

Recent Changes to Industrial Relations

Presented by NSW Industrial Relations

Topics Covered

1. Upcoming changes to Boxing Day Trading 2017
2. NSW Apprenticeship & Traineeship Regulation 2017
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Boxing Day Trading Update



Boxing Day

UPDATE - Retail Trading Amendment for Boxing Day

- The Retail Trading Amendment (Boxing Day) Bill 2017 passed through Parliament on 20 September 2017.
- The Bill removes the sunset clause and therefore permits shops to continue to be able to trade on Boxing Day and banks to be able to trade on Boxing Day, Bank Holiday and certain other public holidays provided staff have freely elected to work.
- Check our website @ www.industrialrelations.nsw.gov.au for further information.

NSW Apprenticeship & Traineeship Regulation 2017



NSW Apprenticeship & Traineeship Regulation 2017

Updates to NSW Apprenticeship & Traineeship Regulation 2017

Changes include

- Improving communication between employers and training organisations through stronger requirements for training providers to consult with employers on training plans and report progress regularly
- Greater emphasis on applying on-the-job training in qualifications
- Removing red tape by abolishing the redundant Vocational Training Review panel
- This has come about with extensive consultation with employers, students, industry and the community over the last year

NSW Apprenticeship & Traineeship Regulation 2017

The object of this Regulation is to repeal and remake, with minor amendments, the provisions of the Apprenticeship and Traineeship Regulation 2010

This Regulation makes provision with respect to the following:

- the making of applications to establish apprenticeships and traineeships
- the employment of persons under the age of 21 years in certain trade vocations,
- the payment of the expenses of witnesses before the Civil and Administrative Tribunal of New South Wales in connection with apprenticeships and traineeships,
- the procedures relating to appeals
- the form for an industry training officer's certificate of identification
- the payment of fees and the circumstances in which fees may be waived or refunded
- the nomination of persons for appointment to the Vocational Training Review Panel of New South Wales
- Further information www.training.nsw.gov.au

Fair Work Amendment (Protecting Vulnerable Workers) Act 2017



Fair Work Amendment Act 2017

Changes Effect the Following Groups

- All employers, companies and employees covered by the FAIR WORK Act 2009
- Particularly important for
 - Franchisors and holding companies
 - Vulnerable employees
 - People or companies who do not voluntarily cooperate with FWO investigations

Fair Work Amendment Act 2017

Reverse Onus of Proof

- If an employee makes a claim in relation to a breach of the NES or a modern award or agreement and the employer did not;
 - keep the right records,
 - make those records available, or
 - give them a pay slip in the right form,
- Then the employer needs to prove that they did pay the employee correctly or gave them the right entitlements
- Employers who do not meet record-keeping or pay slip obligations and cannot give a reasonable excuse will need to disprove allegations in wage claims made in a court
- This is referred to as a 'reverse onus of proof.'

Fair Work Amendment Act 2017

Serious Contraventions

- There are increased penalties for 'serious contraventions' of workplace laws
- A 'serious contravention' happens when:
 - The person or business knew they were contravening an obligation under workplace law
 - The contravention was part of a systematic pattern of conduct affecting one or more people
- If someone else was involved in the contravention, and knew it was a 'serious contravention', they could also face the higher penalties

Fair Work Amendment Act 2017

Increased Penalties - Employers can be ordered to pay

- Penalties for giving pay slips that they know are false or misleading to their employees
- Double the previous maximum penalty for failing to keep employee records or issue pay slips
- Triple the previous maximum penalty for knowingly making or keeping false or misleading employee records
- New penalties also apply for people providing information or documents they know are false or misleading
- up to \$126,000 per contravention for an individual and \$630,000 per contravention for companies

Fair Work Amendment Act 2017

Cashback Schemes

- Employers cannot require an employee or prospective employee to spend their money, or give them (the employer or someone else) money, when:
 - it's unreasonable or the payment is for the employer's benefit, or the benefit of someone related to the employer
 - for the prospective employee, it's connected to their potential employment
- This applies to any of the employee's money, not just the pay they get for working

Fair Work Amendment Act 2017

This means that an employer cannot

- Ask employees or prospective employees to pay money just to get the job, or to keep their job
- Pay the employee the correct pay rate and then make them give some of it back
- Apply unfair pressure to employees to spend their pay or own money

