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Changing Working Hours? More Consultation Required!

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The Fair Work Commission has made changes to Modern Award consultation obligations. Under the changes employers will need to consult with Award covered employees regarding changes to rosters or ordinary hours working hours. Specifically, employers will need to:

- Provide information to employees about the change;
- Ask employees about their views about the impact of the change;
- Consider any views provided by employees.

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The changes are aimed at imposing obligations on employers to consult with employees about changes to their hours of work. When introducing the changes to Parliament, the then Minister for Employment and Workplace Relations Bill Shorten stated:

“The amendments will place an obligation on employers to provide employees with information about changes to their roster or hours of work and consult with employees on the impact any changes will have, including on the employees’ family and caring responsibilities.”

About CCI Lawyers

CCI Lawyers is a boutique workplace relations practice.

CCI Lawyers operates as an independently managed legal practice, providing legal services that are charged at competitive rates to employers across Australia.

CCI Lawyers is associated with the Victorian Employers’ Chamber of Commerce and Industry ([VECCI](#)). Your business does not need to be a VECCI member to engage our services.

What About Casuals?

The changes may also apply to casual employees; however, they are not intended to cover employees who work “irregular, sporadic or unpredictable hours”. Instead, where an employee (including a casual) has regular and systematic hours, the requirement to consult will be triggered. The Explanatory Memorandum accompanying the changes provides some guidance on what might be considered regular and systematic hours which trigger consultation requirements:

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Readers should ensure that they obtain advice from an appropriate qualified professional before acting, or deciding not to act, on the basis of the information in this publication. It does not constitute legal advice and should not be regarded as a substitute for legal advice.

“Gabrielle has worked 4 days a week with Wednesdays off for several years. Her employer knows that she has school aged children and that she cares for her elderly mother on her day off. Her employer has decided to change the arrangements under which Gabrielle works such that she will no longer be able to take Wednesdays off. Before changing her regular rostered hours of work... Gabrielle’s employer will [need to comply with the consultation requirements]. This means casuals or permanent employees who have regular hours will need to be consulted with before any changes.”

What if we don’t Consult?

Employees (and their unions) who feel consultation requirements have been breached will be able to ask Fair Work Commission to conciliate the issue. At conciliation the parties will have an opportunity to discuss the issues privately with the aim of reaching a mutually acceptable outcome.

Employers should be mindful that employees or their union can, at any stage, commence legal proceedings for failure to comply with consultation obligations. If a Court finds a breach, a maximum penalty of up to \$51,000 can be ordered.

From our experience, employees and their unions often first seek to resolve matters of this kind quickly and cheaply through conciliation at Fair Work Commission before commencing legal proceedings. As such, employers should carefully consider their options and seek advice before attending conciliation.

Tips for Preparing Your Business

Employers should consider the following tips to prepare for the changes:

- Review which employees are likely to be covered by the consultation obligations due to their regular and systemic employment. This should include carefully reviewing previous roster patterns and seeking advice where appropriate;
- Review employment contracts of irregular casuals to ensure contractual terms are consistent with the irregular nature of the employee’s engagement; and
- Develop a plan of how the business will conduct consultations when changing rosters, remembering that consultation does not require an employer to agree to what an employee might be seeking.

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