

# Complying with the Legislative Requirements of Work Choices

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# Overview

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- Work Choices delivers big and timely changes
- Over 1000 pages of legislation plus 400 pages of Regulations – presents a substantial implementation task
- Reforms can be viewed in 2 parts:
  1. Compliance obligations
  2. Opportunities for productivity enhancement
- Compliance will be the immediate priority for most employers
- **What do employers need to do straight away?**

# Complying with the AFPC Standard

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- Set of legislated minimum conditions dealing with:
  - Basic rates of pay
  - Casual loading
  - Maximum ordinary hours of work
  - Annual leave
  - Personal/carer's leave
  - Compassionate leave
  - Parental leave
- Applies to award covered, award free and agreement covered employees (except those covered under pre-reform agreements)

# Complying with the AFPC Standard (Contd)

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- Provisions are relatively generous and detailed
- Virtually all companies will need to adjust their policies, procedures and payroll systems to comply
- **Key issues:**
  - Formula in Regs for determining whether the Standard prevails over a workplace agreement or contract of employment in a “particular respect”
  - Formula in Regs for determining whether the annual leave, personal/carer’s leave and/or parental leave provisions of the Standard or the award apply

# Complying with the AFPC Standard (Contd)

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- Maximum hours of work provisions do not apply to award-covered staff for three years but apply immediately to award-free staff
- In most cases it is worthwhile to specify in employment contracts and workplace agreements that there are 38 ordinary hours per week with a requirement to work reasonable additional hours
- Worthwhile to review all employment contracts
- Detailed formulas for accruing and crediting annual leave and personal leave
- Very generous payment rule for personal/carer's leave

# Complying with the AFPC Standard (Contd)

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- New documentation requirements for personal/carer's leave
- Important transitional provision in Regs re. accrual and crediting of personal/carer's leave and annual leave
- Compassionate leave provisions of Standard must be applied – bereavement leave provisions in awards are no longer enforceable
- Detailed parental leave provisions – 8 different types of parental leave

# New meal break and public holiday requirements

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- Employees are entitled to a 30 minute unpaid meal break after 5 hours of work (does not apply where employee covered under an award or agreement)
- An employer is entitled to request that an employee work on a public holiday. The employee is entitled to refuse if reasonable:
  - Long list of grounds for reasonable refusal
  - A term in a workplace agreement or award is of no effect if contrary to the provisions of the Act

# New record keeping requirements

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- **General records** for each employee:
  - Name of each instrument which applies
  - Classification under each instrument
- **Hours of work** records:
  - Number of hours to be worked each week
  - Daily starting and finishing times
  - Number of hours worked each day
  - The employee's "nominal hours"



# New record keeping requirements (Contd)

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- **Leave records:**
  - Rate of accrual
  - Date on which employee was credited with leave
- **Pay slips:**
  - Classification under each instrument which applies
  - The employee's rate of pay (eg. annual salary) expressed as an hourly rate

# New record keeping requirements (Contd)

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- Maximum penalty - \$2,750 per offence
- Workplace Inspectors cannot pursue prosecutions prior to 27 September
- Inspectors can issue infringement notices (max. \$275 per offence) but not prior to 27 September
- Ai Group is lobbying to have the provisions amended

# Federal award provisions which are no longer enforceable

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- Relatively long list of new “not allowable matters”
- Not allowable matters are immediately unenforceable and the AIRC is required to remove them from awards
- Facilitative provisions which only allow majority agreement (eg. many 12 hour shift provisions) no longer have any effect

# Employees covered under former state awards

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- State award employees are deemed to be covered under a NAPSA:
  - Operate for up to 3 years
  - Any “prohibited content” is void
  - AFPC Standard applies
- Work Choices Regs vary the *SG (Admin.) Act* to require employers to offer choice of fund to employees covered under a NAPSA from 1 July 2006

# Other compliance issues

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- Workplace agreements:
  - New agreements are subject to “prohibited content” and numerous other requirements
  - Anti-AWA clauses in pre-reform agreements are no longer enforceable
- New industrial action laws (eg. secret ballots)
- New unfair dismissal laws
- New transmission of business, right of entry, freedom of association etc laws

# Conclusion

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- The Work Choices reforms are very worthwhile
- But companies have some immediate compliance challenges - virtually all companies will need to make changes
- Ai Group is providing a wide range of Work Choices-related assistance to its members