

New workplace laws: will they affect you?

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As promised by the Federal Labor party in the lead up to last year's election, the Government has started the process of reforming Australian employment laws.

It is inevitable that the current Work Choices laws governed by the Workplace Relations Act 1996 will be abolished and new laws designed to be fairer to all employees will be introduced. There has been much debate as to whether the abolition of Work Choices and Australian Workplace Agreements (AWAs) will be better for employees and worse for employers. This article is geared towards those who are affected by AWAs.

As the first step to changing Work Choices, the government introduced in February of this year the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008, which is primarily focused on transitional matters in anticipation of the substantial reforms soon to be introduced into Parliament. The Bill has been put to the Senate for approval, but is unlikely to be passed until after 1 July 2008 when the Liberal party loses control of the Senate.

When the Bill is passed as law, it will provide for a transition period up until 1 January 2010, when the new employment laws will take full effect.

The key amendments to the Work Choices laws are the abolition of AWAs and the introduction during the transitional period of Individual Transitional Employment Agreements (ITEA).

Those currently employed in the wine industry under an AWA will continue under that arrangement until the AWA is terminated in accordance with the current Work Choices laws or replaced. Employers and employees will not be able to enter into AWAs after the Bill becomes law (at some stage after 1 July).

After the Bill becomes law, employers and employees can choose to enter into an ITEA at any time up to 31 December 2009. Like AWAs, ITEAs will operate as an industrial instrument to the exclusion of awards and collective agreements. The purpose of introducing an ITEA is to soften the blow on employers who have traditionally employed staff under AWAs.

An ITEA can only be offered to existing staff employed by the same employer under an AWA or a new employee provided that new employee is offered an ITEA within 14 days of commencement. Existing employees who were not previously employed by the same employer under the AWA cannot be offered an ITEA by the employer. Those not employed under an AWA can continue under the current terms of their employment.

AWAs and an ITEA cannot be used for new employees after the transition period expires and when the new employment laws take full effect from 1 January 2010.

During the transitional period, an ITEA can be terminated by mutual agreement between both employer and employee, however, after 1 January 2010 an ITEA can be terminated by either party, or it can be replaced by a collective agreement.

After an AWA or an ITEA is terminated, the employee then has the option to negotiate the terms and conditions of employment, and to move to a common law employment contract, or to a relevant award or to some form of collective agreement, which may be negotiated by a union on behalf of the employee.

The 'fairness test' introduced by the Howard Government in 2007, under the new laws will be replaced by the 'no disadvantage

test' which will apply to ITEAs and to all new collective agreements. The 'no disadvantage' test will be administered by the Workplace Authority. The aim of the test is not to reduce employees' overall terms and conditions as compared with a relevant award and the Australian Fair Pay and Conditions Standard.

A further change proposed is that an ITEA and collective agreement can still be reviewed by the Workplace Authority under the 'no disadvantage test' even if terminated and if found to be unfair, the Authority can retrospectively order the employer to compensate the employee if minimum conditions of pay have not been met for the period of the operation of the agreement.

The changes also provide that the Australian Fair Pay Commission retain some powers to set minimum wages during the transition period, in that AWAs and an ITEA must reflect adjustments to minimum wages set by the Commission. After 1 January 2010 minimum rates of pay and employee entitlements will be found in awards.

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