

WorkChoices - What Does an Employer Need to Know Now?

It is anticipated that the long-awaited WorkChoices amendments to industrial relations legislation will come into effect during the second half of March. It will have an immediate affect on all Victorian employers and employees not covered by a certified agreement and an immediate effect on all employers in all other states that are corporations (i.e. partnerships and sole traders are excluded). It will also have an immediate effect on all award-free employers in Victoria and award-free employers in all other states that are corporations (again excluding partnerships and sole traders).

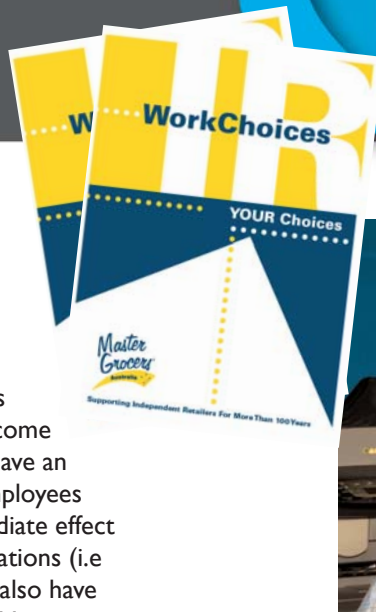
The terms and conditions of all current federal awards like the VIC Shops Interim Award 2000 and the Master Grocers' Association and the Shop, Distributive and Allied Employees Association Award 2005 as well state awards like the SHOP EMPLOYEES (STATE) AWARD (NSW) will be affected by WorkChoices. The aspects of WorkChoices that will immediately affect awards are:

- The Australian Fair Pay and Conditions Standard (the "Standard")
- Prohibited content

The Standard

Basically the Standard will prevail over any award condition that is less favourable than the Standard. The Standard consists of five minimum conditions. They are

- Minimum wage rates and casual loading. The minimum wage rate under the Standard is \$12.75 ph and the default casual loading is 20 per cent. The Standard will not affect MGA members because all awards prescribe a minimum wage and a casual loading that are more favourable towards employees.
- A maximum 38 hour week, plus reasonable additional hours. The only award affected by the Standard will be the Master Grocers Association of Victoria Ltd and Australasian Meat Industry Employees' Union Award 1995. This award prescribes a maximum 40 hour week. It means the Standard will reduce the Award's maximum 40 hours per week to 38 hours plus reasonable additional hours. All other awards affecting MGA members refer to 38 hours and no change is necessary.
- 4 weeks' paid annual leave per annum (5 weeks for continuous shift workers). The standard does not affect awards because the awards provide for 4 weeks and leave loading.



- The Standard provides for 10 days paid personal/carer's leave (including sick leave) leave per year that accrues after 12 month service. This leave will be cumulative and up to 10 days a year can be used as carer's leave. An additional two days of unpaid carer's leave will be available for emergencies for permanent employees who have used up their personal leave entitlement and for casual employees. The standard will override awards in this respect because its conditions are more favourable. In addition the standard provides for only 2 days paid compassionate leave. Most awards provide for at least 3 days paid bereavement leave and will override the standard.
- The standard provides for 52 weeks unpaid parental leave. Awards will override the standard in this respect because they reflect the recent family test case which is far more generous than the standard.

Employers and employees cannot contract out of Standard entitlements. It is important to know that the Standard does not affect existing certified agreements or AWA's

We are awaiting the publication of WorkChoice regulations that will set out prohibited content under WorkChoices. It would appear that prohibited contents in awards will be clauses that:

- Do not pertain to the employment relationship;
- Prohibiting AWA's
- Pertain to trade union training leave and other union related issues
- Allow strikes and industrial action
- Provide remedies for unfair dismissal

Unfair Dismissal

Under WorkChoices, unfair dismissal will only apply if an employer has more than a 100 employees. Any employee who wishes to use unfair dismissal provisions must be employed for more than 6 months before being eligible to lodge a claim. Note that unlawful dismissal provisions continue to apply.

If there any questions please call Leon Blignaut at The Master Grocers on (03) 9824 4111.