Fair Work Amendment Act 2017

Collecting Evidence

- The Fair Work Ombudsman can apply to the Administrative Appeals Tribunal (AAT) for a 'FWO notice' if it is reasonably believed a person or a business has information or documents that will help an investigation and is capable of giving evidence
- A FWO notice is a written document which can require a person or business to:
 - Give information, produce documents, or
 - Attend an interview to answer questions

Fair Work Amendment Act 2017

Collecting Evidence

- A FWO notice can only be given in specific circumstances and the Fair Work Ombudsman, Natalie James, or specified senior executives authorised can apply to the AAT for one to be issued
- Penalties of up to \$126 000 (for an individual) or \$630 000 (for a company) can apply for not complying with a FWO notice

Fair Work Amendment Act 2017

Liability for Franchisors and Holding Companies

- From 27 October 2017 Franchisors and holding companies (a company that has control over subsidiary companies) can be held responsible if their franchisee or subsidiary does not follow workplace laws about
 - Minimum entitlements, the National Employment Standards, awards, sham contracting, record-keeping and pay slips

Fair Work Amendment Act 2017

Liability for Franchisors and Holding Companies

- This will apply to franchisors that have a significant amount of influence or control over the business affairs of the franchisee
- Franchisors or holding companies could be liable for breaches or underpayments if:
 - they knew (or could have reasonably known) that a franchisee or subsidiary wasn't following workplace laws
 - they did not take reasonable steps to prevent it

4 Year Modern Award Review



4 Year Modern Award Review

Casual Employment

- 85 Modern Awards to have model casual conversion clause inserted

The model provision has the following features:

- A qualifying period of 12 calendar months
- A qualifying criterion that the casual employee has over the qualifying period worked a pattern of hours on an ongoing basis which, without significant adjustment, could continue to be performed in accordance with the full-time or part-time employment provisions of the relevant award
- The employer must provide all casual employees (whether they become eligible for conversion or not) with a copy of the casual conversion clause within the first 12 months after their initial engagement

4 Year Modern Award Review

Casual Employment

- A conversion may be refused on the grounds that it would require a significant adjustment to the casual employee's hours of work to accommodate them in full-time or part-time employment in accordance with the terms of the applicable modern award, or
- it is known or reasonably foreseeable that the casual employee's position will cease to exist, or
- the employee's hours of work will significantly change or be reduced within the next 12 months, or
- on other reasonable grounds based on facts which are known or reasonably foreseeable
- FWC will provide interested parties with an opportunity to make further submissions about the terms of this proposed model provision

4 Year Modern Award Review

Domestic Violence – Update

- FWC rejected a claim for ten days a year of paid family and domestic violence leave and that employees should be able to access personal/carer's leave for the purpose of taking family and domestic violence leave
- FWC is seeking submissions ahead a full bench hearing in October
- FWC are considering the following five key elements to be considered in the preparation of a model term identified as
 - The definition of ‘family and domestic violence’ for the purposes of the clause
 - The purpose of the leave (i.e. In what circumstances an employee can access the leave and which employees may take the leave)
 - Unpaid leave – quantum and accrual issues
 - The evidence requirements
 - Privacy considerations

4 Year Modern Award Review

Penalty Rates Decision

- FWC recent decision to change Sunday penalty rates are to be phased in over 3 or 4 years as of 1 July 2017
- Cuts of 5% as of the 1 July 2017, with greater cuts in 2018, 2019
- Public holiday penalty rates reduced by 25% as of 1 July 2017
- Only selected awards are affected by the penalty rate changes

4 Year Modern Award Review

Selected awards are affected by the Sunday penalty rate change's

- **General Retail Industry Award 2010:** Changes to take place over 4 years for full-time and part-time employees and over 3 years for casual employees
- **Fast Food Industry Award 2010:** Changes to take place over 3 years for all employees
- **Restaurant Industry Award 2010:** Change to **Public Holiday rates**, *no changes to Sunday rates*
- **Hospitality Industry General Award 2010:** changes to take place over 3 years for full-time and part-time employees (there are no Sunday changes for casual employees)
- **Pharmacy Industry Award 2010:** Changes to take place over 4 years for all employees

4 Year Modern Award Review

Annual Leave - Cashing Out of Annual Leave

- No cashing out unless in accordance with NES or Modern Award
- Must be a written agreement stating the amount of leave to be cashed out and the payment to be made, when it will be made, paid at what would be received if leave was taken and that u18 must be signed by parent/guardian
- 4 weeks annual leave must remain
- Maximum of 2 weeks to be cashed in 12 month period

