



Australian Government

WorkChoices

Employee collective agreements

An employee collective agreement is an agreement negotiated between a group of employees in a workplace and their employer. Employee collective agreements can only bind the employer and employees making the agreement. Unions cannot be bound to an employee collective agreement.

Advice on how to make an employee collective agreement can be obtained from the Office of the Employment Advocate (OEA).

Negotiating an employee collective agreement

When an employer or employee wants to make an employee collective agreement they may initiate a bargaining period for negotiating the agreement by giving written notice to all other negotiating parties and the Australian Industrial Relations Commission (AIRC).

Employees can request to have a bargaining agent meet and confer with the employer during agreement negotiations with their employer.

Also, an employee or group of employees may ask a bargaining agent to initiate a bargaining period on their behalf.

For information about industrial action and bargaining periods see the 'WorkChoices and industrial action' fact sheet.

Employee approval

An employee collective agreement must be approved by a valid majority of employees who will be covered by the agreement. A vote can be used to work out whether a majority of employees approve an agreement.



WorkChoices and employee collective agreements

If an employer lodges an agreement without obtaining employee approval, they may be liable to a penalty of up to \$33,000 and the agreement may be set aside or varied by a court.

Prior to seeking employees' approval of an agreement, employers must provide the employees with a consideration period of at least seven days.

At the beginning of the seven day consideration period, employers must provide employees with access to the proposed agreement as well as an information statement from the OEA. New employees who commence work within the seven day period must also have ready access to the agreement and be provided with the information statement prior to the agreement being approved.

The seven day consideration period can be waived by the employees, but only if all employees agree to do so in writing.

The Workplace Relations Act makes it unlawful for a person to coerce a person into making a collective agreement, or to make false or misleading statements so that a person agrees to make a collective agreement.

Employees can request to have a bargaining agent meet and confer with the employer during agreement negotiations with their employer. Prior to WorkChoices, only trade unions could act as bargaining agents in relation to employee collective agreements. WorkChoices increases the range of people or organisations who can act as bargaining agents. For example, a bargaining agent could be a friend or relative, solicitor, a trade union representative or any other person who could provide advice.

If an employee requests a bargaining agent, the employer must meet and confer with that agent at least seven days before the agreement is approved.

Lodgement

All workplace agreements come into operation on the day that they are lodged with the OEA. Employers must lodge an agreement within 14 days of the agreement being approved by employees. There will be penalties against employers for late lodgement of agreements.

Once an agreement has been lodged, the OEA will issue a receipt to the employer. The employer must provide a copy of the receipt to the employees within 21 days of receiving it.

All agreements that are lodged with the OEA will need to be accompanied by a declaration signed by the employer. The declaration must state that the requirements for making the agreement have been complied with. It must also state that the content of the agreement meets the requirements under the legislation. It is an offence to lodge a false or misleading declaration in these circumstances.

Employee collective agreements can have a nominal expiry date of a maximum of five years from the lodgement date. An agreement continues to operate beyond its nominal expiry date until it is terminated, or replaced by another collective agreement or Australian Workplace Agreement (AWA).

Variation and termination

Overview

The process for varying or terminating an employee collective agreement is essentially the same as for making the agreement. Advice on how to vary or terminate a collective agreement can be obtained from the OEA.

Employee collective agreements can be terminated in several ways. An employee collective agreement can be terminated if all the parties agree to do so, and the employer lodges a declaration to terminate the agreement with the OEA.

A workplace agreement may also be unilaterally terminated by one party to the agreement provided that the nominal expiry date has passed. WorkChoices provides two ways in which an agreement can be unilaterally terminated. These are where termination is provided for under the agreement and termination with 90 days written notice.

Termination is provided for under the agreement

A workplace agreement may set out its own process for its termination. If this is the case, the agreement may be terminated by giving 14 days written notice of the termination once the nominal expiry date has passed. Provided that all the requirements in the agreement have been met, a declaration to terminate the agreement must be lodged with the OEA after the 14 day notice period. The termination will come into effect when the declaration is lodged.

Termination with 90 days written notice

A workplace agreement may be terminated by any party giving 90 days written notice to the other parties to the agreement. The notice may only be given after the nominal expiry date of the agreement has passed. After the 90 day notice period has expired, the party wishing to terminate the agreement must lodge a declaration with the OEA. The termination will come into effect when the declaration is lodged.

Wages and conditions following termination

If an agreement made under WorkChoices is unilaterally terminated, employees will be covered by the Australian Fair Pay and Conditions Standard (the Standard) and protected award conditions (see below).

In addition, if an agreement is terminated with 90 days notice, the employer can provide voluntary undertakings to their employees about the terms and conditions of employment above these minimum conditions. Such undertakings will need to be lodged with the OEA and will be enforceable.

The Australian Fair Pay and Conditions Standard

The Standard applies to all new federal workplace agreements made after commencement of WorkChoices. The Standard overrides an agreement where the agreement provides less favourable entitlements to an employee. The Standard does not apply to workplace agreements made before the commencement of WorkChoices or to preserved state agreements.

For more information about the Standard, see the 'WorkChoices and the Australian Fair Pay and Conditions Standard' fact sheet.

Interaction with awards and other agreements

An award has no effect in relation to an employee while a workplace agreement is in operation.

However, certain award conditions may be read into an agreement. These are called protected award conditions, and are taken to be part of the agreement unless the agreement specifically excludes or modifies them. The protected award conditions cover the following entitlements:

- rest breaks;
- incentive-based payments and bonuses;
- annual leave loadings;
- public holidays, or days or a procedure for specifying days substituted for public holidays. This includes state or territory public holidays;
- monetary allowances for:
 - expenses incurred in the course of employment; or

- responsibilities or skills that are not taken into account in rates of pay for employees; or
- disabilities associated with the performance of particular tasks or work in particular conditions or locations;
- loadings for working overtime or for shift work;
- penalty rates; and
- outworker conditions.

If there is an employee collective agreement at the workplace, an employer and employee can still enter into an AWA at any time.

For more information about awards and agreements, see the 'WorkChoices and federal awards and agreements'; WorkChoices and state awards and agreements'; and 'WorkChoices and awards' fact sheets.

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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