



WERP ♀

WOMEN'S EMPLOYMENT RIGHTS PROJECT

**FUNDED BY THE OFFICE FOR WOMEN,
NSW DEPARTMENT OF PREMIER AND CABINET**



ICLC INNER CITY LEGAL CENTRE

About WERP

New workplace relations laws were introduced by the Australian Government on 27 March 2006. 'WorkChoices' was the name the Government used to describe these changes until May 2007 when the brand was dropped because of successful union and community campaigns.

Without a doubt, the laws represent a major shift in the way employment conditions are set in Australia. The NSW Government responded immediately and funded (via the Office for Women, NSW Department of Premier and Cabinet) the Inner City Legal Centre to run a significant 12-month project focused on women's employment rights.

The Women's Employment Rights Project (WERP) provides legal advice, information and training to community advocates across NSW. At the same time, WERP monitors the impact of the current workplace relations system on NSW women particularly in the areas of unfair/unlawful dismissals, Australian workplace agreements and discrimination.

Note: The views expressed herein do not necessarily reflect the views of the Office for Women, NSW Department of Premier and Cabinet.

Disclaimer

The information and publications made available on this site are broad guides to aspects of employment law. They are solely intended to provide a general understanding of the subject matter and to help people assess whether they need more detailed legal information.

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Your feedback on these fact sheets is most welcome.*

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WORKING WOMEN: INDUSTRIAL RELATIONS IN 2007 AND BEYOND

AUSTRALIAN STATS, AT A GLANCE

- ❖ 56 per cent of all women are in the labour force (ABS 2004)
- ❖ Women comprise 45 per cent of the labour force in Australia (ABS 2005)
- ❖ 46 per cent of working women work part-time compared to an average 25 per cent in OECD countries (ABS 2005)
- ❖ 31 per cent of women were employed on a casual basis in 2005 (ABS 2005)
- ❖ Low pay for female workers is 41 per cent compared to 29 per cent for all workers (ABS 2004)
- ❖ In 2002-3, 87 per cent of complaints under the Sex Discrimination Act received by the Human Rights and Equal Opportunity Commission were in the area of employment
- ❖ 87 per cent of the complaints made under this Act were made by women
- ❖ Sole mothers are particularly vulnerable to being trapped in a cycle of low pay or no pay
- ❖ Many sole mothers cease working because the low-wage jobs make them worse off financially than they would be if they remained on welfare
- ❖ Some sole mothers will be \$100 per week worse off if they are forced to return to work (under 'Welfare to Work' changes) when their youngest child turns eight
- ❖ A sample of 250 AWAs analysed by the Federal Employment Advocate between March and April 2006 revealed that all agreements removed at least one award condition. Around 64 per cent of the sample removed leave loading; 63 per cent penalty rates and 52 per cent shiftwork loadings.

INTRODUCTION

The workplace has fundamentally changed since the 'WorkChoices' laws came into effect on 27 March 2006.

This fact sheet will look generally at the laws and what they mean for working women. Other fact sheets look at specific issues such as unfair dismissal, wages & conditions and where to get legal help. Although the laws are complex and reduce the rights of workers, women can still get advice about possible remedies.

WHAT ARE THE KEY ISSUES FOR WORKING WOMEN?

- ❖ These Australian workplace laws ('WorkChoices') represent a major shift in the way employment conditions are set in Australia and have significant implications for women's wages, their job security and their work/life balance.
- ❖ Women are clustered in low-paid areas, are award-dependent, often working part-time and tending to trade family-friendly conditions for cash-in-hand jobs.
- ❖ The changes are compounded by changes to the welfare system ('Welfare to Work') introduced in July 2006 where sole parents whose youngest children turn eight will have to find at least 15 hours' paid work per week. *(For more information on the Welfare to Work system, contact [The Welfare Rights Centre](#).)*

ARE ALL WORKERS AFFECTED BY WORKCHOICES?

- ❖ The WorkChoices laws apply to a majority of employees. However, some workers will not be covered by WorkChoices - NSW public servants, employees of sole traders and partnerships and employees of some charitable or not-for-profit organisations.



HOW ARE WORKING WOMEN AFFECTED RIGHT NOW?