4 Year Modern Award Review

Annual Leave - Annual Leave in Advance

- Employer and Employee may agree in writing to the employee taking a period of paid annual
- Must be an agreement in writing signed by both parties
- If on termination the employee has not accrued an entitlement then the employer may deduct from money due an amount equal to the amount already paid to employee in respect of annual leave

4 Year Modern Award Review

Annual Leave - Excessive Leave accruals

General Provisions

- Excessive leave accrual if employee has more than 8 weeks (10 for shiftworker)
- Requirement to confer and attempt to reach agreement on how to reduce entitlement
- An employer may direct an employee who has excessive leave to take it if an agreement is not reached;
 - Employee must maintain 6 weeks accrued leave
 - Must not require employee to take any less than 1 week
 - 8 weeks notice required and to be taken within 12 months
- Must not be inconsistent with any leave arrangement made between employer/employee
- Note 1: Paid annual leave arising from a request by employee may result in a direction ceasing to have effect
- Note 2: Under section 88(2) of the FW Act the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave

4 Year Modern Award Review

Time Off Instead of Overtime

- Commonly referred to as time off in lieu (toil) in many modern awards
- Model clause now formalising toil by agreement and recorded in writing
- An employee may elect with the consent of the employer, to take time off instead of receiving payment for overtime worked that is authorised overtime

4 Year Modern Award Review

Time Off Instead of Overtime

- Modern Awards vary on how the time off is calculated, it may be either:
 - Time taken off at the overtime equivalent
 - Time taken at an hour for an hour
- If time off in lieu is not taken within a certain period then employer may be required to pay out the overtime entitlement (check your modern award as periods vary)
- Never lose the overtime payment if time not taken
- Check modern award for time in lieu clause and schedules for agreements

Useful Information and Contacts

- NSW IR is working with NSW businesses to help them better understand their rights and responsibilities as an employer. Through a comprehensive workshop and webinar program NSW IR are providing employers with information and tools to deal with Industrial Relations issues and Human Resource issues.
- Further information on our current program and online registration may be found at:
www.industrialrelations.nsw.gov.au/Workshops.page
- Face to Face IR and HR Workshops include:

Industrial Relations:

- Rights and Responsibilities
- Workplace issues for Bookkeeper and Payroll
- Various Modern Awards workshops including:
 - Health Professionals
 - Childrens Services

Human Resources:

- Managing Employees
- Writing Workplace Policies
- Bullying in the Workplace
- Workplace Negotiations



Upcoming Events

October 2017		
Date	Event	Location
3/10/2017	Workplace Issues for Bookkeepers, Payroll and Accountants	Sydney CBD - (Y)
3/10/2017	Workplace Issues for Bookkeepers, Payroll and Accountants	Ramsgate RSL
4/10/2017	Workplace Issues for Bookkeepers, Payroll and Accountants	Gosford Golf Club
5/10/2017	Managing Employees	Wollongong - Adina Apartment Hotel
5/10/2017	Parental Leave in NSW	Fairfield RSL Club
10/10/2017	Long Service Leave Workshop	Kiama - The Pavilion
10/10/2017	Rights and Responsibilities in the Workplace	Wentworthville Leagues Club
11/10/2017	Parental Leave in NSW	Penrith RSL Club
11/10/2017	Parental Leave in NSW	Mascot - Adina Apartment Hotel Sydney Airport
12/10/2017	Rights and Responsibilities in the Workplace	Mascot - Adina Apartment Hotel Sydney Airport
31/10/2017	Rights and Responsibilities in the Workplace	Rooty Hill RSL
31/10/2017	Workplace Issues for Bookkeepers, Payroll and Accountants	Blacktown Workers Club
31/10/2017	Rights and Responsibilities in the Workplace	Mudgee Golf Club

Our Team



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Industrial
Relations

Useful Information and Contacts

NSW Industrial Relations - 13 16 28

- Live and recorded webinars
- Workshop Program
- Long Service Leave
- Public Holidays

www.industrialrelations.nsw.gov.au

Fair Work Ombudsman - 13 13 94

- Fact Sheets, templates, pay tools and other resources for employers

www.fairwork.gov.au

Fair Work Commission - 1300 799 675

- Modern Awards
- Fair Work Act 2009
- Enterprise Agreements & Unfair Dismissals

www.fwc.gov.au

