

LegalTalk Alert

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What's New – 1 July 2010?

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With the beginning of the new financial year, there are several important developments employers and employees should be aware of.

Paid Parental Leave Scheme becomes law

On 17 June 2010, the *Paid Parental Leave Act 2010* (Cth) became law after it passed through the Senate. The paid parental leave scheme (**PPL Scheme**) provides eligible working parents with a legal entitlement of up to 18 weeks paid parental leave calculated at the national minimum wage (see below). A summary of the main features of the PPL Scheme was provided in our LegalTalk Alert released on 10 May 2010.

Amendment - PPL Scheme must be provided in addition to employer-provided paid parental leave

The most significant amendment to the Bill prior to it being passed by parliament was that it is now clear that an employer who is obliged to pay an employee parental leave pay under the PPL Scheme must do so *in addition* to any paid parental leave which the employer is obliged to provide (for example, under other applicable legislation, an industrial instrument, or an employment contract).

This means that employers cannot use the funds provided to them by the Federal Government under the PPL Scheme to pay for their own paid parental leave schemes.

This is also reflected in a change to the objects to the Act, which now states that the “*financial support provided by this Act is intended to complement and supplement existing entitlements to paid or unpaid leave in connection with the birth or adoption of a child.*”

What should employers do?

Employers should consider whether any paid parental leave which they are providing to employees is in fulfilment of a legal obligation to do so.

If it is in fulfilment of a legal obligation, then employers must continue to honour that obligation to employees, even if those employees are eligible to claim payments under the PPL Scheme at the same time.

If it is **not** in fulfilment of a legal obligation, then employers may wish to reconsider providing paid parental leave at their own initiative. However, employers should always keep in mind the wider implications on staff morale and reputation that any decision to cease any discretionary employer-provided parental leave scheme may have.

What now?

The PPL Scheme commences on 1 January 2011, when the Family Assistance Office or employers who opt in early will begin making payments to parents who are the primary carers of children born or adopted on or after that date. Employers will only be obligated to take part and start making payments to eligible employees from 1 July 2011, though they may choose to do so from the start of the transitional period from 1 January 2011.

National minimum wage increase

On 1 July 2010, the national minimum wage rose to \$569.90 per week.

In its decision on 29 June 2010, Fair Work Australia issued a National Minimum Wage Order that raised the minimum wage by \$26, from \$543.78 per week

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(equivalent to \$14.31 per hour) to \$569.90 per week (\$15 per hour). Subject to our comments below, the national minimum wage applies to employees who are not covered by a modern award or an enterprise agreement.

If an enterprise agreement provides for a wage less than the national minimum, the enterprise agreement is treated as providing the national minimum wage.

Guarantee of annual earnings

What is a guarantee of annual earnings?

Under the *Fair Work Act 2009 (Cth) (Act)*, employers can exclude the operation of modern awards in relation to employees earning over the high income threshold (**high income employees**) by guaranteeing their annual earnings.

The guarantee must be in writing and agreed to by the employee, and it must be made clear to the employee that the modern award will not apply to them. A guarantee cannot be made with an employee who is covered by an enterprise agreement.

An effective guarantee of annual earnings can give more flexibility to employers in relation to the working arrangements provided to high income employees. This is as a result of employers not having to comply with the obligations imposed by the applicable modern award, such as those relating to remuneration, hours of work,

leave, consultation and dispute resolution, and termination of employment.

It is important to note, however, that the exclusion of the *operation* of a modern award in relation to an employee does not exclude the *coverage* of the modern award to that employee. This means that such an employee will still be eligible to claim the protection from unfair dismissal under the Act, even if the *operation* of a modern award in relation to them is excluded as a result of a guarantee of annual earnings.

Increase in the high income threshold

The high income threshold rose on 1 July 2010 to \$113,800, from the previous amount of \$108,300. This increased the threshold at which an employee is considered a high income employee for the purposes of entering into a guarantee of annual earnings.

High income threshold and unfair dismissal claims

The increase in the high income threshold also affects unfair dismissal claims. Under the Act, employees who are not covered by a modern award or an enterprise agreement and who earn more than the high income threshold are unable to bring a claim for unfair dismissal under the Act.

If you would like advice or assistance regarding the drafting of a guarantee of annual earnings in relation to your employees, we would be happy to assist.

For further information please contact your PricewaterhouseCoopers advisor or:

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