- ❖ Unfair dismissal laws have been changed to exclude many workers so it is now much easier for employers to dismiss employees.
- ❖ Minimum pay is set by the Australian Fair Pay and Conditions Commission (AFPC) and considers not only wages but also unemployment. Previously the Australian Industrial Relations Commission (AIRC) set the nation's pay and took into account how much money a person needs to live with dignity.
- ❖ There is a greater emphasis on individual bargaining between the employer and worker using Australian workplace agreements (AWAs) instead of pay and conditions being governed by awards.
- ❖ Workers now have just five minimum working conditions.
- ❖ Once a worker is on a workplace agreement of any type they can never return to an award. This means workers will give up basic award protections like overtime rates or compensation for unsocial working time.
- ❖ There is now an option of 'cashing out' up to two weeks' annual leave under the Australian Fair Pay and Conditions Standard (AFPS). This time is crucial to healthy family relationships.
- ❖ Full-time workers can cash out any amount of sick and/or personal/carer's leave, provided that 15 days remain available.
- ❖ The AFPC allows for a minimum hourly rate, with ordinary hours of work specified at 38 hours per week. These hours can be averaged over 12 months where not otherwise specified. This means for workers where the minimum standard applies, hours can vary widely on a daily or weekly basis. This could play havoc with family life.
- ❖ Workers can be 'stood down' without pay if work is unavailable 'due to factors outside the employer's control'. This could include drought, changes in the exchange rate and competition from other employers.
- ❖ Awards and agreements cannot include provisions relating to a worker shifting from full-time work to part-time work or the reverse.

HOW ARE WOMEN LIKELY TO BE AFFECTED IN THE FUTURE?

- ❖ Under the new system there is a real risk that the gender pay gap will widen. The democratic and egalitarian principle of 'equal pay for equal work' is expected to be significantly undermined.
- ❖ Anticipated growth of Australian workplace agreements (AWAs) could result in more family unfriendly agreements; awards will be minimalist and there is a possibility of lower work and family standards for those in the federal system.
- ❖ Workplace bullying is expected to increase with the shift of the employment relationship to the private sphere, together with reduced access to formal procedures and less accountability and transparency.

CAN WOMEN STILL BELONG TO A TRADE UNION?

- ❖ Workers still have the right to be a union member and can't be lawfully terminated because they are in a union.
- ❖ There are tough new laws for unions who wish to enter workplaces and also new provisions about the content in agreements regarding unions and industrial action.

KEY POINT!

Recent changes to Australian industrial and welfare laws will dramatically affect the workforce participation and financial status of most working women.

Sources:

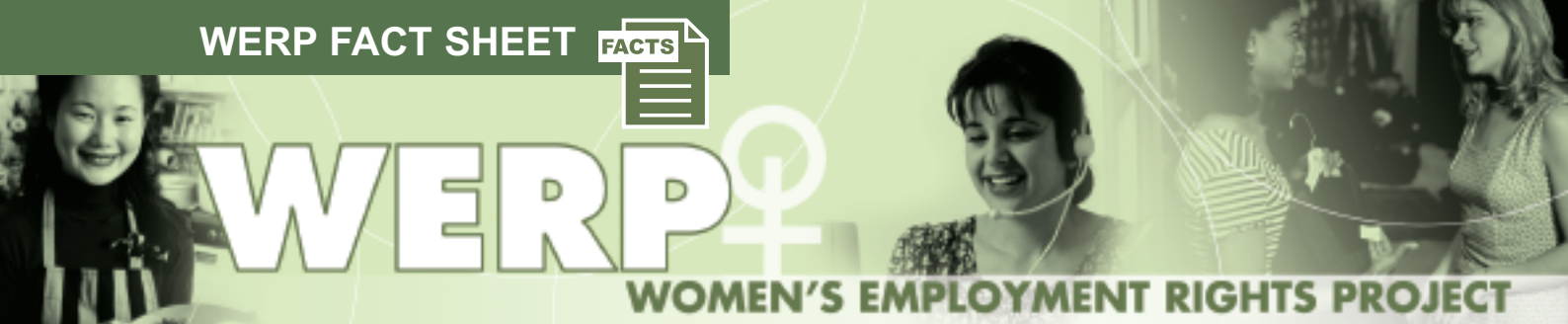
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TERMINATION OF EMPLOYMENT

“I’VE JUST BEEN DISMISSED!” – WHAT TO DO AND WHERE TO GO FOR HELP

Getting the ‘sack’ is a catastrophic event for most workers. Some dismissed workers may be able to make a claim against their employer for unlawful termination, or unfair dismissal or discrimination. Below is a brief summary of available options.

But remember, **the time limit is 21 days from the date of termination** to start an action for unlawful termination or an unfair dismissal.

- ❖ **filing a complaint, or participation in proceedings**, against an employer for an alleged breach of the law
- ❖ **refusing to negotiate, make, sign, extend, vary or terminate** an Australian workplace agreement (AWA)
- ❖ temporary absence from work to carry out **voluntary emergency services activities**.

WHAT IS UNLAWFUL TERMINATION?

A worker’s employment has been ‘unlawfully terminated’ if the termination was based on one or more of a number of reasons listed in the Workplace Relations Act. These include failure to give the employee the required notice or payment instead of notice (see below) and reasons concerning alleged discrimination.

