

# WORKPLACE RELATIONS CIRCULAR

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## FAIR WORK ACT AMENDMENTS

The Federal Parliament has passed a number of changes to the Fair Work Act over the last nearly two years to have the legislation approved. The Fair Work Amendment Bill 2014 was passed by the House of Representatives on Wednesday 11 November 2015 and will come into effect on 27 November 2015, with a number of amendments to the Fair Work Ombudsman's obligation to pay interest on unpaid parental leave.

### Amendments

#### Unpaid Parental Leave Extension

Employers will only be able to refuse an extension of unpaid parental leave if they can show that the employee has not been given an opportunity to discuss the request.

This differs from the current law where an employer may refuse the request for an extension of unpaid parental leave simply by notifying the employee in writing and providing the employee a reasonable opportunity to discuss the request in light of the existing requirements.

Under the new law, employers cannot take industrial action unless bargaining for an enterprise agreement has commenced. This amendment overcomes the so called 'strike first, bargain later' approach that arose following the JJ Richards Case (where employees were taken to court for industrial action in order to pressure an employer into agreeing to bargain).

Under the new law, for a protected action ballot order to be issued by the Commission, bargaining must have commenced either by the employer agreeing to bargain, or by a majority support determination being issued by the Commission.

**EXAMPLE ONLY**  
This document is for example purposes only and should not be relied on

## Greenfields Agreements

Employers who are bargaining for a proposed Greenfields Agreement will have the option of applying to the Fair Work Commission for approval of the proposed enterprise agreement even where the relevant union involved in the bargaining does not consent.

Employers will be able to make the application to the Commission unilaterally if no deal has been reached with the union within a negotiating period of six months.

## Unclaimed Monies

The Fair Work Act provides that employers can pay unclaimed monies owed to the Fair Work Ombudsman in situations where the employee cannot be located. There is a strong interest to be paid on unclaimed monies in excess of \$100 that have been owed for at least six months.

## **Changes Not Approved**

The original draft of the Bill contained amendments relating to annual leave on termination as well as new rules relating to the accrual of annual leave on termination compensation.

The original amendments proposed to:

- only require that annual leave be paid (as per the decision in *Centennial Northern* [2015] FCAFC 100); and
- confirm that annual leave compensation is payable to workers on workers compensation.

These proposals were not included in the final draft of the Bill as they were not supported by the majority of the Senate recently passed.

This means that:

- when they take a period of leave, annual leave must be paid (as per the decision in *Centennial Northern* [2015] FCAFC 100); and
- an employee is on workers compensation if required by the relevant state or territory (as per the decision in *Anglican Church of Australia* [2015] FCAFC 81 5 June 2015).

- amendments that would have affected transfer of business compensation are not included in the Bill.

**Workplace Relations Helpline on 1300 765 123 if you wish to hear or require further information.**