WorkChoices
e-zine

WorkChoices and your workplace
Vol: 1 Issue 2

Lodge your agreement online

Did you know you can lodge your workplace agreement online?

The process for making workplace agreements has been simplified. There is no time consuming certification or approval process, and agreements now come into operation once they have been lodged with the Office of the Employment Advocate.

Visit the Office of Employment Advocate website at www.oea.gov.au to get your agreement into operation sooner by lodging it online.

Need more information?

WorkChoices Infoline - Phone 1300 363 264

WorkChoices - provides comprehensive information on the new national workplace relations reform, including information products you can download.

Office of the Employment Advocate - gives free support and information to employers and employees on agreement making.

Office of Workplace Services - provides advice and assistance to workers, employers and organisations about compliance under the Workplace Relations Act.

Prohibited content - don't get fined!

Under WorkChoices, a range of content is prohibited from being included in workplace agreements. Employers face a range of penalties if they include prohibited content in new workplace agreements.

If an employer lodges a workplace agreement, or a variation to a workplace agreement, containing prohibited content, they may have court action taken against them and be fined up to $6,600 (for individuals) or $33,000 (for corporations).

Prohibited content includes:

- discrimination for reasons due to race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- content that deals with the rights of trade unions or employer associations to be involved in dispute resolution (unless the organisation is the representative of the employer or employee's choice); and
- content that is objectionable in that it is a provision that requires or permits any conduct that would contravene the freedom of association provisions of the Workplace Relations Act 1996 including a provision that requires payment of a bargaining services fee to an industrial organisation.

Clauses in agreements (including pre-reform agreements) that attempt to restrict the use of AWAs are also prohibited.

Any clause within a workplace agreement containing prohibited content will be void and unenforceable. However, including prohibited content will not make the agreement invalid. The OEA is able to vary a workplace agreement to remove prohibited content from a lodged agreement.

Employers can avoid lodging workplace agreements that contain prohibited content in a number of ways such as:

- carefully considering every clause in the agreement to ensure they do not fall into one of the categories of prohibited content;
- requesting that the Employment Advocate review the workplace agreement before it is lodged. The Employment Advocate may provide the employer with written advice on whether the terms of the agreement contain prohibited content; and
- ensuring if you seek such advice that you do so before you have your workplace agreement approved by your employee/s because once an agreement is approved, you must lodge that agreement within 14 days.

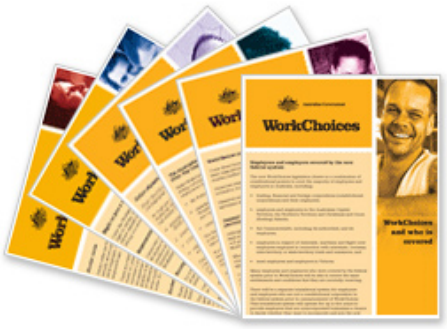
Australian Fair Pay Commission - sets and adjusts the federal minimum wage under the WorkChoices legislation.

Workplace - employment and workplace relations services for Australians.

WorkChoices publications

You can order a range of information products for your workplace including the WorkChoices booklet, fact sheets, posters and information kits.

Phone 1300 363 264 or visit workchoices.gov.au to access the available information.



WorkChoices fact sheets

- WorkChoices and annual leave
- WorkChoices and parental leave
- WorkChoices and the Australian Fair Pay and Conditions Standard
- WorkChoices and ordinary hours
- WorkChoices and multiple business agreements
- WorkChoices and union greenfields agreements

For a full list of what constitutes prohibited content visit the Office of Employment Advocate website at www.oea.gov.au.

Does WorkChoices cover you?

Does the term 'constitutional corporation' sound like double dutch to you? Many businesses may be unsure about whether the term applies to them. WorkChoices covers up to 85 per cent of employees across Australia, many of these because they are employed by constitutional corporations.

Constitutional corporations are the trading, financial and foreign corporations covered by paragraph 51(xx) of the Constitution (corporations' power) formed within the limits of the Commonwealth.

A corporation is a trading corporation where it engages in 'substantial' trading activities. As a general rule this includes companies and incorporated businesses.

The 15 per cent not considered constitutional corporations is made up of groups such as sole traders, sub-contractors, taxi drivers, farmers in family trusts and direct employees of state government departments. However the High Court's approach to what constitutes financial or trading activities has been broad. For example, a football club and a state board have been found to be constitutional corporations.

Most employees and employers in Victoria, the ACT and the Northern Territory are already covered by WorkChoices. Sole traders, partnerships, unincorporated clubs and constitutional corporations in these locations are covered. It may not be obvious to you what your business or association is. So to be safe consult your lawyer for advice.

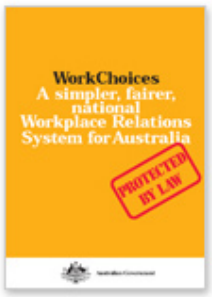
Frequently asked questions

This round of WorkChoices information sessions has now finished. The Department of Employment and Workplace Relations and the Office of the Employment Advocate presented information to more than 13,000 people over 350 sessions. A number of questions were received from seminar attendees about WorkChoices. Over the coming months we will address some of these frequently asked questions.

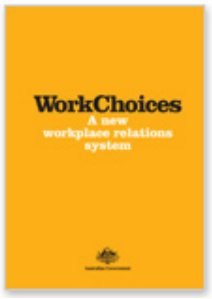
Q. When looking at the 38 hour week under the Standard, what is considered reasonable additional hours?

A. In determining whether the additional hours an employee is requested or required to work are 'reasonable', a range of factors must

- WorkChoices and employee collective agreements
- WorkChoices and State awards and agreements
- WorkChoices and Federal awards and agreements



WorkChoices brochure



WorkChoices information kit

be taken into account, including (but not limited to):

- any risk to the employee's health and safety;
- the employee's personal circumstances including family responsibilities;
- the operational requirements of the workplace or enterprise;
- whether any of the additional hours are on a public holiday;
- the employee's hours of work in the four weeks prior to the request; and
- the notice (if any) given by the employer of the additional hours and by the employee of his or her intention to refuse it.

Q. What leave entitlements are employees permitted under WorkChoices?

A. Minimum leave entitlements are set out in the Australian Fair Pay and Conditions Standard:

- paid annual leave;
- parental leave - the Australian Fair Pay and Conditions Standard gives all women the right to unpaid maternity leave; and
- Personal/carers leave - which covers sick leave and carer's leave;
- the Standard also provides for paid compassionate leave.
- If an employee's award provides for more generous leave provisions, this won't change - they will continue to receive these entitlements. They can also negotiate more generous leave entitlements at a workplace or individual level as part of a workplace agreement.

Further information can be found at www.workchoices.gov.au