

Tuesday, 20 July 2010

Abbott's "tweaks" leave back door open for worst of WorkChoices to return

The worst of WorkChoices could return to Australian workplaces through changes to regulations and 'tweaks' that do not require legislative amendment says the ACTU.

Liberal leader Tony Abbott's statement that changes to regulations will not bring back WorkChoices are deceptive and misleading says ACTU President Ged Kearney.

The fact is that two million workers could lose protection from unfair dismissal through changes to the 'Small Business Fair Dismissal Code' said Ms Kearney.

"Other changes to regulations could effectively reintroduce individual contracts for millions of workers.

"This would mean cuts to workers' take home pay and basic award conditions such as overtime pay, penalty rates, public holiday pay, allowances and leave loading – the same as occurred under WorkChoices.

"Tony Abbott is trying to be too clever by half by attempting to make Australians believe he won't bring back WorkChoices.

"The truth is there is enormous scope for the Coalition to alter the operation of the Fair Work Act simply by regulation.

"He has left a back door open for the return of WorkChoices.

"Without an absolute guarantee in relation to the legislation as well as the regulations and other Ministerial powers, Australian working people can have no confidence that a Liberal Government would not return to WorkChoices.

"A preliminary analysis by the ACTU shows there are at least 198 separate sections in the *Fair Work Act* and the three related Acts which enable the Minister to enact changes by regulation. (A selection of these are shown overleaf)

"Many of these would severely curtail the rights of millions of working Australians.

"The Liberals have tried this sort of action before. The Howard Government, prior to having a Senate majority, attempted to change regulations so as to strip unfair dismissal rights from a large number of Australian employees, only to be frustrated by the then Senate.

"Mr Abbott should be judged on what he and his Party did when they were in government not on meaningless scraps of paper signed during media interviews.

"When the Coalition was last in power they secretly brought in WorkChoices and did all they could to deprive working Australians of their rights.

"WorkChoices is what the Liberals believe in, so why would working people think they would do otherwise if they are elected?"

Media contacts: Anaya Latter 0432 121 636

.../List of possible Regulation Changes overleaf

Potential changes to regulations by the Coalition that will effectively bring back the worst aspects of WorkChoices and reduce rights at work (selected list):

- Modify the Small Business Fair Dismissal Code provided for by section 388 of the Act, so as to reduce or remove the unfair dismissal protections for up to two million employees of small business;
- Make Regulations under sections 127 or 129 of the Act to permit Modern Awards or Enterprise Agreements to include terms that are contrary to the National Employment Standards allowing reductions in minimum conditions;
- Make Regulations under sections 22(2)(c) or 22(4)(a)(ii) to exclude periods of employment from counting towards an employee's period of service (e.g. for purpose of calculating redundancy pay);
- Make Regulations under sections 127 or 129 of the *Fair Work Act* 2009 to prohibit terms being included in Modern Awards or Enterprise Agreements which may remove workers' job conditions;
- Amend or repeal Regulation 1.04 of the *Fair Work Regulations* 2009 ("the Regulations") to restrict the definition of "designated outworker terms" for the purposes of section 12 of the *Fair Work Act*;
- Amend the definitions contained in Regulation 1.07 of the Regulations, to allow employers to avoid the obligation to pay Notice or Redundancy pay;
- Make any further regulations for the purposes of section 178(3) of the *Fair Work Act* ("the Act") to introduce further restrictions or controls on the qualification or appointment of Bargaining Representatives for agreement negotiations;
- Modify the *Model Flexibility Term* prescribed in the Regulations pursuant to section 202(5) of the Act to increase the number of conditions of employment susceptible to individual negotiation;
- Modify the *Notice of Representational Rights* prescribed by the Regulations, or the means by it may be given to employees under Regulation 2.04;
- Modify or repeal Regulation 2.13 of the Regulations, which sets out the High Income Threshold for the purposes of section 333 of the Act, to reduce award coverage or unfair dismissal protection;
- Make any regulation or other law as referred to in section 342(c) of the Act to reduce the scope of actions which constitute "Adverse Action" for the purposes of the *General Protections* provisions;
- Modify or repeal regulation 3.01 or 6.04 of the Regulations to reduce unlawful dismissal protections for workers who are suffering from an illness or an injury;
- Modify the Regulations to increase the application fees payable by workers or their representatives making applications to Fair Work Australia in relation to Unfair Dismissal or contravention of the *General Protections*;
- Make Regulations under section 437(6) of the Act to create more onerous requirements on the making of an application for a protected action ballot;
- Modify Regulations made under Division 9 of Part 3-3 of the Act dealing with payment for protected industrial action constituted by partial work bans;
- Modify or make any further regulations under section 492(4), section 494(3) or section 521 or concerning the rights of employees to have access to representation at work or advice in relation to Health and Safety laws;
- Make Regulations under section 534(1)(h) of the Act to provide exemptions in relation to the requirement to notify Centrelink of and consult with Unions regarding redundancies.
- Modify or repeal any Regulations made under Division 3 of Part 3-6 of the Act regarding the content of Employee Records and Payslips.
- Modify the Model Dispute Settlement term provided by the Regulations for the purposes of section 737 of the Act.
- Make regulations under section 28 of the Act to exclude the operation of any further State and Territory Laws that protect workers rights in certain States; and
- Make or modify Regulations under section 31-34 of the Act that would exclude the Act from applying to particular categories of workers and giving them rights and protections.