Any unlawful termination claim concerning alleged discrimination must be based on one or more of the following –

- ❖ temporary absence due to **illness or injury**
- ❖ **trade union** membership or participation in trade union activities outside of working hours or, with the employer’s consent, during working hours
- ❖ **non-membership** of a trade union
- ❖ seeking office or acting as a **representative of employees**
- ❖ absence during **maternity or parental leave**
- ❖ **discrimination** on the grounds of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin

Under WorkChoices a worker can also make a claim of unlawful termination if they were not given a **reasonable period of notice** on termination, or **not paid compensation** in lieu of notice. The minimum notice payable is –

Employee Continuous Service	Minimum Notice
Less than 1 year	1 week
More than 1 year, but less than 3 years	2 weeks
More than 3 years, but less than 5 years	3 weeks
More than 5 years	4 weeks

One additional week of notice is to be paid to an employee aged over 45 years and has completed at least two years of continuous service.

If a worker is covered by an award, and if that award has more generous notice provisions, then the award provisions will apply.



WHAT IF MY EMPLOYER'S BUSINESS HAS BEEN TAKEN OVER?

In the case of a transmission of business, the previous employer is not obligated to pay notice if –

- ❖ the employee is re-employed by the new owner of the business; and
- ❖ that new owner comes under an enforceable obligation (such as an award that counts service before and after the transmission as continuous service) to give or pay notice in respect of the earlier period of service.

WHAT IS UNFAIR DISMISSAL?

- ❖ A worker can make an unfair dismissal claim where an employer doesn't give a worker a 'fair go all round' when dismissing them. Workers or the workers' representatives can lodge an unfair dismissal claim with the Australian Industrial Relations Commission (AIRC) to try to get their job back or to get some monetary compensation.
- ❖ When considering an unfair dismissal claim the AIRC looks at issues such as –
 - ❖ whether the employer had a valid reason for terminating the worker's employment
 - ❖ whether that reason was communicated to the employee; and
 - ❖ whether the worker had an opportunity to respond to the reason given for their termination.

WHO CAN MAKE AN UNFAIR DISMISSAL APPLICATION?

Claims of unfair dismissal are made to the Australian Industrial Relations Commission (AIRC) if the matter is covered by WorkChoices or a federal award. However, if a worker is not covered by WorkChoices they may still be able to make an unfair dismissal claim to the NSW Industrial Relations Commission (IRC).

Are you covered by WorkChoices? (see Fact Sheet: Wages and Conditions - are you covered by federal workplace relations system (WorkChoices)?)

WHO CANNOT LODGE AN UNFAIR DISMISSAL CLAIM?

The following workers **cannot** make a claim in the AIRC if they are covered by WorkChoices and if they were –

- ❖ employed by an employer with **100 or fewer employees**
- ❖ serving a **six-month qualifying period of employment** or a shorter or longer period agreed to in writing before employment started
- ❖ dismissed for **genuine operational reasons**, which include economic, technological, structural or similar reasons relating to the employer's business
- ❖ serving a **probationary period** determined in advance
- ❖ engaged on a **seasonal basis**
- ❖ engaged under a contract of employment for a **specified period or task**
- ❖ engaged under a **traineeship agreement** or **approved traineeship** for a specified period
- ❖ engaged as a **casual employee** for a short period unless employed by an employer on a regular and systematic basis over a period of at least 12 months and the employee had a reasonable expectation of continuing employment with the employer
- ❖ not employed under an **award** or **workplace agreement** and **earning \$101,300** a year or above in remuneration; or
- ❖ pursuing **other related termination proceedings**.

Note: The above restrictions relate to unfair dismissal but do not apply to **unlawful termination** applications.

However, an employee is not able to lodge such an unlawful termination claim if he or she is pursuing other related termination proceedings.

If you are in the NSW system and not covered by WorkChoices, the following workers **cannot** make an unfair dismissal claim in the **NSW Industrial Relations Commission** –

- ❖ workers who are **award-free** and whose current annual remuneration is more than **\$101,300**
- ❖ those who are engaged under a contract of employment for a specified period of time, if the specified period is less than **six months**
- ❖ those engaged under a contract of employment for a **specific task**



- ❖ those serving a **probation or qualifying period** if the period was determined in advance and is three months or less; or if more than three months, it is reasonable having regard to the nature and circumstances of the employment; or
- ❖ those engaged on a **casual basis**, except employees who are engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment during a period of at about six months and who would, but for the dismissal, have had a reasonable expectation of continuing employment with the employer
- ❖ **apprentices and trainees.**

KEY POINT!

Any worker not covered by WorkChoices and not excluded as above can make an application in the NSW Industrial Relations Commission for unfair dismissal.

HOW DO I MAKE A CLAIM?

