

Need more information?

WorkChoices Infoline - Phone
1300 363 264

WorkChoices website - 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.

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

Workplace website - employment and workplace relations services for Australians.

WorkChoices Act amendments

On Tuesday 12 December 2006 the following amendments were made to the *Workplace Relations Act 1996*.

Leave accrual

The amendments:

- cap the accrual of annual and personal/carer's leave so that leave does not accrue in respect of hours worked above 38 hours per week; and
- change the payment rule for personal/carer's leave, compassionate leave and leave for pregnant employees who cannot be transferred to a safe job, so that an employee is entitled to be paid a rate for each hour of leave taken at his or her hourly basic periodic rate of pay (consistent with the payment rule for annual leave).
- These changes are broadly consistent with pre-reform arrangements under many awards and agreements.

The amendments do not affect certified agreements and Australian Workplace Agreements made before the commencement of WorkChoices (27 March 2006).

Where an award provides a more generous entitlement to leave than the Australian Fair Pay and Conditions Standard, the award entitlement will continue to apply in full (including any related administrative rules about accrual or payment) to the exclusion of the Standard.

Cashing out personal/carer's leave

The amendments allow an employee to request to cash out paid personal/carer's leave, provided that a minimum balance of at least 15 days leave remains available after cashing out (for full-time employees, pro rata for part-time employees).

Cashing out is subject to a number of conditions:

- A workplace agreement needs to make provision for cashing out.
- An employee needs to request in writing to cash out personal/carer's leave and the employer needs to agree (there would be no automatic right to cash out).
- An employer is prohibited from requiring or pressuring an employee to cash out personal/carer's leave.
- When leave is cashed out an employee needs to be paid an amount that is no less than the employee's hourly basic periodic rate of pay (which means that leave would not be able to be cashed out at a 'discounted' rate).

WorkChoices publications

Do you know someone from a non-english-speaking background who would benefit from knowing about WorkChoices?

Up-to-date fact sheets are now available in 13 languages and can be downloaded from the WorkChoices website www.workchoices.gov.au or ordered through the WorkChoices Infoline on 1300 363 264.



WorkChoices fact sheets

Fact sheets are available in the following languages:

- Arabic
- Khmer (Cambodian)
- Chinese
- Croatian
- Greek
- Italian
- Korean
- Polish
- Portuguese
- Serbian
- Spanish
- Turkish
- Vietnamese

Default stand down provision

A default stand down right is provided in the Act, to allow an employee to be stood down in particular circumstances (e.g. if work is unavailable due to factors outside the employer's control). In the absence of a stand down right an employer would usually have to choose between continuing to pay the employee (despite lack of work) and dismissing the employee. The default stand down provision applies where a contract or industrial instrument does not otherwise provide a stand down right.

Record keeping

Record-keeping requirements are streamlined to focus on records necessary for compliance with the Standard, protected award conditions or relevant industrial instrument. For example, an employer is required to keep records that:

- allow the basic periodic or piece rate of pay to be determined for each employee;
- allow protected award conditions such as penalty rates, loadings, allowances or incentive-based payments to be determined;
- show the accrual, leave taken and the balance of the employee's entitlement to annual leave and personal/ carer's leave (and any election to forgo leave); and
- show those hours for which an employee is entitled to overtime or other penalty rates, rather than all hours worked.

Employers need to keep records of hours worked by casuals and irregular part-time employees when they are paid on an hourly basis.

Employers need to keep records relating to superannuation contributions and any agreement authorised under the Standard (e.g. copies of any elections to cash out leave, averaging of hours arrangements) as well as issue payslips, the content of which would reflect the new record-keeping requirements.

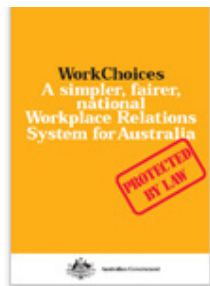
Protect employee redundancy entitlements

The amendments provide that agreement-based redundancy entitlements continue to operate for 12 months after an agreement is terminated, unless a new workplace agreement is made earlier.

Employees must be notified if their redundancy entitlements continue after termination. Employee notification is part of the process for terminating an agreement.

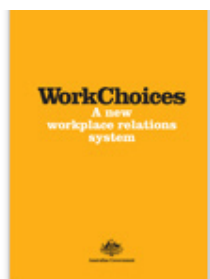
Preserved redundancy clauses will bind a new employer where there is a transmission of business.

Transmitted redundancy clauses prevail over the new employer's industrial instruments (awards, agreements), to the extent of any



WorkChoices booklet

Limited stock is available in audio, braille, large-print format and in 13 languages other than English. To order copies call the WorkChoices Infoline on 1300 363 264 and specify the format or language you require.



WorkChoices information kit

inconsistency, and can be replaced by a new workplace agreement (individual or collective) at any time, with the agreement of the employee.

For more information on the amendments contact the WorkChoices Infoline 1300 363 264.



Independent Contractors

On Tuesday 12 December 2006 the Independent Contractors Act 2006 received Royal Assent and is due to commence in the first quarter of 2007.

The Independent Contractors Act will operate as stand-alone legislation independent of the Workplace Relations Act.

An independent contractor is a person who contracts to perform services for others without having the legal status of an employee (who may or may not employ staff). Independent contractors can work in a range of sectors, often benefiting business by providing for services that have a fluctuating demand - such as seasonal business requirements or one-off specialist jobs.

The legislation will:

- ensure existing state and territory outworker protections are not overridden;
- remove the minimum remuneration guarantee for independent contractor outworkers in the textile, clothing and footwear industry on the basis that the proposed provisions are an unnecessary duplication of state and territory laws;
- ensure that a court assesses the unfairness or harshness of a contract at the time it was made;
- clarify the powers of the court in reviewing services contracts; and
- include more comprehensive 'anti-double-dipping' provisions.



WorkChoices High Court decision

On Tuesday 14 November 2006 the High Court wholly rejected the states' challenge to the constitutional validity of the WorkChoices legislation.

The court decided that the scope of the corporations power is broad enough to support laws that regulate the conduct, rights and obligations of trading, financial and foreign corporations, their employees or registered representative bodies.

The court also rejected other, more discrete challenges to the validity of particular provisions of the *Workplace Relations Act 1996*.

As a result of this decision, all of the WorkChoices laws are valid and continue to operate.

