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Australian Council of Trade Unions

FACT SHEET

January 2010

New protections and minimum standards for all Australian workers from 1 January 2010

From 1 January, all Australian workers will be protected by a strong safety net of 10 minimum standards, that cannot be taken away. These standards are particularly important for young and vulnerable workers.

In addition, modern awards will take effect from 1 January which will establish minimum wages, hours of work, superannuation, and other arrangements for hundreds of thousands of workers.

These new protections build on the better rights delivered by the Fair Work Act, which came into operation on 1 July and replaced WorkChoices.

The Fair Work laws give workers stronger rights to negotiate their wages and conditions and to have a say in their workplace. They will safeguard the rights of workers to be represented by a union and to bargain collectively for safe, secure and satisfying work. And they improve protection from unfair dismissal for more than 3 million workers.

All these new rights are the result of the successful Your Rights at Work community campaign, which was spearheaded by the ACTU and unions.

It began five years ago when the former Howard Government won control of the Senate and announced sweeping changes to workplace laws that would strip away basic rights at work including penalty rates, overtime and unfair dismissal protection.

Once thousands of Australians, including many young workers, began feeling the impact of WorkChoices the campaign grew rapidly into a broad-based groundswell in the community for a fair go. Unprecedented numbers of people joined with unions to take action because the former Liberal Government's unfair WorkChoices IR laws went too far. At the 2007 federal election Australians said 'enough is enough', voting against John Howard and WorkChoices.

But the recent elevation of Tony Abbott to the leadership of the Liberal Party has put all that at risk again. Mr Abbott has signalled he will unwind employee protections in the name of a free labour market and more power for employers. Australian unions will not stand by and allow workers' rights to be threatened again. We need stronger rights at work, not WorkChoices Mark II.

National Employment Standards (new from 1 January)

Australian employees are entitled to the following minimum employment terms and conditions:

1. A maximum standard working week of 38 hours plus 'reasonable' paid overtime if a full-time employee. An employer can require an employee to work reasonable additional hours but they have the right to refuse unreasonable hours. Whether the hours are unreasonable will depend on their position, the arrangement of the hours, health and safety and their family responsibilities.

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2. A right to request flexible working arrangements if they need to care for a child under school age, or a child (under 18) with a disability. An employer must consider the request and can only refuse on reasonable business grounds.
3. An entitlement to take unpaid parental (or adoption) leave of twelve months after the birth (or adoption) of a child, with a right to request an additional twelve months unpaid leave.
4. Four weeks paid annual leave each year.
5. Ten days paid personal or carer's leave each year. Two days paid compassionate leave for each permissible occasion. Two days unpaid carer's leave for each permissible occasion.
6. A right to take 'Community Service Leave' for jury service or activities dealing with certain emergencies or natural disasters. This leave is unpaid except for jury service.
7. Long Service Leave.
8. Public holidays and the entitlement to be paid for ordinary hours on those days.
9. Notice of termination and redundancy pay.
10. The right for new employees to receive the Fair Work Information Statement.

A complete copy of the National Employment Standards (NES) can be viewed at www.fairwork.gov.au. Some limitations may apply — for instance, there are exclusions for casual employees.

Modern Awards (new from 1 January)

In addition to the National Employment Standards, workers will be protected by a robust safety net of modern awards. Australia's system of awards is internationally unique. New, modernised awards for a worker's industry, occupation or employer provide additional enforceable minimum employment terms and conditions, including:

- minimum wages
- penalty rates
- types of employment
- flexible working arrangements
- superannuation
- hours of work
- rest breaks
- classifications
- allowances
- leave and leave loading
- procedures for consultation, representation and dispute settlement.
- some modern awards may also contain industry-specific redundancy entitlements

Modern awards that cover industries or occupations may not apply to managers or high income employees, but the NES will.

Transitional arrangements to introduce modern awards will apply to wages, penalties and loadings for five years. Employers are not permitted to use these transitional arrangements to reduce an employee's take home pay.

The employment conditions covered by modern awards take effect from 1 January 2010 while the new, national award wages take effect from 1 July 2010.

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Agreement Making and Collective Bargaining

Wages and employment conditions may be set in an enterprise agreement that applies to a specific workplace. An enterprise agreement replaces the Modern Award, but not the NES, which continues to apply.

