



WORKPLACE LAW UPDATE

Issue 1 - April 2009

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Welcome to our first issue of Workplace Law Update. These are interesting times in the workplace law area, with significant changes to workplace relations legislation about to come into effect and the global financial crisis impacting on human resources. It is also a time of change for us. We have recently re-branded our practice so that it is now known as CCI Lawyers and has its own [website](#). We have identified you as someone who may be interested in receiving our updates, but if you no longer wish to receive the Workplace Law Update from CCI Lawyers, please [click here](#). If you would like to add someone to our mailing list, please feel free to do so by [clicking here](#) and adding the new email address.

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FAIR WORK ACT

New workplace relations legislation has passed Parliament: The Fair Work Act 2009 has now passed through Parliament. Most of the legislation is expected to take effect on 1 July 2009, but some aspects, such as the National Employment Standards (NES), will only have effect from 1 January 2010. The legislation contains many provisions which will impact on business, including: • obligations to bargain in good faith when making enterprise agreements • inability to make new individual statutory agreements such as AWAs and ITEAs • employees having greater access to unfair dismissal provisions with the removal of exemption that applied to businesses with less than 100 employees • new rules applying when employees transfer businesses in a sale or outsourcing situation commencement of the NES, including the right of employees to request flexible work arrangements. Employers need to understand the implications of the legislation for their business. You are welcome to attend our upcoming seminar, so please monitor our [website](#) for further details.

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New laws mean employers are rethinking how they employ their employees. Once the [Fair Work Act 2009](#) comes into force, it will not be possible to make new AWAs or ITEAs for employees. Employers who have used ITEAs and AWAs in the past are looking at other options such as enterprise agreements (collective agreements either with unions or directly with part of the employee workforce). There are many issues arising from this, such as which employees can vote in order to approve any enterprise agreement and the interaction between old system agreements and new system agreements. Employees currently on AWAs and ITEAs will be impacted by the [Fair Work \(Transitional Provisions and Consequential Amendments\) Bill 2009](#) which deals with the transition from the current system to the new Fair Work regime. At this stage, the Transition Bill is still before Parliament, but employers will need to monitor its progress for the purposes of determining their future employment strategies.

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About CCI Lawyers

CCI Lawyers is a boutique workplace relations practice.

CCI Lawyers operates as an independently managed legal practice, providing legal services that are charged at competitive rates to employers across Australia.

CCI Lawyers is associated with the Victorian Employers' Chamber of Commerce and Industry ([VECCI](#)). Your business does not need to be a VECCI member to engage our services.

Smart Company Articles

Peter Vitale is a regular contributor to www.smartcompany.com.au. Feel free to browse the site and view his articles.

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Right to request flexible working arrangements from 1 January 2010:

As part of the National Employment Standards (NES), which have effect from 1 January 2010, certain parents or carers have a right to request flexible work arrangements. The right applies to a person who has the care of children under school-age or the care of a child under 18 who has a disability. The employee must have completed at least 12 months of continuous service with the employer immediately before making the request. Where an employee makes a request, the employer must respond to this request in writing within 21 days. A refusal can only be made by the employer on 'reasonable business grounds'. 'Reasonable business grounds' might include matters such as the effect on the workplace and the employer's business of approving the request, as well as the inability to organise work among existing staff. Where an employer has consented to this in an enterprise agreement, employment contract or other agreement, a dispute over an employer's refusal to accommodate such a request can be resolved by Fair Work Australia or another nominated person. Employers will need to take account of these new obligations in dealing with requests from relevant employees for flexible work arrangements.

DISCRIMINATION

Termination of employee with disability in sheltered workshop lawful:

In a [Federal Court decision](#), in which CCI Lawyers represented the employer, the Federal Court found that an employee whose employment was terminated for misconduct was lawful. The employer was a supported employment service providing employment to persons with disabilities. The employee, who suffered from a disability, claimed discrimination and unlawful termination on grounds that included her disability. In its decision, the Federal Court found that the employee was unable to carry out the inherent requirements of her job due to her deteriorating work performance and her psychological and social dysfunction which was attributable to her epilepsy and family background.

Equal opportunity guidelines released.

The Australian Human Rights Commission and the Victorian Equal Opportunity and Human Rights Commission have both recently released practical guidelines that may assist employers in understanding their obligations under equal opportunity legislation. The Australian Human Rights Commission publication, ['Effectively Preventing and Responding to Sexual Harassment: A Code of Practice for Employers'](#), recommends swift and decisive action to address allegations of sexual harassment in the workplace before they escalate. The Victorian Equal Opportunity and Human Rights Commission publication, ['Pregnancy & work: A Guide for Employers'](#) is intended to assist employers by providing an overview of the rights and obligations of employees who are pregnant or returning to work from maternity leave. Although these publications are not legally binding, employers will find them of assistance in understanding their obligations.

UNFAIR DISMISSAL

Employee's termination for eating employer's stock was not harsh, unjust or unreasonable: A [decision](#) of the Australian Industrial Relations Commission ('AIRC') found that an employee whose employment was terminated for eating a Snickers bar given to him by another employee while on duty in a Coles distribution centre was not harsh, unjust or unreasonable. The employee's employment was terminated by Coles for breaching the company's policy regarding the consumption of stock. The AIRC found that the company policy was reasonable. Further, as Coles had been proactive in regularly promoting the policy with all staff, the employee should 'reasonably have suspected that the Snickers bar he ate was stolen'. The decision highlights the importance of ensuring that workplace policies are fair and are clearly and regularly communicated to employees.
