

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE**

**2005-2006 SUPPLEMENTARY BUDGET SENATE ESTIMATES HEARING
2 and 3 NOVEMBER 2005**

EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO

QUESTION ON NOTICE

Outcome 2: Higher productivity, higher pay workplace

Output Group 2.1: Workplace relations policy and analysis

Output 2.1.1: Workplace relations policy advice

Question Number: W603-06

Question:

Senator Marshall asked in writing:

When a workplace agreement is terminated but not replaced by a new agreement, will these employees return to their higher award leave standard or the lower FPAC leave standard?

Answer:

Section 103R of the *Workplace Relations Act 1996* (Schedule 1, item 71, *Workplace Relations Amendment (Work Choices) Act 2005*) states that an existing agreement has no effect in relation to an employee if the employee was covered by a workplace agreement and that agreement was terminated. An award has no effect except to the extent that it contains protected award conditions. If, but for the agreement, the employee would have been entitled to protected award conditions, the employee will receive those protected award conditions in addition to the Fair Pay and Conditions Standard.

These rules continue to have effect until another workplace agreement covering the employee comes into operation. Employees in this situation are subject to the conditions of the Fair Pay and Conditions Standard.

When an agreement has been unilaterally terminated by an employer after the nominal expiry date of the agreement, the employer may make an undertaking to as to the terms and conditions of employment of employees covered by the agreement that is to be terminated. The terms in the undertaking must be as good as or better than the conditions in the Fair Pay and Conditions Standard. Employees in this situation are subject to the Australian Fair Pay and Conditions Standard (the Fair Pay and Conditions Standard) and any undertakings made by their employer.

The annual leave entitlement of an employee covered by an agreement that is terminated will be either the annual leave entitlement contained in the Fair Pay and Conditions Standard, or, in the case where an employer has unilaterally terminated an agreement and makes an undertaking as to the annual leave entitlement of employees covered by the terminated agreement, the entitlement contained in the undertaking.