

Amendments to Industrial Relations Laws

On the 4th December Parliament passed legislation which further amends the Industrial Relations Laws. The following is a summary of the main points.

1. Personal/ Carers Leave –Cashing Out

- Employees may cash out personal/carers leave provided that at least 15 days leave remains accrued at all times
- Employees must make request in writing and Employer must agree.

2. Waiving of 7 day period

An employee may now waive the statutory requirements that they have possession of or ready access to the AWA or collective agreement for 7 days before approving it. As before, they may also waive the requirement for an information statement.

3. Stand down provisions

Employers will now be allowed to stand down employees in circumstances where they cannot be usefully employed due to

- Strike action (including third party strikes)
- A breakdown in machinery
- A stoppage of work “*for which the employer cannot be **reasonably** held responsible*”

Effect on Employers

This gives employers more flexibility in relation to standing down employees without incurring penalties. We predict there will be a great deal of discussion and argument as to the meaning of the word “reasonably” in this context

4. Redundancy provisions

For pre and post reform collective agreements and AWA's that contain redundancy provisions, these provisions will be extended for a further 12 months after the agreement is terminated.

However where an employee signs a new AWA or collective agreement within that period the 12 month the old redundancy provisions will no longer apply.

Effect on Employers

Employers who are looking to scale back redundancy provisions in any new enterprise agreement should be aware that the employees shall have the benefit of the old clause for an extra 12 months. On this basis employees may refuse to sign a new agreement and strategies will need to be implemented to overcome this problem.

There are also notice requirements in relation to the redundancy provisions that employers must adhere to when an agreement is terminated

5. Other Issues

Other amendments have been made including;

- Changing the requirement that employees be paid fortnightly to monthly. This means that employers can still pay more frequently than monthly but not longer
- Employees may only accrue annual leave based on ordinary hours, not overtime hours
- Unpaid and unauthorised leave may not be counted in accrual of annual leave
- Employers may direct a pregnant employee to take unpaid leave if she is not fit for work and cannot be transferred to a safe job within 6 weeks of their due date.
- Employees have the right to refuse, on reasonable grounds, a request by an employer to work on a substituted public holiday

Independent Contractor Legislation

The government has also passed legislation which will govern independent contractors. We will update you on this legislation shortly.

Comment

The amendments are a mixed bag, some of which strengthen employee rights with others providing greater flexibility to employers.

To find out how these changes may affect your business please contact Andrew Bland at abland@blandslaw.com.au or on 0401 244418