

CLIENT ALERT – JANUARY 2010

This Alert outlines changes to State and Federal employment and tax laws.

New National Employment Standards (NES)

From 1 January 2010, all employers (not only those operating as companies) and their employees are now governed by the new National Employment Standards (NES). This now means that employers who were previously covered by the NSW state award system must now comply with the Federal employment laws.

It was often difficult for employers to determine the relevant award for your business. This has been somewhat simplified but there are still catches. From 1 January 2010, all existing awards (both federal and New South Wales) have been streamlined into approximately 120 “modern” awards. If your business was covered by a federal award on 31 December 2009 (essentially corporate employers), you must now use the appropriate “modern” award. If you were covered by a NSW state award on 31 December 2009 (essentially non-corporate employers), that award has been preserved as a New South Wales state reference award for the period 1 January 2010 until 31 December 2010. From 1 January 2011 those employers will then need to apply the appropriate “modern” award.

Any new business commencing on or after 1 January 2010 is automatically covered by the relevant “modern” award.

In addition to the awards themselves, the new National Employment Standards (effectively conditions of employment) now apply. These standards are contained in the Federal Fair Work Act 2009 and comprise:

- A maximum of 38 work hours per week, plus “reasonable” additional hours.
- Parents or carers of a child under school age or of a child under 18 with a disability may request a change in working arrangements to assist with the child’s care.
- Parental leave and related entitlements of up to 12 months unpaid leave for every employee, plus a right to request an additional 12 months unpaid leave, plus other forms of maternity, paternity and adoption related leave.
- 4 weeks paid annual leave per year, plus an additional week for certain shift workers.
- 10 days paid personal / carer’s leave and 2 two days compassionate leave (unpaid for casuals) as required.
- Community service leave – unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service.
- Long service leave – a transitional entitlement for certain employees who had certain LSL entitlements before 1 January 2010 pending the development of a uniform national long service leave standard.
- Public holidays – a paid day off on a public holiday, except where reasonably requested to work.
- Up to 4 weeks notice of termination (5 weeks if the employee is over 45 and has at least 2 years of continuous service) and up to 16 weeks redundancy pay. Both of these are based on the length of service.
- All employers must provide a Fair Work Information Statement to all new employees. This statement must contain information about the NES, the relevant modern award or awards, any agreement-making, the right to freedom of association, termination of employment, individual flexibility

arrangements, rights of entry, transfer of business, and the respective roles of Fair Work Australia and the Fair Work Ombudsman.

The NES applies to all employees covered by the national workplace relations system, however only certain entitlements apply to casual employees.

Employers and employees are not permitted to use employment contracts that exclude, or provide for any entitlement that is less than that specified in the NES. This is because the NES represent guaranteed minimum standards.

Employers who contravene the provisions of the NES may face penalties of up to \$6,600 for an individual and \$33,000 for a corporation.

Further information is available from the NSW and Federal Government websites at:

- www.industrialrelations.nsw.gov.au and
- www.fairwork.gov.au

Source: NSW department of Industrial Relations and Fairwork online.

Business tax breaks

Clients are reminded that while the business tax breaks ceased on 31 December 2009, where a business has paid for an asset that is awaiting construction or delivery, then completion of that construction or delivery must occur on or before 31 December 2010.

NSW Payroll tax rate change

From 1 July 2009 to 30 June 2010 the salary and wages threshold above which payroll taxes become due is \$638,000. The rate of NSW payroll tax for the period 1 January 2010 to 30 June 2010 is now 5.65% (previously 5.75%)

Haiti Earthquake relief

The Tax Office has advised that donations to an Haitian Earthquake appeal are tax deductible provided that the organisation operating the appeal is endorsed as a deductible gift recipient (DGR) – such as Red Cross.

Private Health Insurance

The Federal Government has introduced legislation (the Fairer Private Health Insurance Incentives Bill 2009) aimed at rebalancing the suite of policies supporting private health insurance – so that those with a greater capacity to pay for their own private health insurance do so.

Once passed, the legislation will operate from 1 July 2010 and will contain three new 'Private Health Insurance Incentive Tiers' so that higher income earners will be "penalised" more for not having private health insurance. There will be three tiers:

- **Tier 1:** for singles earning more than \$75,000 (couples \$150,000), the Private Health Insurance Rebate will be 20 per cent for those up to 65 years (25 per cent for those over 65, and 30 per cent for those over 70 years). The Surcharge for avoiding private health insurance will remain at one per cent.
- **Tier 2:** for singles earning more than \$90,000 (couples \$180,000), the Private Health Insurance Rebate will be 10 per cent, for those up to 65 years (15 per cent for those over 65, and 20 per cent for those over 70 years). The Surcharge for avoiding private health insurance will be increased to 1.25 per cent.
- **Tier 3:** for singles earning more than \$120,000 (couples \$240,000), no Private Health Insurance Rebate will be provided. The Surcharge for avoiding private health insurance will be increased to 1.5 per cent.

All income thresholds will be indexed to future wages rate changes in the national average weekly ordinary time earnings.