

Enterprise Bargaining under the Fair Work Act



Australian Business
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A new legal framework

The Fair Work Act took effect on 1 July 2009. As with the previous legislation, the Fair Work Act provides a framework for dealing with claims of unfair dismissal and provides a means by which unfairly dismissed employees may be compensated or reinstated to their former employment. The Fair Work Act expands the unfair dismissal protections to the majority of employing businesses.

Even small businesses are affected by these laws and the Fair Work Act includes a special dismissal code for small business. The relevance of the Fair Work Act is not just confined to unfair dismissal claims. The National Employment Standards as contained in the Fair Work Act provide for minimum periods of notice and minimum severance pay conditions where employment is terminated due to redundancy. The Fair Work Act also provides additional protections from termination for prohibited reasons.

Our objective

Employers need to ensure compliance with existing laws and need to be suitably informed in order to assess the potential effects of laws upon their businesses. Termination of employment is a subject that can be confusing and daunting for employers. Dismissal can expose employers to challenges to the fairness of the dismissal and several other legal actions. It is not possible for a single handbook to deal with everything that is relevant to the subject of termination of employment and this handbook does not purport to be comprehensive. However, the handbook is designed to be an information resource in which key issues are explained and illustrated by example. In keeping with this objective, the handbook contains an overview of unfair dismissal and unlawful termination processes under the Fair Work Act and includes practical checklists for redundancy, counselling and discipline, warnings and pre-dismissal checks.

Making business life simpler

Our mission is to make business simpler by using everyday scenarios to explain the workplace law issues which frequently confront business. Our team has a wealth of experience in all areas of workplace law. We use the intellectual property from our strategic practice to provide tangible and practical solutions. By promoting how workplace law is understood, we promote compliance.

Experts make things simple

AUSTRALIAN BUSINESS LAWYERS & ADVISORS PTY LTD

Level 10, 140 Arthur Street

NORTH SYDNEY NSW 2060

Tel: (02) 9458 7005 Fax: (02) 9954 5029

e-mail: ablawyers@ablawyers.com.au

website: www.ablawyers.com.au

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Types of enterprise agreements, nominal period, termination



John is the human resources manager for a manufacturing business with sites in most States including New South Wales and Victoria.

The enterprise agreement for production employees at the New South Wales site has recently expired and John needs to help coordinate the company's approach for a new agreement. The expired agreement was made under the Workplace Relations Act. The new agreement will be made under the Fair Work Act which commenced 1 July 2009.

John is due to meet with Susan, the General Manager, and Carl, the Financial Controller. John understands that it is critical to include the nominal period in the agreement and so he needs to find out from Susan and Carl about what period is acceptable to the business.

John meets with Susan and Carl.

Types of agreement

John: *"The previous agreement for New South Wales was made under laws which have been replaced by the Fair Work Act. There are three types of agreement permitted under the Fair Work Act, single enterprise agreements; greenfields agreements; and multi-enterprise agreements".*

John: *"Which type is relevant for our New South Wales site?"*

John: *"A single enterprise agreement."*

John: *"What about a greenfields agreement or a multi-enterprise agreement?"*

John: *"Neither of those is relevant to our situation. A greenfields enterprise agreement applies if a business is either in the process of being established or is proposed to be established. A greenfields agreement can be made only with a union as a party. A multi-enterprise agreement is one in which there is more than one unrelated employer and extends beyond a single business. This does not reflect our situation."*

John: *"Okay, can the single enterprise agreement be made directly with employees?"*

John: “Yes, the agreement can be made with the employees. The agreement can also cover the union, but for this to happen the union will need to apply to be covered by the agreement. The union can make an application at the time that the agreement is filed with Fair Work Australia for approval.”

Susan: “John, we had a five year agreement under the previous laws. Is five years permitted under the Fair Work Act?”

Four-year maximum nominal period

John: “No, under the Fair Work Act the maximum nominal period is four years. This means that the agreement will need to be either four years or some lesser period. What’s your preference?”

Susan: “Carl and I will need to think about this. We’ll get back to you.”



Later that day Susan contacts John on his mobile phone.

Susan: “Taking into account business forecasts, supply contracts and other relevant issues, our preference is for a two-year agreement. This period would best suit the business in the current and foreseeable circumstances.”

John: “Okay, I will make a note of that and ensure that this period is stated in the agreement.”

Agreement must state nominal period

Susan: “Is it important to state the nominal period in the agreement?”

John: “Yes, it’s really important. If the period is not stated in the agreement, it cannot be approved.”

Susan: “What happens to the agreement when it comes to the end of the nominal period? Does it still apply?”

John: “Yes, it will still have legal effect after the nominal period. The expired agreement can only be terminated with the approval of Fair Work Australia.”

Susan: “Thanks John, can you send me a summary of these matters?”

John: “I’ll do that straight away.”



Read John’s summary on the next page.



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Level 10, 140 Arthur Street
NORTH SYDNEY NSW 2060
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e-mail: ablawyers@ablawyers.com.au
website: www.ablawyers.com.au