



Workplace Relations Amendment Regulations 2006 (No. 3)¹

Select Legislative Instrument 2006 No. 247

I, PROFESSOR MARIE BASHIR, AC, CVO, Administrator of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Workplace Relations Act 1996* and *Workplace Relations Amendment (Work Choices) Act 2005*.

Dated 21 September 2006

MARIE BASHIR
Administrator

By Her Excellency's Command

KEVIN ANDREWS
Minister for Employment and Workplace Relations

1 Name of Regulations

These Regulations are the *Workplace Relations Amendment Regulations 2006 (No. 3)*.

2 Commencement

These Regulations commence, or are taken to have commenced, as follows:

- (a) on 27 March 2006 — regulations 1, 2, 3 and 5 and Schedule 1;
- (b) on the day after they are registered — regulation 4 and Schedule 2.

3 Amendment of *Workplace Relations Regulations 2006*

Schedule 1 amends the *Workplace Relations Regulations 2006*.

4 Amendment of *Workplace Relations Regulations 2006*

Schedule 2 amends the *Workplace Relations Regulations 2006*.

5 Application of amendments — Schedule 1

The amendments made by Schedule 1 are taken not to authorise:

- (a) the imposition on any person of a penalty under Part 14 of the *Workplace Relations Act 1996* in respect of conduct, to which a provision specified in Schedule 1 relates, that occurred in the period:
 - (i) starting on 27 March 2006; and
 - (ii) ending immediately before the commencement of these Regulations; or

- (b) the institution of proceedings relating to the imposition on any person of a penalty of that kind in respect of conduct of that kind that occurred in that period.

Schedule 1 Amendment taken to have commenced on 27 March 2006

(regulation 3)

[1] Chapter 7, Part 2, after Division 16

insert

Division 17 Pre-reform personal/carer's leave and compassionate leave

2.23A Pre-reform personal/carer's leave and compassionate leave

- (1) The Australian Fair Pay and Conditions Standard does not apply in relation to paid personal/carer's leave or paid compassionate leave of an employee that accrued before the Standard applied to that employee.

Note 1 The Standard may have applied to an employee from 27 March 2006. However, if an employee's employment is subject to a pre-reform certified agreement, pre-reform Australian Workplace Agreement or a section 170MX award, the Standard will not apply to that employee until the pre-reform instrument is terminated or replaced (clause 30 of Schedule 7 to the *Workplace Relations Act 1996*).

Note 2 The Standard does not apply to annual leave entitlements of an employee that accrued before the Standard applied to that employee as a result of the operation of subsection 232 (1) of the *Workplace Relations Act 1996*.

- (2) A term of a workplace agreement which allows for the forgoing of an amount of leave of the type described in subregulation (1) for an amount of pay or other benefit, is not prohibited content under paragraph 8.5 (1) (l) of Chapter 2.
- (3) An employee wishing to forgo an amount of leave of the type described in subregulation (1) for an amount of pay or other benefit must elect to do so in writing.

-
- (4) This regulation ceases to have effect at the end of 5 years after 27 March 2006.

Schedule 2 Amendments commencing on day after registration

(regulation 4)

[1] Chapter 2, Part 7, after subregulation 7.1 (5)

insert

- (5A) The Standard provides a more favourable outcome in the respect mentioned in subregulation (2) if:
- (a) a workplace agreement or contract of employment which binds the employee (whether the contract is in writing or not) allows for the imposition of a penalty on an employee; and
 - (b) a consequence of the imposition of the penalty is that the employee's guaranteed basic rates of pay in Subdivision B of Division 2 of Part 7 of the Act would not be satisfied.

[2] Chapter 2, Part 7, subregulation 7.1 (12), example

insert at the end

Crediting of leave annually in arrears of service would be less favourable than the Standard, but crediting in advance of service would be more favourable.

