



Anglican Church Diocese of Sydney

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Circular to Minsters and Wardens

Transition to the Federal industrial relations system

This circular outlines the material changes that transition to the Federal industrial relations system will have on Anglican parishes in the Diocese.

In a circular dated 3 May 2006 we advised that the Howard Government's WorkChoices industrial relations reforms principally only applied to certain corporations and not to Anglican parishes. With the election of the Rudd government, WorkChoices was replaced with the Fair Work Act 2008.

On 1 December 2009 the NSW Parliament passed legislation to refer its industrial relations powers to the Commonwealth.

The effect of NSW referring its industrial relations power to the Commonwealth is that all employers and employees in NSW, including Anglican parishes, will be covered by the Federal industrial relations system (except State and local government employees). There are some significant differences between the NSW and Federal industrial relations' systems. In the main these changes commence from 1 January 2010 but some commence from 1 January 2011.

This circular outlines the material changes affecting parishes. Our *Employment Relations Guidelines for Parishes* will also be updated and amended sections circulated in due course.

Clergy are not affected

The first thing to note is that parish clergy are not employees, they are office holders. Therefore the move to the Federal industrial relations system has no effect on parish clergy.

From time to time we become aware of parishes that risk undermining this important distinction between office holder and employee by issuing their clergy with letters of appointment or employment contracts. If you have done so, please contact the Manager, Legal Services to discuss the matter.

Changes commencing 1 January 2010

National Employment Standards

The *Fair Work Act 2008* contains a set of 10 minimum pay and conditions, known as National Employment Standards which operate as a safety net applying to all employees. An industrial award may also apply depending on the nature of work being undertaken by the employee. For NSW employers transitioning on Federal industrial relations system applicable NSW State awards will continue to apply until 1 January 2011 at which time the Federal modern awards system will apply.

The National Employment Standards and the provisions in any applicable industrial award override any contractual agreement you have made with your employees on any matter where the Standards or industrial award are more beneficial to the employee.

In summary the National Employment Standards are as follows –

Maximum weekly hours of work: 38 hours per week, plus reasonable additional hours. Whether additional hours are reasonable will depend on a number of factors including the employee's personal circumstances (e.g. family responsibilities), the needs of the workplace, whether it is usual in the industry, the nature of the employee's role and the employee's level of responsibility.

Flexible working arrangements: Allows parents or carers of a child under school age or of a child under 18 years with a disability who have completed at least 12 months continuous service, to request a change in working arrangements to assist with the child's care. An employer may only refuse the request on reasonable business grounds.

Parental leave and related entitlements: Up to 12 months unpaid leave for every employee, plus a right to request an additional 12 months unpaid leave, plus other forms of maternity, paternity and adoption related leave. An employer can only refuse an additional 12 months leave if there are reasonable business grounds for doing so.

Annual leave: 4 weeks paid leave per year based on ordinary hours.

Personal (or sick) leave – carer's leave – compassionate leave: 10 days paid personal (sick) / carer's leave (pro rata for part-time workers), two days unpaid carer's leave as required, and two days paid compassionate leave (unpaid for casuals) as required. Personal (sick) leave accumulates from year to year.

Community service leave: Unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for each occasion of jury service.

Long service leave: The provisions in the Standard on long service leave are not relevant to parish employers. The Long Service Leave Act 1955 (NSW) continues to apply.

Public holidays: A paid day off on a public holiday, except where reasonably requested to work. Generally, it would be reasonable to request a member of parish staff who has ministry responsibilities to work on a public holiday that is also a Christian festival.

Notice of termination and redundancy pay: Up to 4 weeks notice of termination (5 weeks if the employee is over 45 and has at least 2 years of continuous service) and up to 16 weeks redundancy pay, both based on length of service. Note however that the redundancy pay requirement only applies if a person has been employed for more than 12 months and the employer has 15 or more employees, it will therefore apply to few, if any, parishes.

Provision of a Fair Work Information Statement. Employers must provide this statement to all new employees. It contains information about the Standards, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, rights of entry, transfer of business, and the respective roles of Fair Work Australia and the Fair Work Ombudsman. You can access the Statement at <http://www.fairwork.gov.au/Pay-leave-and-conditions/Conditions-of-employment/Pages/Fair-Work-Information-Statement.aspx?role=employees>.

National Minimum Wage

There is a national minimum wage which applies to employees who are not covered under an industrial award. If an employee is covered by an industrial award the wage provision in the award applies.

Presently the national minimum wage is \$28,276.56 per annum (or \$543.78 per week) for a full-time worker. The hourly rate for part-time workers is \$14.31. A 20% loading applies to casual employees. The minimum wage is reviewed by Fair Work Australia on an annual basis.

Unfair dismissal

Unfair dismissal already applies under the NSW industrial relations system. The unfair dismissal provisions under the Federal system are largely the same. The key differences are –

- The period within which an employee can lodge a claim for unfair dismissal is reduced to 14 days (previously 21 days).
- An unfair dismissal claim cannot be brought unless an employee has been engaged for at least 12 months, in the case of an employer with less than 15 employees, and at least 6 months for employers with 15 employees or more.
- A Small Business Unfair Dismissal Code applies for employers who employ less than 15 people. If a small business employer is found to have complied with the Code the dismissal will be deemed to be fair. The Code and a checklist for compliance can be accessed at <http://www.fairwork.gov.au/Termination-of-employment/Pages/Small-Business-Fair-Dismissal-code.aspx?role=employers>.

Changes commencing on 1 January 2011

If you have employees that are covered by a NSW State award that award will continue to apply until 31 December 2010. Typical parish employees covered by NSW State awards are secretarial/administrative staff, musicians, some social workers, cleaners, gardeners and caretakers.

From 1 January 2011 NSW State awards will cease and the Federal modern awards system will apply. Further details about Federal modern awards will be provided in the course of amendments to the *Employment Relations Guidelines for Parishes*.

What action should be taken?

1. Review your pay scales with effect from 1 January 2010 to ensure that they are not less than the National Minimum Wage.
2. Ensure that all new employees who are employed on or after 1 January 2010 are provided with a copy of the Fair Work Information Statement.
3. Ensure that you comply with the Small Business Unfair Dismissal Code if you are terminating a person's employment. It is also advisable to contact the Manager, Legal Services in advance if you are experiencing difficulties with an employee that could lead to disciplinary action or termination of the person's employment.
4. Advise your existing employees of any changes to the terms of their employment. The National Employment Standards will apply notwithstanding any provisions to the contrary in the letters of appointment you may have issued to your employees. It is therefore unnecessary to update these letters; however it is important that employees understand the new terms of their employment which now apply. A convenient way to do this may be to provide your existing employees with a copy of the Fair Work Information Statement since it summarises the changes but you could communicate the information in other ways should you wish to do so.

5. We are in the process of updating our *Employment Relations Guidelines for Parishes* and will circulate the revised letters of appointment with these updates. In the meantime if you are engaging new employees contact the Manager, Legal Services to obtain an updated letter of appointment.

Need more information?

Contact Steve Lucas, Manager, Legal Services, by phone on 9265 1647 or by email at szl@sydney.anglican.asn.au.

STEVE LUCAS
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