

Industrial Relations

As advised last month, from 1 January 2010 the NSW Government has referred most of its industrial relations powers to the Commonwealth. This means that EVERY employer & employee in NSW, other than employees within the State public sector is now covered by the Fair Work Act 2009 and fall within the jurisdiction of the new industrial tribunal called Fair Work Australia. Fair Work Australia, or FWA, replaced the Australian Industrial Relations Commission as the industrial umpire.

For many employers and employees this will mean little practical change, at least in the immediate term. The most significant change is operation of the new National Employment Standards (NES), with which ALL employers will now need to be compliant. The 10 NES relate to:

1. Maximum weekly hours;
2. Requests for flexible working arrangements;
3. Parental leave and related entitlement;
4. Annual leave
5. Personal/Carers leave and compassionate leave
6. Community Service leave
7. Long service leave
8. Public holidays
9. Notice of termination and redundancy pay
10. Fair Work Information Statement

However the changes have caused some confusion and concern regarding the application of the Awards to employers and employees. As such, the impact of the changes is summarised below:

*** Employers and Employees who were covered by NSW Awards up until 1 January 2010 (includes employers practising as sole traders or partnerships, NOT incorporated companies):**

Employee optometrists – these employees remain award-free.

Employee optical dispensers – as for employee optometrists

Employee clerical staff – these employees remain covered by the terms and conditions of the NSW Clerical in Retail State Award (or in some rare cases the Clerical and Administrative Employees State Award). In either case, these Awards have been moved to the Commonwealth jurisdiction. The Awards remain in force, known as Division 2B State Awards, for a period of 12 months. On 1 January 2011, these Division 2B State Awards will cease to exist and these employees will fall under the relevant modern Award.

*** Employers who were trading as an incorporated entity (a Pty Ltd company) prior to 1 January 2010 or all employers in the ACT and so were covered by the WorkChoices/Fair Work Australia regimes. From 1 January 2010:**

Clerical employees – these are now covered by the Modern Award called General Retail Industry Award 2010. This Award provides for transitional arrangements in order to phase-in the impact of the new modern Award. Essentially, this means that there is no immediate change to the rates of pay, casual loadings or shift penalties at this time. The first phase-in step commences on 1 July 2010. At this time, we can also expect an increase to the minimum wage by Fair Work Australia. At this time, employers should continue to pay their clerical staff according to the Award rates which existed at 31 December 2009. We will advise you when Fair Work Australia varies those rates and conditions.

Optometrists & optical dispensing staff – these remain Award-free (subject to the comments noted above). Existing arrangements (that is, individual agreements) should be continued.

Award Modernisation

The process of amalgamating many Awards into a much smaller number has begun and so far over 1500 Awards have been reduced to just 122. However there are still a great many Awards to be dealt with and so the process will continue for a long time yet. We will advise you as this occurs in Awards which affect optometric practices.

If there is any further advice or assistance that you require please don't hesitate to call!