



Department of Consumer
and Employment Protection
Government of Western Australia

Labour Relations

New State labour relations laws - *The Labour Relations Legislation Amendment Act 2006*

Important information

This fact sheet provides information for employers and employees in the **Western Australian state industrial relations system**. In March 2006 the Federal Government introduced major changes to industrial relations in Australia, through the *Workplace Relations Amendment (Work Choices) Act 2005*.

Many employers and employees who have previously been covered by State awards, agreements and/or the Western Australian minimum conditions legislation are now covered by the federal industrial relations system.

Any employers who are uncertain whether their business is affected by the federal changes, should contact their employer association, Wageline on 1300 655 266 or the Work Choices Hotline on 1300 363 264.

New State laws

Western Australia has amended its labour relations laws in July 2006. These changes will provide better employment protections and allow award and minimum wages for Western Australian employees to be set fairly and independently.

The *Labour Relations Legislation Amendment Act* was effective from **4 July 2006**. The new Act amends a range of existing industrial relations legislation, namely:

- the *Industrial Relations Act 1979*
- the *Minimum Conditions of Employment Act 1993*
- the *Long Service Leave Act 1958*
- the *Construction Industry Portable Paid Long Service Leave Act 1985**
(*effective from 1 October 2006)

The key changes include:

- new reasonable hours provisions;
- fairer minimum conditions;
- enhanced long service leave provisions;
- stronger powers for industrial inspectors;
- fair and independent wage setting for Western Australia;
- extended good faith bargaining; and
- clearer right of entry rules

This brochure provides a summary of the key aspects of the new Act. For more detailed information on any areas, please contact your union, employer association or Wageline on 1300 266 655.

Reasonable hours of work

In 2002 the Australian Industrial Relations Commission handed down a decision known as the Reasonable Hours Test Case. The outcome of this decision has been incorporated in the *Minimum Conditions of Employment Act*. The new changes provide clarification of what constitutes ordinary hours and reasonable overtime.

The changes provide that employers may require employees to work reasonable overtime. However, an employee may refuse to work overtime if such overtime would be unreasonable. To assist in determining if additional hours are reasonable the *Minimum Conditions of Employment Act* now details a range of factors to be considered.

In addition, to clarify when the protection against unreasonable overtime comes into operation, the *Minimum Conditions of Employment Act* specifies the maximum hours of work for employees. Maximum ordinary hours are as specified in the relevant employment instrument or where there is no relevant employment instrument, as 38 hours per week.

Fairer minimum conditions

A variety of changes have been made to minimum leave entitlements for employees in the *Minimum Conditions of Employment Act*. As minimum conditions of employment, these leave entitlements will apply to all employees in the State system and become an implied term of all State awards and agreements and employment contracts. Award, agreement and contract provisions will continue to apply where they are more favourable than the minimum condition.

This brochure provides a summary of the new leave provisions. For detail on the operation of these provisions, please consult DOCEP's *Minimum Conditions of Employment* booklet or contact Wageline on 1300 655 266.

Sick leave

An employee's entitlement to sick leave is now cumulative, with any portion not used in a given year being carried forward to subsequent years.

Paid carers leave

An employee can use an entire year's entitlement to sick leave as paid carers leave. For a full time employee, this means 10 days is now available as carers leave rather than the previous 5 days. Carers leave is not cumulative, and no more than a year's entitlement can be used in any one year.

A new definition of carers leave has been included in the *Minimum Conditions of Employment Act*, which extends this type of leave to cover situations in which there is an unexpected emergency affecting a member of the employee's family or household, as well as an injury or illness. A new broader definition of 'a member of an employee's family or household' has also been included, so it is clear that employees can take carers leave for grandparents and siblings

Unpaid carers leave

Unpaid carers leave is a new entitlement for all employees, including casual employees. An employee is entitled to up to 2 days unpaid leave on any occasion that the employee needs to take carers leave due to an illness or injury or unexpected emergency of the employee's family or household member. This unpaid leave can be taken by casual employees, or when an employee has used all paid carers leave entitlement.

Bereavement leave

A new broader definition of 'a member of an employee's family or household' has been included in the *Minimum Conditions of Employment Act*, so that employees can take bereavement leave for the death of a grandparent or sibling as well as other family members.

