

Enterprises Agreements

The majority of the relevant provisions in the Fair Work Act 2009 ("Act") relating to collective bargaining and enterprise agreements commenced operation from 1 July 2009. This fact finder looks at some of these relevant provisions

Content

Agreements may include content about "permitted matters" and matters pertaining to the relationship between the employer and employees, and notably also between the employer and the union.

Flexibility and Consultation

Each agreement must include a flexibility term that enables the employer and an individual employee to agree to an individual flexibility arrangement to meet the genuine needs of both parties. A consultation clause is also mandatory, requiring the employer to consult about major workplace changes likely to have a significant effect on employees.

Bargaining Representatives

Employers must notify employees of their right to be represented by a bargaining representative during the bargaining period, which is the period between notice of the beginning of bargaining (essentially when employees are notified the employer seeks to implement an enterprises agreement and the date the agreement is voted on by the employees. It is important to note that the union will become the bargaining representative of an employee if the employee is a member of a relevant union and does not appoint anyone else as their bargaining representative. This significant change will bring unions into the bargaining process in many workplaces that have traditionally had non-union collective agreements in place.

Good Faith Bargaining

The Act now requires parties to the agreement process to bargain in good faith. Good faith bargaining contains a number of specific requirements in relation to the conduct of parties during the bargaining process including:

- they must attend and participate in meetings;
- they must disclose relevant information and respond to proposals in a timely manner;
- genuinely consider proposals made by the other party and give reasons when responding; and
- refrain from capricious or unfair conduct that undermines the bargaining process.

Fair Work Australia ("FWA"), the governing body, has the power to make a wide variety of orders where a party is not meeting the requirements of good faith bargaining.

FWA Approval

An agreement is entered into when it is accepted by a majority of employees who vote to accept the agreement. Each agreement must then be approved by FWA upon an application by the employer. From 1 January 2010, agreements must pass the BOOT ("better off overall test") which replaces the no disadvantage test under Work Choices. The test requires employees to be better off overall, when compared with the relevant modern award. It does not however require FWA to enquire into individual employees circumstances, as the test can be applied to classes of employees.

Ferguson Cannon Lawyers are experts in Human Resource and Employment Law. Please contact Tony Pattinson from our office to discuss your business and ensure you comply with the Fair Work Act.