[3] Chapter 2, Part 7, after subregulation 7.1 (14)

insert

*Notice periods and evidentiary requirements relating to
leave*

- (15) Each of the following is a particular respect:
- (a) the giving of notice in relation to a period of sick leave taken (or to be taken) by the employee;

-
- (b) the giving of notice in relation to a period of carer's leave taken (or to be taken) by the employee;
 - (c) the giving of documentary evidence in relation to a period of sick leave taken (or to be taken) by the employee;
 - (d) the giving of documentary evidence in relation to a period of carer's leave taken (or to be taken) by the employee;
 - (e) the giving of evidence in relation to a period of compassionate leave taken (or to be taken) by the employee.
- (16) The Standard provides a more favourable outcome in any of the respects mentioned in subregulation (15) if a workplace agreement or contract of employment which binds the employee (whether the contract is in writing or not) imposes obligations on the employee that are more onerous than the requirements in the Standard.
- (17) The Standard provides a more favourable outcome in any of the respects mentioned in subregulation (15) if a workplace agreement or contract of employment which binds the employee (whether the contract is in writing or not) allows for the imposition of a penalty on an employee for a breach of a requirement or condition to give the notice or evidence.
- (18) In subregulations (5A) and (17):
- penalty:***
- (a) means any of the following:
 - (i) a deduction of an amount from an employee's remuneration;
 - (ii) a reduction of an employee's entitlements;
 - (iii) a requirement that an employee makes a payment to the employer; but
 - (b) does not include a deduction, reduction or requirement that is:
 - (i) for the benefit of the employee; or
 - (ii) authorised under a law; or
 - (iii) made or imposed because the employee was provided with an entitlement to which the employee was not entitled.

[4] Chapter 2, Part 8, paragraph 8.5 (1) (j)

omit

otherwise than in accordance with the Act;

insert

for an amount of pay or other benefit otherwise than at the written election of the employee;

[5] Chapter 2, Part 8, paragraph 8.5 (1) (l)

omit

amount of pay

insert

amount of pay or other benefit

[6] Chapter 2, Part 8, after subregulation 8.5 (8)

insert

Terms allowing for penalties

(8A) A term of a workplace agreement is prohibited content to the extent that the term allows for the imposition of a penalty on an employee for breach of a requirement to provide notice or evidence:

- (a) for the purpose of substantiating an entitlement to sick leave or carer's leave; or
- (b) for the purpose of substantiating a reason for absence from work due to:
 - (i) an illness, injury or emergency affecting the employee; or
 - (ii) an illness, injury or emergency affecting a member of the employee's immediate family or household.

Example

Zoe's Adventures Pty Ltd is concerned about the number of its employees who take sick leave on Mondays.

To try to reduce the costs of these absences to its business, Zoe's Adventures would like to include a term in its workplace agreement that requires the employee to provide notice to the office manager of needing to take sick leave the day before taking it, and if the employee does not do so, the employee will not be entitled to 2 hours of paid sick leave for that day.

As the term penalises the employee (by reducing the employee's entitlement to paid sick leave by 2 hours) for not providing notice in accordance with the agreement, this term would be prohibited content.

(8B) A term of a workplace agreement is prohibited content to the extent that the term allows for the imposition of a penalty on an employee for being absent from work due to:

- (a) an illness, injury or emergency affecting the employee; or
- (b) an illness, injury or emergency affecting a member of the employee's immediate family or household.

Deryk works as a casual waiter at a restaurant that only employs waiters who have 'silver service' training. When one of its waiters is sick, the restaurant is often unable to find a suitable replacement at short notice.

The restaurant proposes to include a term in its AWAs so that, if a waiter is unable to make a shift because he or she is sick, the waiter will pay the restaurant \$150. The proposed term of the AWA also provides that this amount will be split among the waiters who do work as an extra tip for working a shift with fewer waiters.

As the term would penalise Deryk by requiring him to pay an amount to his employer for not working a shift because he was sick, this term would be prohibited content.

[7] Chapter 2, Part 8, after subregulation 8.5 (9)

insert

(10) In subregulations (8A) and (8B):

penalty:

(a) means any of the following:

- (i) a deduction of an amount from an employee's remuneration;
- (ii) a reduction of an employee's entitlements;
- (iii) a requirement that an employee makes a payment to the employer; but

- (b) does not include a deduction, reduction or requirement that is:
- (i) for the benefit of the employee; or
 - (ii) authorised under a law; or
 - (iii) made or imposed because the employee was provided with an entitlement to which the employee was not entitled.

