



The commencement of the National IR reforms

The *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* (**"the Transition Act."**) commenced at midnight on 28 March 2008. As the name portrays, the amendments in the Transition Act provide a foundation for the transition from "Work Choices" to the new Federal Government's "Forward with Fairness" industrial relations system. It is anticipated that further legislation necessary to give affect to the majority of the changes required for the implementation of "Forward with Fairness" will not come into affect until later this year.

The Transition Act amendments include the following:

- A ban on new AWA's;
- A provision allowing employers who as at 1 December 2007, had utilised AWA's, to now offer new staff and existing staff on AWA's a new interim agreement called an Individual Transitional Employment Agreements (**"ITEA"**);
- Introduction of the "no disadvantage test" for ITEAs and new collective agreements;

Are you eligible to make an ITEA?

To be eligible to make an ITEA you must as an employer be eligible, and the employee must be eligible. If either the employer or the employee is not eligible then you are not able to make an ITEA.

1. As an **employer you must**, as at 1 December 2007, had at least one person employed who was covered by:
 - a. an Australia Workplace Agreement;
 - b. a preserved individual state agreement; or
 - c. a Victoria agreement.**AND**
2. The employee must either:
 - a. be a **new employee**, that is started their current period of employment with you, no more than 14 days before the ITEA was signed; or
 - b. be an **existing employee**, that is a current employee employed under an ITEA, an AWA, a preserved individual state agreement or a Victorian employment agreement.

Please note you can not terminate an existing employee for the sole purpose of re-employing them as a "new employee" on an ITEA.

No disadvantage test

The "no disadvantage test" requires that a worker's overall terms and conditions are not reduced in comparison with a "reference instrument", which may be the relevant collective agreement, an award, or if there is no award, a designated award.

Agreements will not be effective until they have passed the no disadvantage test and have been approved by the Workplace Authority Director.

If the employee is a **new employee**, an ITEA will start to operate when the employer lodges the ITEA but if the ITEA does not pass the no disadvantage test they will be notified by the Workplace Authority and the parties will have 37 days from the date of the notice to vary the agreement or the ITEA will stop operating.

As an employer, what should you do now?

- You should cease drafting and lodging AWA's effective midnight on 28 March 2008;
- If you are currently negotiating a collective bargaining agreement, then this agreement will now need to be reviewed to ensure it meets the requirements of the Transition Act, including the no disadvantage test.
- If you are an eligible employer and wish to utilise the ITEA's for your new employees, you will need to draft the agreements to comply with the no disadvantage test.
- You should otherwise, review your employment contracts in general to ensure compliance with the Transition Act.

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