Steps to a positive workplace culture

MKA: Risk Mitigation

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This is a special edition of the MKA Risk Newsletter welcoming all new subscribers who joined us at the October 2005 Safety Show. On the news front, MKA Risk has also taken over the role of editing the National Newsletter for the College of Organisational Psychology. The October National Newsletter features an article by Doctor Assaf Semadar at Monash University on Integrity Testing in Australia (www.psychology.org.au/units/colleges/organisation). There is an additional article on MKA Risk Mitigation's tips for prevention of workplace bullying on our website. This article was written by WorkplaceOHS and they have kindly given permission for us to post it on the website (see http://www.mkarisk.com.au/news/news02.html).

The new "Workplace Relations Amendment (Work Choices) Bill 2005 is going to be the focus of this news letter. A summary is always useful, as few people have a spare month to read the total 691 pages of legislation. However it is strongly recommended that employers and employees do take the time in the next few months to actually read the sections on sick leave, lodgement of agreements and employment termination. The controversy around this legislation has resulted in summaries by various experts each of whom has a very different emphasis.

MKA: Making Knowledge Accessible

The Workplace Relations Amendment Bill 2005

The bill is a wide ranging set of industrial reforms, which involves substantial transfer of responsibilities from the states to federal jurisdiction. The Australian Fair Pay Commission (AFPC) will be taking over a number of responsibilities from the Australian Industrial Relations Commission. The AFPC determines wage reviews, minima, junior wages and casual loadings. The AFPC also has the capacity to override certain laws affecting public sector employment.

Workplace Choices and Enforceable Conditions

The bill reduces the number of enforceable conditions down to five. These are outlined below along with various caveats that apply from the broader legislative text:

a) A Federal Minimum Wage (FMWS). The standard federal minimum wage outlined in the legislation is $12.50 per hour. This does not apply to juniors, trainees, apprentices, disabled workers or piece rate workers (see Subdivision E, Section 90O).

b) A maximum 38 hour week which is determined by taking an average over a specified period.

c) Four weeks of annual leave per year. Employers have the power to order employees to take annual leave during "shut down periods" and to order employees to use excess accrued annual leave.

d) Up to two days unpaid carer's leave for all employees including casuals. Supporting medical certificates or a statutory declaration by the employee (if obtaining a medical certificate is not feasible) must be provided for instances of compassionate leave (see Subdivision C, Section 93J).

e) A minimum casual loading of 20%, which will be periodically reviewed by the Australian Fair Pay Commission (AFPC).

Existing Federal Awards will be restricted to an even smaller number of protected allowable matters. These are rest breaks, incentive payments and bonuses, observance of state/territory public holidays, monetary allowances, overtime and shift loadings, and penalty rates and outworkers conditions.

What remains under state control?

The legislation specifies a number of "non-excluded" matters which will still be covered by the state systems. These matters are superannuation, workers compensation, occupational health and safety, child labour, long service leave, observance of public holidays (except the rate of payment for that public holiday), frequency of payment of wages and salaries, method of payment, wage deductions, training matters, industrial action, jury duty and regulation of employee/employer associations. This means that employer obligations under occupational health and safety and workers compensation remain unchanged for the time being.

What are the types of agreements that can be negotiated?

Employers have an option of negotiating:

- Australian Workplace Agreements
- Employee Collective Agreements
- Union Collective Agreements,
- Union Greenfield Agreements,
- Employer Collective Agreements
- Multiple Business Agreements (See Division 2, Sections 96-96E).

For an employer to achieve a Multiple Business Agreement, the employer must have the agreement authorised through the Office of the Employee Advocate (OEA). The OEA is not allowed to authorise an agreement unless it is the public interest to do so.

This could present particular problems for most of the top twenty Standard and Pors Companies who need to be able to flexibly deploy specialist staff to projects in different businesses. Unless these organisations can demonstrate a strong public interest argument, they may be in the position of having to negotiate a different agreement for each business unit. This would reduce ease of staff portability across business units, as well as presenting problems with business integration.

What is the time table for this legislation?

The legislation states that the state transitional agreement preserving state awards ceases to be in operation at the end of the period of three years beginning from the start of the reforms. In plain English, businesses that are covered by existing agreements and awards, will have three years (10th November 2008) to negotiate new agreements under the new arrangements.

What is the impact on termination of employment?

Businesses that employ 100 or fewer employees will be exempt from the unfair dismissal legislation. Businesses employing more than 100 employees will be exempt from unfair dismissal laws where the employee has been employed for less than six months; and where there is a genuine operational reason for that employee's termination.

Employees can make an unfair dismissal application against businesses with more than 100 employees, if that dismissal has been made because of:

- temporary absence from work due to illness or injury;
- trade union membership (or non membership) or participation in union activities;
- race, colour, sex, sexual preference, age, physical or mental disability, religion, political opinion, national extraction or social origin;
- pregnancy, marital status, family responsibilities or absence from work due to parental leave;
- refusing to negotiate with, make, sign, extend, vary or terminate an AWA;
- temporary absence from work because of carrying out of a voluntary emergency management activity.

Certificates for single day sick leave?

This has been one of the most controversial points. Unions have argued that this means an employer will require a medical certificate for a single days absence. Government spokespersons have stated that the bill does make it mandatory for employees to have a certificate for a single day of sick leave. The government has stated that it is at the employers' discretion as to whether they require a medical certificate for a single day of sick leave.

MKA Risk Mitigation will continue to analyse this legislation in our next newsletter.

We are offering an obligation free discussion on how you can improve workplace safety culture and morale during these industrial reforms. This offer will conclude on 26th February 2006. Please call us on 02 9264 9954 or 0417 687 947 if you wish to take up this offer.

Future Topics

- Creating positive, performing, professional workplace cultures
- Positive Mental Health at Work
- A Drug Free Workplace
- Inspired Performance Management
- Adventurous workplaces without risk
- Goodbye Chronic Pain
- Mediation that Works
- Safety Culture Plus
- Real Team Building

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