

Employment & Workplace Update



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Marsdens Law Group take pride in keeping our clients informed of all the latest developments in the law, changes to the law and recent case decisions. Set out herein is our Employment & Workplace update. The contents of this update are designed to bring to your attention issues which we believe may be of interest to you.

BE ALERT BUT NOT ALARMED VIGILANCE OF WORKPLACE OMBUDSMAN EXPECTED TO CONTINUE WITH NEW GOVERNMENT

Experience has taught us that since the introduction of the *Work Choices* amendments to the *Workplace Relations Act* in March 2006, and the subsequent commencement of regulations relating to the keeping of employee records, the compliance mechanisms available under the legislation have been enthusiastically embraced by various agencies, most notably the Workplace Ombudsman.

Since July 2007 the Workplace Ombudsman has had the responsibility for investigating complaints about wages and entitlements made by employees covered by the Federal Legislation. It has wide powers to inspect records (on as little as three (3) days notice) and to issue breach notices which are usually a precursor to litigation if the notices are not complied with.

The Workplace Ombudsman has also commenced a number of prosecutions against companies who fail to properly pay their employees.

One of the features of *Work Choices* was an increase in penalties for breaches. Some offences now attract fines of up to \$33,000.00. The Courts have also shown a willingness to impose tougher penalties in line with the extra power they have been given.

This is illustrated by a recent case in the Federal Court where an employer who operated a hotel as a sole trader was fined \$170,000.00 for 254 award breaches relating to 41 employees. The prosecution was brought by the Office of Workplace Services (the forerunner to the Workplace Ombudsman) and involved breaches under both the old and new legislation.

The employer failed to pay casual loadings, correct adult rates of pay and correct junior rates of pay and this resulted in an underpayment of approximately \$18,000.00. The Federal Court said the employer's conduct called for a high penalty which was arrived at after a heavy discount for the employer's cooperation with the Office of Workplace Services. On appeal, the Full Court confirmed the penalties.

This and other decisions are illustrative of both the willingness of authorities to investigate and prosecute employers who fail to comply with awards and minimum standards, and the preparedness of the Courts to impose penalties which act as a deterrent.

Our experience also tells us that most employers take care to make sure they are compliant. However, if you have any questions about legal obligations in relation to employees, please contact Grant Butterfield or Charles McElroy at our Campbelltown office on (02)4626 5077.

This update represents a brief summary only of the cases and legislation discussed and is not intended to be a definitive analysis and therefore should not be relied upon as a definitive or complete statement of the relevant law. For more information or detailed legal advice, please contact Grant Butterfield or Charles McElroy on (02) 4626 5077.