



In This Issue

WORKCHOICES LEGISLATION: NEW REQUIREMENTS FOR RECORD KEEPING

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ATTENTION ALL EMPLOYERS – WORKCHOICES LEGISLATION: NEW REQUIREMENTS FOR RECORD KEEPING TRANSITIONAL PERIOD EXTENDED TO 26 MARCH 2007

With the introduction of the WorkChoices legislation a number of changes to systems and procedures has been mandated. Some of these are well known, but others are less publicised. One such less publicised issue that has a potentially major impact is the new record keeping requirements.

Under the old act record keeping requirements were relatively straightforward and only related to record keeping and pay slip requirements for employees covered by awards, certified agreements or AWAs. **The new record keeping requirements under WorkChoices apply to all employees and employers who are now covered by the Workplace Relations Act 1996.**

Under Part 19 of the Workplace Relations Regulations 2006 (Cth) (“Regulations”) there are extensive new record keeping requirements, so as to ensure employees receive the benefit of the Australian Fair Pay Conditions Standard.

KEEPING OF RECORDS

Records must be kept by an employer for seven years from:

- the date that an entry is made or it is changed or
- the date an employee's employment is terminated;

whichever happens first.

FORM OF RECORDS

Records must be:

- in English, in a legible form;
- in a form that can be readily accessed by a workplace inspector;
- in a format that allows a workplace inspector to determine the employee's entitlements; and
- made available to employees or ex-employees within given time frames. The time frame for existing employees is 3 working days and for ex-employees it is 14 days in total.

GENERAL CONTENT

A record relating to an employee must contain:

- the name of the employer;
- the name of the employee;
- the date of birth of the employee as provided by the employee;
- the name of each relevant industrial instrument;
- the classification of the employee under each such instrument;
- whether the employee is permanent, temporary or casual;
- whether the employee is permanent full-time or part-time and in these cases the specified number of hours to be worked by the employee per week; and
- the date the specific employee's employment began.

WORKING HOURS

If entitled to be paid overtime then the employee's record must contain the employee's daily start and finish times.

If an employee's “base annual salary” is less than \$55,000 (or the full-time equivalent) then the record must contain the total number of hours worked each day by the employee. This threshold of \$55,000 is to be indexed annually from 1 July 2007.

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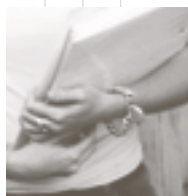
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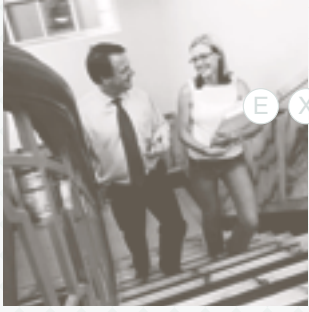
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WORKING HOURS (continued)

The base salary of an employee is the 'gross income' excluding the following:

- incentive-based payments or bonuses;
- loadings;
- monetary allowances;
- penalty rates;
- employer contributions to superannuation; or
- any other similar separately identifiable entitlement.

Note – Under Section 226 it stipulates that if there is an agreement in writing between the employer and the employee allowing for hours of work to be averaged, a copy of the agreement must be kept by the employer.

PAY

The records relating to the employee must contain:

- the basis on which the employee's rate of pay is determined;
- the gross rate of pay expressed as an hourly rate;
- details of any incentive-based payment, bonus, loading, monetary allowance, penalty rate or other separately identifiable payment;
- the period to which the payment relates;
- the total remuneration received by the employee during that period, including the gross and net amounts;
- the dates on which the employee was paid; and
- the deductions (if any) made from that remuneration and the name of the fund or account into which the deductions were paid.

ANNUAL LEAVE, PERSONAL LEAVE AND OTHER LEAVE

Records relating to the employee for each type of leave must contain the following:

- nominal hours worked by the employee;
- amount and type of leave taken by the employee (including whether the leave is paid or unpaid);
- details of the accrual of that leave;
- state on which date the employee was credited with that leave;
- balance of the employee's entitlement to that leave from time to time; and
- amount paid to the employee while on that leave.

In the case of annual leave, if an employee has elected to forgo an entitlement to an amount of annual leave the following records must be kept:

- (i) a copy of the employee's written election to forgo an entitlement to take an amount of annual leave,
- (ii) the rate of payment for the amount and when the payment was made.

If the employee is a shift worker the employer must keep records of the periods the employee was a shift worker and the date on which the employee was credited with the additional annual leave.

SUPERANNUATION CONTRIBUTIONS

Where an employer is required to make superannuation contributions the records for each employee must contain:

- the amount of contributions made;
- the period over which they were made;
- the dates on which they were made;
- the name of the fund to which contributions were made; and
- the basis on which the employer became liable to make the contributions, including a record of any election made by the employee as to choice of fund and the date of any relevant election.

TERMINATION OF EMPLOYMENT

If an employee's employment is terminated the record must state:

- whether the employment was terminated by consent, by notice, summarily or in some other manner; and
- the name of the person who terminated the employment.

CHANGE OF BUSINESS OWNERSHIP

Where an employer sells its business and the new employer takes on the employee(s) then the old employer must transfer to the new employer all records concerning those employees.

PAY SLIPS

Employers must:

- issue pay slips to each employee for each payment made;
- issue pay slips within 1 day of the payment being made;
- include the following information on the payslip:
 - the name of the employer;
 - the name of the employee;
 - the classification of the employee under any relevant industrial instrument;
 - the date on which the payment was made;
 - the period to which the pay relates;
 - the hourly rate and the number of hours paid if the employee is paid on an hourly basis;
 - the gross amount;
 - the nett amount;
 - any incentive based amount including bonus, loading, monetary allowance, penalty rate or other separately identifiable entitlement;
 - details of any amount deducted from the gross amount. These details are to include the name, or name and number, of the fund or account into which the deduction was paid; and
 - if the employer is required to make superannuation contributions on behalf of the employee, the amount of each contribution and the name of the fund.

COMPLIANCE AND PENALTIES

The record requirements come into force on 27 March 2006. Initially the Government allowed a moratorium of six months for employers to make sure their record keeping strictly complied with the requirements.

On Friday 22 September 2006 the government issued a press release advising that the transitional period for complying with the requirements had been extended by a further six months to 26 March 2007.

The above information is a general overview of the record keeping requirements under the legislation and is not to be relied upon in substitution for proper detailed legal advice, or as a basis for making decisions. **Please contact Gary Woodman if you have any specific questions.**

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