



Australian Government

WorkChoices

Compliance and penalties

Under WorkChoices, the Office of Workplace Services (OWS) will provide protection for employees by monitoring compliance with the new legislation and enforcing the new penalty provisions.

OWS can enforce penalties for breaches of the following categories of employee entitlements:

- a term of the Australian Fair Pay and Conditions Standard;
- a term of a workplace agreement;
- a term of an award or order of the Australian Industrial Relations Commission (AIRC);
- meal break entitlements;
- public holiday entitlements; or
- extended parental leave entitlements.

Penalties can also be sought for breaches of:

- workplace determinations;
- undertakings about post-termination terms and conditions; and
- various provisions of the Workplace Relations Act (WR Act) and Workplace Relations Regulations 2006 (WR Regulations).

OWS inspectors will be able to take legal action on an employee's behalf for breaches of the above industrial instruments or provisions of the WR Act or the WR Regulations.



WorkChoices and employee protections

OWS can also seek the imposition of penalties if a workplace agreement is lodged without the pre-lodgement requirements being met. For example, employers are required to provide a consideration period of at least seven days for a new agreement presented to an employee for their approval. If this consideration period is not provided, penalties can be applied by OWS.

Union membership and bargaining agents

Under WorkChoices, all employees will retain the right to belong to, or not belong to a trade union. An employer cannot dismiss an employee because they belong, or do not belong, to a union. The OWS will ensure that breaches of the freedom of association provisions of the new legislation are prosecuted.

All employees have the right to appoint a bargaining agent to assist them in negotiating agreements, whether individual or collective. A bargaining agent can be a friend, relative, union representative or lawyer. Bargaining agents cannot be acting for another party in negotiations, a bankrupt, under the age of 18, or have been convicted of certain criminal offences.

For more information, see the 'WorkChoices and the role of unions' fact sheet.

Protections against discrimination

Under WorkChoices, employees will continue to be protected against discrimination in the workplace on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

For more information on the protections available, see the 'WorkChoices and termination of employment' fact sheet.

The AIRC, the Office of the Employment Advocate (OEA) and the Australian Fair Pay Commission (Fair Pay Commission) will take account of the principles of non-discrimination to deliver various support services to employees and employers. The AFPC has a specific responsibility to ensure that its decisions do not discriminate on various grounds.

Employees can continue to access to anti-discrimination remedies in federal, state and territory anti-discrimination legislation. Individual employees will be able to make complaints of discrimination and harassment to the Human Rights and Equal Opportunity Commission when harassment or discrimination has occurred based on their sex, pregnancy, marital status, disability, age, race, colour, descent or national or ethnic origin.

When setting and adjusting employee wages, the Fair Pay Commission will be required to apply the principle that men and women should be paid equal remuneration for work of equal value. The AIRC will also be bound to take into account the 'equal remuneration for work of equal value' principle. Under WorkChoices, an employer cannot dismiss or otherwise cause detriment to any of his or her employees as a result of an equal remuneration proceeding.

For more information on the provisions available for these groups, see the:

- 'WorkChoices and young people';
- 'WorkChoices and disability wages';
- 'WorkChoices and outworkers';
- 'WorkChoices and apprentices and trainees'; and
- 'WorkChoices and junior rates' fact sheets.

The Australian Fair Pay and Conditions Standard includes provisions to protect groups with specialised employment needs.

Young people

Under WorkChoices, junior rates will not fall below the award rates that applied after the increase from the AIRC's 2005 Safety Net Review.

The OEA will protect employees under 18 who are entering into an AWA by requiring the approval of a parent or guardian before the AWA can be lodged.

People with disabilities

Wages for employees with disabilities who are unable to earn the full minimum wage will not fall below the award rates that applied after the increase from the Australian Industrial Relations Commission's 2005 Safety Net Review.

Outworkers

Existing protections in federal awards and state legislation for outworkers in the textile, clothing and footwear industry will be maintained under WorkChoices. Outworker award protections, such as maintaining work records and inspection arrangements will remain in awards as allowable award matters. State laws which provide protections for outworkers will not be overridden by WorkChoices.

The OEA will assist employees by giving them advice about agreement making and encouraging parties making individual or collective agreements to take into account the circumstances of vulnerable employees, for example, women, young people, trainees, apprentices, outworkers and people from non-English speaking backgrounds.

Further information

For further information:

- visit the Australian Workplace portal at www.workplace.gov.au;
- Call the Office of the Employment Advocate on 1300 366 632 or visit its website at www.oea.gov.au;
- Call the Human Rights and Equal Opportunity Commission on 1300 369 711 or visit its website at www.hreoc.gov.au.

WorkChoices is a new system of workplace relations legislation that covers up to 85 per cent of Australian employees. This series of fact sheets is available to assist workers and employers to understand their rights and obligations under the legislation.

For more information call the **WorkChoices Infoline** on **1300 363 264** or visit the **WorkChoices** website www.workchoices.gov.au



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