreements lodged after 7 May 2007 must meet a Fairness Test if those agreements apply to employees earning less than \$75,000 per annum whose work was previously covered by an award;
- agreements lodged before 7 May 2007 are not covered by the new Fairness Test;
- the Office of the Employment Advocate still administers the agreement registration process but the (OEA) now has a new name: the Workplace Authority;
- the Fairness Test will focus on workplace agreements where those agreements either modify or remove penalty rates. If penalty rates or other protected conditions (e.g. shift loadings, annual leave loading, public holidays etc.) are removed or varied then there must be “adequate compensation” of either a monetary or non-monetary nature to meet the Fairness Test;
- an employer cannot dismiss an employee because the workplace agreement which applied to that employee failed the Fairness Test;

- an employer is prohibited from “forcing” an employee to agree to the removal or variation of a protected award condition;
- the Workplace Authority will now have an Infoline for the public to call; and
- the Office of Workplace Services (which currently engages the inspectors who investigate breaches of the Act) also gets a new name: the Workplace Ombudsman.

The Fairness Test is certainly a substantial change to the potential substance of workplace agreements. If you are in the process of negotiating an agreement, or are likely to in the near future, Ebsworth & Ebsworth can assist you in ensuring your agreements will comply with the new laws.

We anticipate seeing draft legislation soon. When that is available we will advise all our clients of its content. In the interim it is essential that clients seek advice in relation to any workplace agreements they intend to submit to the newly titled Workplace Authority.

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