An enterprise agreement must be genuinely agreed to by the majority of employees at the workplace, and must leave employees *better off overall* (BOOT Test) than they would be if the Award applied.

There are specific rules relating to the way in which enterprise agreements are made. These rules include:

- The right to be represented by a union (see further below)
- Bargaining or negotiations must be conducted in good faith
- Rules for taking industrial action
- Employees under the age of 18 require the co-signature of a parent or guardian when making an enterprise agreement.

Once approved by Fair Work Australia, an enterprise agreement is enforceable and may provide for changes in your terms and conditions of employment.

Individual Flexibility Arrangements

Modern awards and enterprise agreements must include a 'flexibility term' and this is an area of ongoing concern for unions as it may allow unscrupulous employers to undermine the collective agreement.

This term allows you and your employer to agree to an Individual Flexibility Arrangement (IFA), which varies the effect of terms of your modern award or collective agreement.

It is important to note that workers cannot be forced or coerced to make a flexibility arrangement — as occurred under WorkChoices. Workers should agree to one only if it suits them. IFAs can be cancelled by employees at four weeks notice, and unions believe employers should be required to demonstrate how they will result in workers being financially better off. IFAs must be made in writing and if you are under 18 years of age, your IFA must be co-signed by your parent or guardian.

Representation at work and in bargaining

All workers have the right to be:

- Consulted about changes in the workplace;
- Represented (including by a union) in those consultations; and
- Represented (including by a union) in disputes at work.

The Small Business Dismissal Code also provides that employees must be given the opportunity to be represented in any discussions that might lead to dismissal.

All workers have the right to invite a union official to their workplace to provide advice and assistance.

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Employees also have the right to be represented in bargaining for an enterprise agreement. Employers must recognise and bargain with their employees' bargaining representatives**.**

For union members, the union is their bargaining representative. The union can attend meetings and negotiate directly with the employer on their behalf.

Employees who are not union members can also nominate the union to be their bargaining representative. A union can be become involved at any stage in the agreement-making process provided they have at least one member at the workplace.

Union officials can enter a workplace, even where the employer opposes their entry, provided the official has a valid entry permit and has provided sufficient notice of their intention to enter the premises.

Union officials may visit the workplace for discussions with workers and to investigate suspected contraventions of workplace laws or occupational health and safety matters.

A permit holder can inspect or copy certain documents. Strict privacy restrictions concerning employee records apply to the permit holder, their organisation and employers.

New General Workplace Rights

It is unlawful for an employer to threaten to or actually dismiss an employee, negatively alter their position or treat them differently because:

- They have a workplace right.
- They make an inquiry or complaint in relation to their employment or workplace rights.
- They join the union or participate in lawful activities such as voting on an agreement or taking protected industrial action.
- They perform a representative role in their workplace. This includes occupational health and safety representatives, harassment officers and union delegates.
- Of their race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

It is unlawful for an employer to place undue influence or pressure on an employee to agree to change certain employment arrangements. For example an employer can not pressure an employee to sign an Individual Flexibility Arrangement.

It is unlawful for an employer to coerce an employee to exercise their workplace rights in a particular way. For example an employer can not pressure an employee not to take leave to which they are entitled.

An employee, union or Fair Work Inspector can enforce a workplace right. Applications relating to these general protections which involve a dismissal must be lodged with Fair Work Australia within 60 days.

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Unfair Dismissal

No employee can be dismissed in a manner that is 'harsh, unjust or unreasonable'.

This is a major change from WorkChoices which took away the rights of millions of Australian workers to protection from unfair dismissal.

Workers sacked unfairly may be eligible to apply to Fair Work Australia for assistance.

Applications must be lodged within 14 days of dismissal and there are special provisions that apply to employees in small businesses, including the Small Business Fair Dismissal Code.

To be eligible to apply, an employee must have completed a minimum employment period of at least 6 months (or 12 months if the employer is a small business employer who employs fewer than 15 full-time equivalent employees).

If employment is terminated, including through redundancy, resignation or dismissal, workers are entitled to receive any outstanding employment entitlements. This may include:

- outstanding wages
- payment in lieu of notice
- payment for accrued annual leave
- long service leave
- any applicable redundancy payments

Further information

Unions Australia: 1300 4 UNION (1300 486 466); http://www.unionsaustralia.com.au