



Labour Relations Newsletter

Issue 257 - 24 December 2008

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Rates of pay for extended Christmas and New Year trading

Retail businesses may choose to open for extended hours over the Christmas period. The extended trading hours include Sundays, later weeknight closures and some public holidays.

An information sheet has been produced by Labour Relations to provide a point of reference for both employers and employees for the correct rates during this period for employees covered by the *Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977*.

The information sheet can be accessed by clicking [here](#).

Contact **Wageline** on **1300 655 266** to ensure the pay rates contained in the information sheet are applicable to your situation as not all employees working in a shop have their pay rates determined by the *Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977*.

Christmas closedown

As many businesses elect to close down over the Christmas/New Year period, employers and employees may need to familiarise themselves with various employment conditions to ensure that correct leave practices are carried out.

If an employer chooses to close their business an employer may direct an employee to take either paid or unpaid leave during the Christmas/New Year period if:

1. the relevant award or agreement has provision for a Christmas closedown (as long as the notice provisions are adhered to);
2. the leave arrangement was a condition of employment or part of the employment contract or an agreement; or
3. it is common practice for the business to close down over the Christmas period.

For further information on Christmas closedown provisions for businesses within the State jurisdiction please contact Wageline on 1300 655 266.

Fair Work Bill 2008 introduced into Federal Parliament

The *Fair Work Bill 2008* (Cth) (the Bill) was introduced into federal Parliament on 25 November 2008. The Bill is intended to repeal the current *Workplace Relations Act 1996* (Cth) (WR Act) including the 'Work Choices' amendments and replace it with a new piece of legislation called the 'Fair Work Act'.

The Bill provides for a new workplace relations system covering those employers and employees currently operating in the federal system. Certain parts¹ will also apply to non-national system employers and employees in the same way as the current WR Act does.

The main features of the new workplace relations system will be:

- 10 National Employment Standards (NES);
- modernised awards;
- enterprise agreements;
- a new unfair dismissal regime;
- broader right of entry for unions; and
- a new central agency called Fair Work Australia (FWA).

The NES will contain minimum standards for weekly hours of work; flexible working arrangements; parental leave; annual leave; personal/carer's and compassionate leave; community service leave; long service leave; public holidays; notice of termination and redundancy pay; and the Fair Work Information Statement.

The NES will be supplemented by the modern awards that are currently being developed by the Australian Industrial Relations Commission (AIRC). It is anticipated that modern awards will cover most national system employers and employees.

¹ e.g notice of termination, parental leave, discrimination.

Employees earning over \$100 000 may be excluded from the operation of modern awards.

Although there will be no AWAs or other registered individual agreements² in the new workplace relations system, modern awards will be required to contain 'flexibility terms' allowing employers and employees to enter into individual flexibility arrangements (IFAs). Although IFAs will not be registered, they must leave employees better off overall.

Like IFAs, collective agreements (known as enterprise agreements) must leave employees better off overall when compared to the relevant modern award. Fair Work Australia will apply the 'better off overall test' (BOOT) before approving the agreement.

The Bill does not contain transitional arrangements for existing individual agreements (i.e. AWAs and ITEAs) or collective agreements. However, it is expected that they will operate until terminated or replaced.

Many of the unfair dismissal provisions brought in by the previous federal Government are absent from the Bill. Rather than the current exemption for businesses with less than 100 employees, the Bill protects small business employers³ against unfair dismissal claims if they comply with the Small Business Fair Dismissal Code.

While current notice provisions will be retained, the Bill will provide unions with greater access to workplaces for discussion purposes. Unions will be able to view the employment records of non-members as well as members if they suspect that the employer has breached requirements of the Bill or an industrial instrument.

Under the new workplace relations system, a single body known as Fair Work Australia (FWA) will be established to replace the AIRC, the Australian Fair Pay Commission, the Workplace Authority, and their supporting bodies. FWA is intended to be a user-friendly, one-stop shop responsible for overseeing the new system.

The Federal Government intends for the NES and modern awards to come into effect from 1 January 2010. The rest of the Bill is scheduled to come into effect from 1 July 2009.

New State labour relations laws: the *Employment Dispute Resolution Act 2008*

The Western Australian *Employment Dispute Resolution Act 2008* (Act) came into effect from 1 December 2008.

The new Act establishes a framework for dispute resolution which sits outside the State *Industrial Relations Act 1979 (IR Act)* and the Commonwealth *Workplace Relations Act 1996 (WR Act)*.

² New Individual Transitional Employment Agreements (ITEAs) cannot be made after 31 December 2009.

³ Small business employers are those with fewer than 15 employees.

The Act develops the role of the Western Australian Industrial Relations Commission (WAIRC) in the provision of dispute resolution and mediation services, through the creation of an easily accessible, expeditious and effective dispute resolution framework.

The framework is available to employers, employees and organisations in both the federal and State industrial relations systems who wish to resolve employment disputes on a wider range of issues which are not confined to industrial matters.

A copy of the *Employment Dispute Resolution Act 2008* is available from the State Law Publisher [website](#).

Federal award modernization

The federal Government's award modernisation process involves the creation of a system of modern awards to operate in conjunction with the new national workplace relations system to commence from January 2010. This process was initiated to streamline and simplify awards and set a minimum standard for enterprise agreements.

