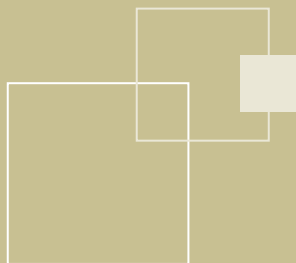


SERIOUS BUSINESS

The Fair Work Act and its implications for pharmacies



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AFFILIATED FIRMS PRACTISING SEPARATELY IN
SYDNEY • MELBOURNE • BRISBANE • ADELAIDE • PERTH

Anthony Massaro

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September 2009

The Fair Work Act 2009

- Fair Work Australia
- National Employment Standards
- Modern Awards
- Agreements
- Transfer of business
- Union activity
- Unfair dismissal
- Adverse Action
- Sham contracts

Fair Work Australia

- All forms of disputes
 - Unfair dismissal and adverse action
 - Industrial action and right of entry
- Modern Awards, minimum wages and equal remuneration
- Enterprise Agreements
- Workplace determinations
- Transfer of business

Fair Work Ombudsman

- Undertakes inspections and inquiries into allegations of breaches of the Act, awards, agreements, determinations and other employment benefits
- Educational function for employers and employees
- Prosecutions

National Employment Standards

- Hours of work
- Parental leave
- Flexible work for Parents
- Annual Leave
- Personal, Carers and Compassionate Leave
- Community Service Leave
- Public Holidays
- Information in the Workplace
- Notice of Termination and Redundancy
- Long Service Leave

Modern Awards

- Pharmacy Industry Award 2010
- Other Awards
 - Clerks – Private Sector Award 2010
 - Road Transport and Distribution Award 2010
 - Health Services and Support Services Award 2010

Modern Awards - terms

- Coverage
- Award flexibility
- Consultation
- Dispute resolution
- Types of employment
- Termination and redundancy
- Classifications
- Minimum wages
- Allowances
- Superannuation
- Hours of work
- Overtime
- Breaks
- Leave, public holidays
- Shiftwork
- **Exemption**

Modern Awards - exception

- Modern awards do not apply to High Income Employees
- High Income Guarantee
 - Guarantee of annual earnings over \$108,300
 - Exclusions from annual earnings
 - Variable or discretionary amounts
 - Statutory superannuation contributions

Modern Awards - flexibility

- Individual flexibility arrangements as to:
 - When work is performed
 - Overtime rates
 - Penalty rates
 - Allowances
 - Leave loading
- Must be in writing
- Better off overall
- May terminate IFA on 28 days notice

Modern Awards - commencement

- Commence from 1 January 2010
- Terms relating to wages, penalties, loadings and shift allowances commence from 1 July 2010
- Phasing in process
 - 20% increments each year
 - Full effect from 1 July 2014

Modern Awards - increase

- Pharmacy Assistants' Award – State (Qld):
 - 6.1 – ordinary hours include Sunday work
 - No loading or automatic overtime for Sunday work
- Pharmacy Industry Award 2010
 - 26.2(d) – 100% loading for all Sunday work
- From 1 July 2010 = 20% loading
- From 1 July 2011 = 40% loading
- From 1 July 2012 = 60% loading
- From 1 July 2013 = 80% loading
- From 1 July 2014 = 100% loading

Modern Awards – reduction

- Level 1 Pharmacy Assistant in Qld
 - \$622.06 per week under the Pharmacy Assistants' Award – State.
 - \$600.00 per week under the Pharmacy Industry Award 2010
 - From 1 July 2010 = \$617.65
 - From 1 July 2011 = \$613.24
 - From 1 July 2012 = \$608.82
 - From 1 July 2013 = \$604.41
 - From 1 July 2014 = \$600.00

Agreements

- Enterprise agreements
- Greenfields agreements
- No new AWAs
- No new ITEAs after 31/12/2009
- Greater scope for union involvement
- Must pass “better off overall test”
- Cannot exclude NES

Transfer of business

- Sale, outsourcing, and insourcing
- Transferring employees are covered by the transferring agreement or determination
- No time limit on the application of the transferred instrument
- Can now apply to non-transferring employees

Union activity

- Industrial action
 - Secret ballot
 - Pay restrictions
 - Can seek orders to stop action
- Right of entry
 - To investigate suspected breach
 - To hold discussions
 - OH & S purposes
 - Restrictions on access

Unfair Dismissal

- Harsh, unjust or unreasonable
- Covers all employers
- Some exceptions
 - Qualifying period
 - High income threshold
 - \$108,300
 - Only applies to non Award/Agreement employees
 - Genuine redundancy

Adverse Action

- Replaces unlawful dismissal
- Must not take adverse action against a person because that person
 - Has a workplace right
 - Has exercised/not exercised a workplace right, or proposed to do so
 - Has benefited from the exercise of a workplace right by another person
- Must not discriminate against a person

Adverse Action – workplace rights

- Entitlement to a benefit
- Has a role or responsibility
- Can initiate or participate in proceedings
- Can make a complaint or inquiry
- Note – prospective employees have workplace rights

Adverse Action – discrimination

- Must not take adverse action against an employee, or prospective employee, because of:
 - Race
 - Colour
 - Sex
 - Sexual preference
 - Age
 - Marital status
 - Religion
 - Pregnancy
 - Physical or mental disability
 - Family or carer's responsibilities
 - Political opinion
 - National extraction
 - Social origin
 - Temporary absence due to illness or injury

Sham contracts

- Must not represent an employee as an independent contractor
- Must not dismiss an employee to re-engage as an independent contractor
- Penalty of \$6,600 for an individual, \$33,000 for a body corporate
- FWA will consider the facts, not just the contract

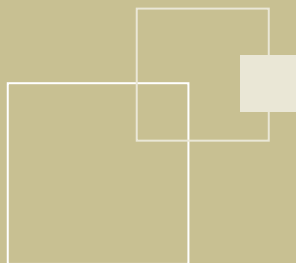
Practical Implications for Employers

- Assess requirements of awards and NES
- Review contracts and policies
- Review any existing enterprise agreements, and develop strategy
- Obtain advice prior to any restructure or acquisition
- Consider termination of employment obligations

Questions

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