

INDUSTRIAL RELATIONS

Collective Agreements advice for Members

NSW Farmers' Association Members should be aware of requirements surrounding collective agreements in the workplace, following the Rudd Government's phase out of individual workplace agreements.

These changes are particularly important for the horticultural industry, which is characterised by fluctuating numbers of casual employees.

Use of collective agreements can ease the burden of paper work placed upon employers during busy picking seasons.

A collective agreement is a written agreement between an employer and a group of employees or a union acting on behalf of a group of employees that sets out the terms and conditions of the employment contract, for example, hours of work, rates of pay and other issues related to the job.

Collective agreements need to be lodged with the Workplace Authority where they are assessed against the no-disadvantage test which ensures that the agreement does not, on balance, reduce the overall terms and conditions of employment of

employees covered by the agreement in comparison with the terms of a relevant award.

Drafting collective agreements to meet the no-disadvantage test can become difficult where employees are working outside of 'normal' conditions, that is, workers working odd and long hours, piece-rate workers and fluctuating employee numbers, as is often the case with horticultural farms.

When making a collective agreement there are certain rules relating to the agreements which must be approved by a majority of employees prior to lodgment often by ballot who must have full access to the agreements for a determined period.

The Australian Industrial Relations Commission has issued substantial fines to employers who have not properly undertaken the correct pre-lodgment procedures.

The use of a collective agreement will enable an employer to have a single agreement for their farm that provides all of the working conditions in the one document.

It also allows for greater flexibility than



The use of a collective agreement can make things easier for Members during busy picking and harvest seasons.

available under awards, especially when dealing with provisions for employees working odd and long hours, piece-rate workers and fluctuating employee numbers, as is often the case on horticultural properties.

NSW Farmers' Association understands

the complexities of collective agreements and the lodgment procedures and can assist Members by providing advice, drafting and lodging collective agreements for Members and conducting employee approval processes of collective agreements.

Online OH&S tool

The NSW Farmers Industrial Association is piloting a new online occupational health and safety resource for its Members available on its www.iressentials.com.au website.

Farm Safety Management is a program based on the Association's successful one day Farm Safety Management Course. It provides practical advice on how to establish an OHS system on your farm using interactive exercises.

It also gives farmers the practical tools to be used on farm to manage workplace consultation and training and to identify

hazards, assess risks and put into place practical OHS controls.

It has also been designed to become a training resource on the farm that will help farmers in providing OHS training to workers.

To make this training flexible the resource remembers where a person is so if they log out there is no need to start from scratch, but they can pick up from where they left.

The program is available via the OHS Online Learning link on the www.iressentials.com.au.



Participants are asked to first undertake an online pre and post "Compliance at a Glance" checklist to assist the Association with the piloting process.

Paid Parental Leave changes

As part of its election platform, the Rudd Labour Government promised to commission an enquiry into a Government funded paid parental leave scheme.

The Productivity Commission commenced the enquiry in April 2008 and on 29 September 2008, released its draft report on its enquiry into Paid Parental Leave.

The Commission has put forward a model scheme of a paid parental leave scheme in its draft report. The suggested scheme provided for 18 weeks of paid maternity leave to mothers available at the birth of a child.

In addition to this leave, fathers are able to access an additional 2 weeks of paternity leave on a use it or lose it basis.

The scheme recommends that maternity leave should be available for all employed and self employed women who meet an eligibility requirement of working an average of ten hours per week and for a continuous period of 12 months. Persons taking leave under the scheme will be paid at the adult minimum wage. This is currently set at \$543.83 per week.

The model scheme is based on the person taking parental leave being paid by their current employer. The employer would then be reimbursed by the Commonwealth Government through a system of tax transfers. Where this is not practicable, the maternity leave payment would be made directly by the Government.

Under the proposed scheme, if an employee is eligible for unpaid maternity leave under the Workplace Relations Act 1996 they will also be paid superannuation by their employer for the period of paid leave.

The Commission has calculated this to be a maximum payment (at the present value of the adult minimum wage) of \$881 for each period of maternity leave.

Holidays allowance for casuals

Questions have arisen in recent months about casual employee's entitlement to holiday pay.

Generally, casual employees don't accrue a sick leave or annual leave entitlement, and are usually compensated for this with a higher hourly rate of pay.

In NSW, some casual employees are entitled to an annual holidays amount under the Annual Holidays Act 1944.

Unless otherwise specified in an award or

agreement, this entitlement is one twelfth of their ordinary pay for the period of employment, as a fixed amount on top of their normal wage.

Most federal awards (such as Federal Pastoral Industry Award) have their own provision setting out the terms of an employees annual holidays allowance, therefore there is no requirement to calculate an additional annual holidays amount. Some state awards however refer to the Annual

Holidays Act 1944. This Act provides for calculating the one twelfth allowance in a casual's pay in lieu of annual holidays.

If an entitlement to an annual holidays allowance applies, calculating the one-twelfth payment can be confusing. Section 2 (5) of the Annual Holidays Act 1955 excludes any additional allowances and penalties such as shift work and weekend work, from being included in calculating the one-twelfth amount.

Generally, the amount paid as an annual holidays allowance remains fixed and is only included for the time worked as ordinary hours.

It should be noted that casual loading is considered part of ordinary pay.

Therefore the one-twelfth payment is worked out on a casual employee's casual rate of pay only, which falls within the scope of the ordinary hours of work.

For example, if the ordinary hours under the Horticultural Employees (State) Award are 38 hours per week and a casual employees wage is \$16.50, the one-twelfth calculation would be \$1.38 (16.50 divided by 12) on top of \$16.50, giving a total ordinary hours allowance of \$17.88. This \$1.38 amount would not be payable if the employee did any overtime, in which case the appropriate overtime rates would take precedence.

Furthermore, this \$1.38 would stay fixed for any weekend work done, provided they are ordinary hours.

Should you need help calculating annual holidays allowances for casual employees, the Industrial Relations team can be contacted for assistance on 1300 794 000.

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