

## Senate Standing Committee on Education and Employment

### QUESTIONS ON NOTICE Additional Estimates 2013-2014

#### Outcome 2 - Workplace Relations & Economic Strategy

#### Department of Employment Question No. EM0494\_14

#### Senator McKenzie provided in writing.

1: Is the Department aware of the Hon. Bill Shorten MP's statement as Minister for Workplace Relations that: "I love this, I do not know who dreamed it up, but they deserve a medal for idiocy —to make law that you can swap your hourly pay for non-monetary benefits."

Who was the Minister for Workplace Relations that introduced into the Fair Work Laws Individual Flexibility Arrangements permitting non-monetary benefits to be traded?

2: Please provide a summary of the protections afforded to workers in the operation of Individual Flexibility Arrangements.

3: What is the difference between an Individual Flexibility Arrangement and a Statutory Agreement?

4: Can the Department please provide examples of how Modern Australian Families could benefit from an Individual Flexibility Arrangement as provided for under the Fair Work Act as it currently stands?

#### Answer

1. The Hon Julia Gillard was Minister for Workplace Relations when the Fair Work Bill 2008 was introduced into Parliament in November 2008. The Bill enabled non-monetary benefits to be taken into account when considering if an employee was better off overall under an individual flexibility arrangement. The provisions have been in place since the commencement of the *Fair Work Act 2009* on 1 July 2009.

The Explanatory Memorandum for the Fair Work Bill 2008 included the illustrative example of "Josh" who works as a membership consultant at a gymnasium. In the example, Josh coaches a local footy team on two evenings per week and enters into an individual flexibility arrangement that allows him to work outside the standard hours of operation. Josh then starts work one and a half hours earlier than the usual hours of work on Tuesdays and Thursdays without attracting the usual penalty rates that would apply, so he can leave at 4pm to coach his footy team.

2. An employee is protected against undue influence or pressure, adverse action, coercion and misrepresentation by his or her employer in respect of the making or terminating of an individual flexibility arrangement (see section 341 and paragraph 344(c)). Similarly, an employer cannot make an offer of employment conditional upon an employee entering an individual flexibility arrangement (see subsection 341(3)). Other protections for employees include:

- the arrangement must be genuinely agreed to by both parties,
  - an employer must ensure that the employee is better off overall under the arrangement,
  - an arrangement must be in writing and signed by both parties (and by a parent or guardian if the employee is under 18 years of age),
  - an arrangement made under an enterprise agreement flexibility term cannot contain unlawful terms,
  - an arrangement has effect as if it were a term of a modern award or enterprise agreement and can be enforced as such, and
  - a breach of an individual flexibility arrangement and/or the general protections can be investigated by the Fair Work Ombudsman.
3. An enterprise agreement is the only statutory agreement permitted under the *Fair Work Act 2009*. Enterprise agreements are made at an enterprise level between employers and employees about terms and conditions. An individual flexibility arrangement is made between an individual employee and his or her employer. It varies the effect of the enterprise agreement or modern award that applies to the employee, but in respect of that employee only, and has effect as if it was a term of that agreement or award. An individual flexibility arrangement does not have any effect or operation outside of the enterprise agreement or modern award under which it is made.
4. An example of how individual flexibility arrangements can already be used to benefit families is contained in the Explanatory Memorandum to the Fair Work Amendment Bill 2014. A mother is employed full time and wishes to pick up her school aged children from school two days a week. She enters into an individual flexibility arrangement with her employer that she will work longer hours three days a week so that she can leave early on the other two days to pick up her children.

Other possible scenarios in which employees may request an individual flexibility arrangement follow. These examples are indicative only and do not necessarily reflect particular terms in any modern award or enterprise agreement.

- A) Sam works full-time as a mechanic. His employment is covered by an enterprise agreement which has penalty rates. Sam's mum lives interstate in a rural area and unfortunately is unwell. Sam wishes to work Monday to Thursday so that he can travel on Fridays to his mum and stay with her until Sunday. This will allow Sam to help his mum with domestic tasks. Sam still wishes to receive his normal weekly wage and so does not wish to work part-time.

Sam approaches his employer to discuss different working arrangements and they agree to make an individual flexibility arrangement allowing Sam to still work 38 hours per week by working later Mondays to Thursdays without the penalty and overtime rates that would usually apply to extended working hours. Sam is better off overall because he is able to work all of his hours and help his mum on Fridays, something he values as a significant benefit, and will still receive his normal weekly wages.

- B) Sophie works part-time 3 days a week as a finance administrator at a small business in her local area. Her usual working hours are 9 am until 4:30 pm and her employment is covered by the relevant Modern Award. Her husband Greg works afternoon shift and starts work at 2pm. They have two primary

school aged children. Sophie would like to start work earlier in the mornings so that she can pick up her children from school.

Sophie discusses making her work hours more flexible with her employer and they agree to make an individual flexibility arrangement to allow her to start work at 7:00 am and finish at 2:30 pm, meaning she will start work before the usual span of hours under the award. Sophie is better off overall as she still works the same number of hours but will be able to pick up her children from school which is something she highly values, and in addition she saves on after school care costs.