On 19 December 2008 the Australian Industrial Relations Commission (AIRC) published the following 17 modern awards in the priority stage of its award modernisation process:

- *Clerks—Private Sector Award 2010*
- *Black Coal Mining Industry Award 2010*
- *Higher Education Industry—Academic Staff—Award 2010*
- *Higher Education Industry—General Staff—Award 2010*
- *Horse and Greyhound Training Award 2010*
- *Hospitality Industry (General) Award 2010*
- *Manufacturing and Associated Industries and Occupations Award 2010*
- *Mining Industry Award 2010*
- *Racing Clubs Events Award 2010*
- *Racing Industry Ground Maintenance Award 2010*
- *Rail Industry Award 2010*
- *General Retail Industry Award 2010*
- *Hair and Beauty Industry Award 2010*
- *Pharmacy Industry Award 2010*
- *Fast Food Industry Award 2010*
- *Security Services Industry Award 2010*
- *Textile, Clothing, Footwear and Associated Industries Award 2010*

A copy of each of these awards as well as detail on the award modernisation process is available on the AIRC's website (www.airc.gov.au).

Graduate Gender Pay Gap

A recent report titled "What price the clever country" examines the costs of tertiary education in Australia, and the relationship between higher education and wages.

The report, by the National Centre for Social and Economic Modelling (NATSEM), in partnership with AMP demonstrates that obtaining a qualification after high school has a

positive impact on wage outcomes. It outlines that University graduates initially lag behind their TAFE age cohorts, but soon surpass their earnings.

The trends are similar within male and female samples, but the research clearly demonstrates that female graduates earn significantly less than male graduates in the same education category – be that university, vocational or no further education.

Comparing across sample groups, female university graduates earn marginally less than male vocational graduates across all age groups; while females with a vocational qualification earn significantly less than males with no post school education, across all age bands.

After the 20 to 29 year old age category, male university graduates are likely to earn nearly twice as much as female university graduates.

Click [AMP's media centre](#) for full report.

Flexible Work Arrangements on the Rise

The most recent survey from the Equal Opportunity for Women in the Workforce Agency (EOWA), with support of Alcoa, shows that both access to and uptake of flexible work arrangements has been on the rise in Australia.

The survey gathered data from employers that report to EOWA, on flexible practices such as child-care provision, compressed hours, job sharing, working from home, flexible hours, part time work, carer or family leave, and paid parental or carer's leave.

The trends indicate that since the last survey in 2003 access to all practices has increased to differing degrees. Managers are enjoying greater access to flexible work arrangements, but are still lagging on other staff, except in the capacity to work from home.

The biggest increase is capacity to compress hours, and access to working from home. Childcare assistance remains the least offered practice.

EOWA draws on previous research which revealed that “83% of women and 73% of men consider an organisation that genuinely supports work life balance to be extremely important when job seeking, while 12% of women and 11% of men said they left their previous job due to a desire for greater work life balance”.

The full report is available from eowa.gov.au

Employment Obligations - Beauty Industry

During November 2008 the Compliance and Education Directorate of DOCEP Labour Relations sent out 350 letters to employers operating beauty establishments in WA's industrial relations system. The campaign targeted the majority of beauty industry employers in the central and outer metropolitan regions of Perth.

The campaign advised employers that the beauty industry is generally an award free industry and that their employees' employment conditions were primarily derived from the *Minimum Conditions of Employment Act 1993*.

The key message of the campaign was to ensure that beauty industry employers:

- paid the correct wages to employees;
- were aware of the ability of current or previous employees' to make an application for breaches of employment obligations up to six years after the alleged breach; and
- were aware that the underpayment of wages is a common issue and is something employers can avoid if they understand their employment obligations.

Part of the campaign was to offer a free and confidential consultation to employers to discuss in greater depth issues surrounding employment matters, especially rates of pay and long service leave obligations.

The campaign resulted in more than 50 calls to Wageline with many of the callers receiving a variety of resources to enable them to better comply with employment laws.

The WA Industrial Relations Society's Convention

The Industrial Relations Society of Western Australia (IRSWA) is an independent association which aims to facilitate discussion and debate on a range of industrial relations issues amongst members of the industrial relations community.

Each year the IRSWA hosts an annual weekend convention to encourage discussion and debate on the wide range of issues which impact on the employer-employee relationship.

The theme of this year's convention was the top ten industrial relations issues of 2008 as nominated by IRSWA members. The titles of the key note address were as follows:

1. Paid maternity leave for Australia;
2. Industrial relations: a new perspective;
3. Drafting enforceable restraints on ex-employees;
4. Here we go again, life after Work Choices;
5. Award modernisation;
6. Workplace relationships, finding a sustainable model for the future;
7. The oppositions approach to workplace relations;
8. Improving indigenous participation rates;
9. Reforming or Revisionism? The Rudd Industrial Relations Agenda; and
10. Successful Acquisition – Does HR Really Matter?

Addressing the convention, Minister Buswell, the minister responsible for WA industrial relations, said he will be recommending that WA does not join a national industrial relations system. In addition, Minister Buswell foreshadowed a review of WA workplace laws and an overhaul of the system administering the Act to begin next year.

The Department of Consumer and Employment Protection soon to be Department of Commerce (from 1 January 2009) was a Silver Sponsor of the Convention.

A number of the annual conventions presentations are available on the [industrial relations society website](#).



Photo Caption (bottom left to right): Charlie Domville-Lewis, Emily Negus, Bradley Trigger, Bob Horstman, Helen Dooley, Scott Barrett and Sarah Haynes from the Labour Relations Division of DOCEP attended the Conference.

2009 public holiday reminder

The following days will be observed as public holidays in 2009.

Public Holiday	Date
New Year's Day	Thursday 1 January
Australia Day	Monday 26 January
Labour Day	Monday 2 March
Good Friday	Friday 10 April
Easter Monday	Monday 13 April
Anzac Day	Saturday 25 April / Monday 27 April
Foundation Day	Monday 1 June
Queen's Birthday [#]	Monday 28 September
Christmas Day	Friday 25 December
Boxing Day	Saturday 26 December / Monday 28 December

[#] Non-metropolitan local authorities may celebrate the Queen's Birthday public holiday on an alternative date.