[8] Chapter 2, Part 19, subregulation 19.9 (1A), definition of *base annual salary*, paragraph (c)

omit

regular rate;

insert

regular rate, but not including any of the matters mentioned in subparagraphs (a) (i) to (vi);

[9] Chapter 2, Part 19, subregulation 19.15 (4), definition of *contributions*

substitute

contributions does not include a contribution in respect of a defined benefit interest (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*) in a defined benefit fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*).

[10] Chapter 2, Part 19, subregulation 19.23 (4), definition of *contributions*

substitute

contributions does not include a contribution in respect of a defined benefit interest (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*) in a defined benefit fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*).

[11] Chapter 2, Part 19, regulation 19.24

omit

6 months

insert

12 months

[12] Chapter 2, Part 21, after subregulation 21.3 (5)

insert

- (5A) The Standard provides a more favourable outcome in the respect mentioned in subregulation (2) if:
- (a) an employment agreement that binds the employee allows for the imposition of a penalty on an employee; and
 - (b) a consequence of the imposition of the penalty is that the employee's guaranteed basic rates of pay in Subdivision B of Division 2 of Part 7 of the Act would not be satisfied.

[13] Chapter 2, Part 21, subregulation 21.3 (12), example

insert at the end

Crediting of leave annually in arrears of service would be less favourable than the Standard, but crediting in advance of service would be more favourable.

[14] Chapter 2, Part 21, after subregulation 21.3 (14)

insert

Notice periods and evidentiary requirements relating to leave

- (15) Each of the following is a particular respect:
- (a) the giving of notice in relation to a period of sick leave taken (or to be taken) by the employee;
 - (b) the giving of notice in relation to a period of carer's leave taken (or to be taken) by the employee;

- (c) the giving of documentary evidence in relation to a period of sick leave taken (or to be taken) by the employee;
 - (d) the giving of documentary evidence in relation to a period of carer's leave taken (or to be taken) by the employee;
 - (e) the giving of evidence in relation to a period of compassionate leave taken (or to be taken) by the employee.
- (16) The Standard provides a more favourable outcome in any of the respects mentioned in subregulation (15) if an employment agreement that binds the employee imposes obligations on the employee that are more onerous than the requirements in the Standard.
- (17) The Standard provides a more favourable outcome in any of the respects mentioned in subregulation (15) if an employment agreement that binds the employee allows for the imposition of a penalty on an employee for a breach of a requirement or condition to give the notice or evidence.
- (18) In subregulations (5A) and (17):
- penalty:***
- (a) means any of the following:
 - (i) a deduction of an amount from an employee's remuneration;
 - (ii) a reduction of an employee's entitlements;
 - (iii) a requirement that an employee makes a payment to the employer; but
 - (b) does not include a deduction, reduction or requirement that is:
 - (i) for the benefit of the employee; or
 - (ii) authorised under a law; or
 - (iii) made or imposed because the employee was provided with an entitlement to which the employee was not entitled.

[15] Further amendments

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Chapter 2, Part 6		
sub-subparagraph 6.2 (1) (b) (i) (B)	Australian Fair Pay and Condition Standard	Australian Fair Pay and Conditions Standard
paragraph 6.3 (1) (b)	Australian Fair Pay and Condition Standard	Australian Fair Pay and Conditions Standard
Chapter 2, Part 19		
Subregulation 19.9 (1A), definition of base annual salary , paragraph (b)	subparagraphs (a) (i) to (v)	subparagraphs (a) (i) to (vi)
Subregulation 19.9 (1A), definition of base annual salary , paragraph (d)	subparagraphs (a) (i) to (v)	subparagraphs (a) (i) to (vi)
Subregulation 19.21 (4)	(2)	(3)
Subregulation 19.21 (5)	(2)	(3)
Chapter 2, Part 19A		
Subregulation 19.40 (4)	(2)	(3)
Subregulation 19.40 (5)	(1), (2) and (3)	(1) and (3)
Chapter 2, Part 21		
Paragraph 21.3 (4) (a)	a workplace agreement or written contract of employment	an employment agreement
Paragraph 21.3 (4) (b)	the workplace agreement or contract of employment	the employment agreement
Paragraph 21.3 (11B) (b)	the workplace agreement or written contract of employment	the employment agreement

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Paragraph 21.3 (11B) (b), note, second paragraph	a workplace agreement or contract of employment	an employment agreement

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.