

Australia's New IR Laws - An Overview

Australia's New Industrial Relations Laws, The Fair Work Act became law on 1 July 2009.

While some parts of the law are effective from 1 July 2009, others, such as the minimum standards of employment are effective from 1 January 2010.

This document gives a brief overview of the areas that will most effect business in the initial stages and gives you some information to prepare your business.

The Definition of a Small or Large Business

From 1 July 2009 the definition of a small and large business has been altered. As can be seen in the diagram to the right, a small business is now one that has less than 15 Full Time Equivalent Employees.

This definition will again change on 1 January 2011 when a straight headcount of employees will be used to determine a small or large business.

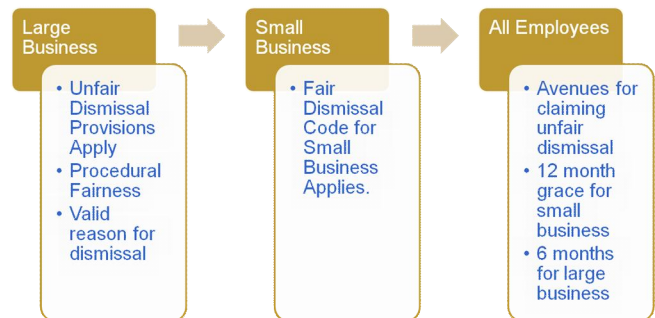


Unfair Dismissal Laws and the Fair Dismissal Code for Small Business

All employees are now protected from unfair dismissal regardless of business size. Unfair Dismissal is where an employee is dismissed from employment and the dismissal was harsh, unjust or unreasonable.

However, it is not an unfair dismissal if a small businesses follows the Fair Dismissal Code for Small Business.

Genuine Redundancies are not considered unfair dismissals.



Increased Union Powers and Right of Entry

Unions have right of entry for the purpose of:

- Investigating breaches of the Act
- For discussions with members or potential members
- To investigate OH&S concerns and issues

Union Officials must present a notice of entry at least 24 hours before entry. They can enter a worksite if they believe they have coverage of the employees on the site. They do not have to have members on site. They can not interfere with the legitimate work of the business.

General Protections

The Act introduces General Protections on which an employee or union can begin a civil action for the violation of a workplace right. General Protections include harassment and discrimination, bullying, freedom of association and unlawful dismissal. These can be the areas investigated by union officials when exercising right of entry

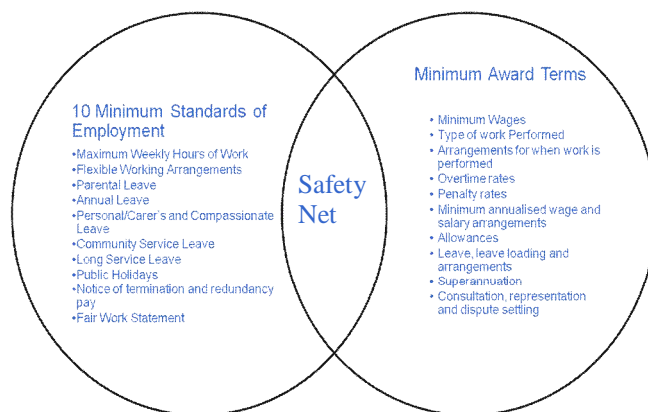
The New Safety Net

From 1 January 2010, a new minimum safety net for employees will come into effect.

The new safety net is 2 tiered comprising Minimum Standards of Employment and Modern Awards.

For employees under \$100,000 the safety net will comprise the Minimum Standards of Employment and the appropriate award for their business or trade.

Employees over \$100,000 will be covered by the Minimum Standards of Employment only.



What do you need to do?

These new laws increase the importance of compliance and systems to protect your business. Some of the things you need to consider are:

- Look carefully at your award compliance - both now and after 1 January 2010
- Ensure all employees have Employment Agreements that are current and consistent with the new legislation.
- Do you require documents and a policy to enable you to reach award flexibility agreements with your employees?
- Review your policies, practices and systems - are they good enough to protect you in the event of an investigation or claim?
- Identify how the new Safety Net is going to affect your business and prepare now.
- Do you have procedures in place for poor performance, misconduct and redundancy - would they pass a test of procedural fairness?
- What is your process if a union official exercises right of entry to your business?
- Ensure your staff documentation systems are easy to use and easy to manage.
- Do you have union members in your business? Are they likely to be organized in support of an enterprise agreement?

Possible Ramifications of Non-Compliance with the New Laws

As an example the following are just 4 of the possible ramifications if a business is non-compliant with the new laws - there are many more!

- Non Compliance with Modern Award Conditions - fine of **\$33,000** for a company for each breach plus the cost of back wages etc to employee
- Non Compliance with National Employment Standards - fine of **\$33,000** for a company for each breach plus the cost of making up the breach to the employee
- Avoidance of Employment Obligations (Sham Contracting) - fine of **\$33,000** for a company for each breach plus back taxes plus Superannuation Guarantee plus possible implications for payroll tax.
- Unfair Dismissal Claim - back wages if found to be unfair plus possible compensation to employee. In addition, legal costs and lost opportunity costs in regards to time and effort to defend the claim. Cost - Many **000's of \$\$\$**

Can you afford the cost to your business??

Don't know where to start—we can help!

A People Smartz Compliance Assessment helps you identify what steps you need to take to protect your business.

It Includes:

- **A Review against the Australia's New Fair Work Act**
- **An initial visit to your workplace**
- **Completion of staff policies and processes checklist**
- **Review of one of your employment agreements**
- **Debrief visit and Written report on the above with recommendations**

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