Parental leave

An unpaid parental leave entitlement has been extended to casual employees who have been employed on a regular a systematic basis for 12 months or more, and who have a reasonable expectation of ongoing employment.

Parents can now request to take concurrent parental leave of up to 8 weeks, to allow both parents to be home together for a longer period immediately after the birth of the child.

Employees on parental leave have the ability to request an extension of their parental leave by an extra 52 weeks, making a total of 2 years unpaid leave.

Employees returning to work after parental leave now have the right to request a return on a 'modified basis', which includes working part-time, working fewer days and/or fewer hours or working different days and/or at different times than the employee was working before parental leave.

Employers must agree to such requests unless there are reasonable grounds not to agree. Clarification on what are reasonable grounds for refusal is provided in the *Minimum Conditions of Employment Act*.

Annual leave

The annual leave provisions in the *Minimum Conditions of Employment Act* remain substantially unchanged. The provisions relating to cashing out of annual leave have been amended, to clarify that an employee can only cash-out of annual leave at the end of the year in which it accrued. Employees will still only be able to contract out 50% of their annual leave entitlement in any given year.

A new provision will specifically prohibit employers from requiring or unduly pressuring employees to contract out of annual leave. Employers can be fined by the Industrial Magistrates Court if it is found that they have pressured employees to contract-out of annual leave.

Enhanced long service leave

The *Long Service Leave Act* and the *Construction Industry Portable Paid Long Service Leave Act* have both been amended to provide 8 2/3 weeks of long service leave to employees after 10 years, with a subsequent entitlement after 5 years, and a pro rata entitlement after 7 years on termination, or exit from the industry in the case of construction.

Employees will also now be entitled to an additional day of leave for any public holiday that falls within their period of long service leave.

The Long Service Leave General Order, which has previously provided long service leave provisions for State award employees, has been abolished and the *Long Service Leave Act* now covers all non-construction employees.

These changes make the long service entitlements for Western Australian employees more consistent with those in other States.

Transitional arrangements will apply for existing employees.

Please note that the amendments to the *Construction Industry Portable Paid Long Service Leave Act* will not take effect until 1 October 2006.

Stronger powers for Industrial Inspectors

The *Long Service Leave Act* has been amended to clarify the powers of Industrial Inspectors in relation to long service leave. Inspectors will be able to investigate alleged breaches of the *Long Service Leave Act* and bring proceedings in the Industrial Magistrate's Court for enforcement of long service leave entitlements.

Fair and independent wage setting

The Western Australian Industrial Relations Commission sets both the minimum award wage and the minimum wage rate in the *Minimum Conditions of Employment Act*, on a yearly basis. The *Industrial Relations Act* has in the past required the WAIRC to flow on wage decisions made at a federal level by the Australian Industrial Relations Commission when setting Western Australia's minimum wages.

The recent changes to federal workplace relations, known as the Work Choices legislation, have changed the way minimum wages are set at the federal level. Amendments to the State wage fixing system have been necessary to ensure that employees in the State system can receive increases in the award minimum wage.

Amendments have been made to the *Industrial Relations Act* to remove the requirement for Western Australian minimum wages to be linked to federal minima. The WAIRC will now establish minimum wages independently for Western Australia to maintain a responsible wage standard that meets the needs of employers and employees subject to the State system.

Extended good faith bargaining

The *Industrial Relations Act* has been amended to extend the good faith bargaining provisions in that Act to employers and unions who are parties in the federal system.

The Western Australian Industrial Relations Commission will be able to use its powers of conciliation and arbitration to assist parties in the federal system with bargaining for a collective agreement, and will be able to make orders to ensure parties bargain in good faith.

Clearer right of entry

A minor amendment has been made to the provisions in the *Industrial Relations Act* regarding right of entry permits for authorised representatives of unions. The amendment clarifies that a union cannot seek to have a right of entry permit revoked voluntarily while proceedings are pending, or the WA Industrial Relations Commission is hearing proceedings, against a union official for inappropriate behaviour or use of their right of entry permit. This amendment now prevents union officials from being able to avoid having their permits revoked for inappropriate behaviour or use by 'voluntarily' having their authority revoked.

Further information

For more detailed information on the provisions of the *Labour Relations Legislation Amendment Act 2006* please contact your union, employer association or Wageline on 1300 266 655

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