

22 SEPTEMBER 2006 AMENDMENTS TO THE WORKPLACE RELATIONS REGULATIONS 2006 (CTH)

On 22 September 2006 the Federal Government introduced further amendments to the *Workplace Relations Act* through the *Workplace Regulations Amendment 2006* (Cth). This is the third set of amendments to the Workplace Regulations.

Set out below is a summary of the key changes, which have been made as of 22 September 2006.

1. PENALTIES REGARDING NOTICE PERIODS AND EVIDENCE FOR LEAVE TAKEN

A new section (14) in Chapter 2, Part 7, subregulation 7.1, states the giving of notice or documentary evidence in relation to an employee taking paid carer's, personal or compassionate leave is a particular 'respect' in relation to the **Standard**.

For each respect, the **Standard** provides a more favourable outcome for an employee if an employment agreement imposes obligations on the employee that are more onerous than the requirements of the **Standard**. This means an employer cannot request an employee to provide more detailed evidence of sick leave taken than the **Standard** requires.

The **Standard** will also provide a more favourable outcome for an employee if the employment agreement allows for a penalty to be imposed on the employee for breaching notice or evidentiary requirements with regards to paid leave taken.

A new section (8A) has also been inserted into Chapter 2, Part 8, subregulation 8.5 which states a term allowing for the imposition of a penalty on an employee for breach of a requirement to provide notice or evidence for the taking of paid sick, carer's or compassionate leave is **prohibited content**.

Similarly, a new section (8B) provides a term of an employment agreement is not allowed to impose a penalty on an employee for being absent from work due to illness, injury, or emergency affecting the employee or a member of their immediate family. It is therefore now illegal to require an employee to pay a penalty to an employer for being away sick.

A penalty is defined as:

- A deduction of an amount from the employee's remuneration; or

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- A reduction in the employee's entitlements; or
- A requirement the employee pays an amount to the employer.

A penalty does not include a deduction, reduction or requirement that is for the employee's benefit, authorised by law or imposed on the employee because they were provided with an entitlement the employee was not entitled to.

2. CIVIL REMEDY PROVISIONS

A workplace inspector may only apply to a court for an order that an employer pay a fine for contravention of a civil remedy provision after a period of 12 months after 27 March 2006, meaning for contravention occurring after 27 March 2006.

Before this amendment, a court order could be obtained 6 months after the commencement of the workplace reforms.

3. APPLICATION OF STANDARD TO PERSONAL AND CARER'S LEAVE

A new Division 17 has been inserted into Chapter 7 of the Regulations. It clarifies the Australian Fair Pay and Conditions Standard ("the **Standard**") does not apply in relation to paid personal, carer's, annual or compassionate leave, which accrued *before* the **Standard** applied to that employee.

The **Standard** will **not** have applied to the employee if after 27 March 2006 the employee's conditions of employment were governed by:

- A certified agreement made before 27 March 2006; or
- An Australian Workplace Agreement made before 27 March 2006; or
- A federal award made under section 170MX of the Workplace Relations Act 1996.

In these cases, the **Standard** will **not** apply to an employee until the certified agreement, AWA, or award is terminated, expires or is replaced.

Division 17 also clarifies that an agreement to cash out paid personal, carer's or compassionate leave is **not** prohibited content. If an employee wishes to cash out leave of this sort for payment of an amount or for another benefit, such an agreement must be in writing.

4. ANNUAL LEAVE

The new amendments clarify crediting of annual leave in arrears of service would be less favourable than the **Standard**, but crediting in advance of service would be more favourable.

Therefore, if an employment agreement provides for crediting of annual leave in arrears, the **Standard** is more favourable and would apply.

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