

## MEDIA RELEASE

### **Ignorance of new industrial relations legislation will prove costly for employers**

*Award modernisation presents pitfalls for businesses caught unawares*

1 April 2009 – The impending changes to the industrial relations legislation may catch unprepared employers by surprise. Some of these changes will become law on 1 July this year. Significantly, new Modern Awards covering a large proportion of the Australian workforce will commence operation on 1 January 2010.

Shana Schreier-Joffe, Partner at Harmers Workplace Lawyers, says ignorance is no longer an option for employers as they may face significant consequences for failing to apply the appropriate award terms. She said that from 1 January 2010, employers could also potentially face higher operating costs due to an increase in entitlements provided under Modern Awards. For instance, many modern awards will provide for loadings for part-time employees, and the casual loading for a number of industries will be increased to 25%.

She said, “Employers are very much in the dark over award modernisation, especially those sectors that have traditionally not been subject to award coverage, which will now be covered by modern awards. Employers need to make a thorough assessment of which modern awards will apply to them, and plan accordingly.”

Ms Schreier-Joffe said that employers should be particularly mindful that all modern awards are required to contain a model flexibility clause. This clause can be used by employers to develop flexible arrangements with individual employees that differ from the requirements under modern awards. However, given the existence of these flexibility provisions, the traditional use of common law contracts which provide for above award payments may no longer insulate employers from award obligations to pay penalty, overtime and loadings.

She pointed out that employers that currently provide an annual salary amount which includes for example, leaving loading, may no longer be able to do so without using the flexibility clause and process contained in the modern award.

Modern Awards may also result in an increase in costs for employers particularly in industries that employ a large number of casuals, such as retail and hospitality. For example, a restaurant in Queensland may be currently paying a casual loading rate of 20%. Under the new modern award which will apply to the hospitality industry, restaurants are required to pay a casual loading of 25%. This increase has the potential to cause costs to increase as well as raise issues of compliance.

Ms Schreier-Joffe said that the new authority charged with ensuring compliance with the system, “Fair Work Australia”, will be eager to ensure the new modern awards system is being complied with and it is likely that Fair Work Australia will be more vigilant in pursuing employees for non-compliance with these awards.

“In order for employers to understand the impact modern awards will have on this organisation and to mitigate the risks of possible non-compliance, a thorough audit of the terms of a modern award in tandem with an assessment of the needs of the business should be conducted,” concluded Ms Schreier-Joffe.

**Practical advice for business:**

Ms Schreier-Joffe said that employers, when contemplating the effects of the award modernisation process, should carefully consider the following factors:

- Employers should make an assessment of which modern awards will apply to them. It may be the case that employers that have traditionally not been subject to award coverage will now be covered by modern awards (for example, currently, employees who perform work in call centres in NSW have been award-free, which will not be the case going forward).
- Employers should consider whether the specific demographics of their workplace make the terms of modern awards particularly onerous.
- Employers who have a workforce that is required to work after-hours and on weekends and have traditionally used contractual arrangements to pay above award rates of remuneration may no longer be able to do so outside of the model flexibility mechanisms; as such, they may face increased labour costs.
- Employers should also consider whether there are any particular workplace traits which will make the use of the model flexibility clause a difficult proposition in their workplace.
- If it appears that modern awards will not be a suitable form of industrial regulation for their workplace, employers should consider mechanisms to “insulate” themselves from the force of modern awards, such as a collective agreement.

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**Note to editors:**

***About Harmers Workplace Lawyers***

*Harmers Workplace Lawyers was established in 1996 as a boutique employment law firm. Since then it has become one of Australia’s leading employment and industrial law firms, with offices in Sydney, Melbourne and Brisbane. The firm has been awarded Australasian Legal Business’s ‘employment specialist firm of the year’ for the past three years running.*

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