Making a claim under WorkChoices

- ❖ Workers covered by WorkChoices can make an unlawful termination claim or an unfair dismissal on the same form at the Australian Industrial Relations Commission (AIRC). **The application must be lodged within 21 days** from the date of the written notice of termination or date of termination. The fee to file is currently **\$55.70**. The filing fee may be waived in cases of serious hardship.
- ❖ A worker lodging an unlawful termination claim can list one or more of the listed unlawful grounds, including discriminatory grounds on the application.

Making a claim in the NSW Industrial Relations Commission

- ❖ Workers not covered by WorkChoices and who are eligible, may make a claim for unfair dismissal at the [NSW Industrial Relations Commission \(IRC\)](#). **The application must be lodged within 21 days** and the fee is currently **\$58.00**. The fee may be waived in cases of serious hardship.

KEY POINT!

If you are dismissed, do not delay - get advice from [Law Access](#) or a [local community legal centre](#).

You have only **21 days** to make a claim.

WHAT HAPPENS NEXT?

After filing an unfair dismissal and/or unlawful termination claim, a conciliation conference between the worker and the employer will be held within a few weeks (in Sydney as well as country towns). The reason for the conference is to try to help the parties to agree on the terms of a settlement. In this way, the matter can be resolved relatively quickly and inexpensively.

WHAT IS A CONCILIATION CONFERENCE?

This is a private and confidential meeting that is usually chaired by a Member of the AIRC. The meeting is informal or semi-informal (and may be conducted by telephone) with no record of proceedings or transcript other than when the matter is settled by agreement of the parties and the terms are put in writing.

This conciliation is an important first step in resolving an unfair dismissal or unlawful termination claim - it is very important that both the worker and the employer attend. If the employee fails to attend a conciliation conference, the application may be dismissed.

The purpose of conciliation is to try and resolve a claim by agreement without proceeding to a full hearing. A claim may not proceed to hearing unless all reasonable attempts to settle it by conciliation have been made.

WHAT HAPPENS IF CONCILIATION FAILS?

- ❖ If an **unfair dismissal** claim is not settled at conciliation, the employee can choose to have the claim heard at a formal arbitration hearing at the AIRC.
- ❖ If an **unlawful termination** claim is not settled at conciliation, the worker can choose to have the claim heard in the Federal Magistrates Court. The [Department of Employment and Workplace Relations \(DEWR\)](#) can provide funds for legal advice for the worker to help them decide whether to continue the claim in the Federal Magistrates Court.
- ❖ If an **unfair dismissal** claim is not settled at conciliation in the **NSW Industrial Relations Commission (IRC)** the worker can choose to have the claim heard at a formal arbitration hearing at the IRC.
- ❖ Remember, the **exclusion for working for an employer with 100 or fewer employees** under WorkChoices, **does not apply** in the NSW Industrial Relations Commission.



HAVE YOU ALSO GOT A CLAIM FOR DISCRIMINATION?

Anti-discrimination laws may apply depending on the circumstances of your dismissal. See the WERP Fact Sheet *Discrimination in the Workplace*.

WOULD I BE ENTITLED TO ANY SOCIAL SECURITY PAYMENTS?

You may be entitled to a payment so apply to Centrelink immediately. As it is important to apply for the right payment, get advice from the [Welfare Rights Centre](#).

WHAT IF I'M ADVISED TO APPLY FOR AN UNEMPLOYMENT PAYMENT?

If you are applying for an unemployment payment such as Youth Allowance or Newstart Allowance, you must tell Centrelink –

- when you finished work
- the reasons you are no longer working; and
- how much annual leave and other leave payments or termination pay you received or are entitled to receive from your employer.

This is generally provided in an **Employment Separation Certificate** completed by your employer, if you have been employed in the last 12 months. You can get an Employment Separation Certificate from Centrelink for this purpose, or supply the information in another way eg by asking your employer to write a letter on business letterhead. You may want to supply the information in another way if you think your former employer may put incorrect information on the Certificate or refuses to supply one.

WHAT IF YOUR PREVIOUS EMPLOYER WON'T GIVE YOU AN EMPLOYMENT SEPARATION CERTIFICATE?

Failure to provide the Certificate can result in your claim for payments being rejected by Centrelink. Centrelink guidelines state that your payment should not be delayed or refused if you have difficulty obtaining an Employment Separation Certificate through no fault of your own. You should explain to Centrelink why you are unable to provide the Certificate and Centrelink should then –

- contact your employer directly for the Certificate and if necessary consider prosecuting the employer; or
- grant your payment and obtain the necessary information later.

Contact your union or [community legal centre](#) if you are having problems getting the Certificate.

IS AN EMPLOYMENT SEPARATION CERTIFICATE ALWAYS REQUIRED?

You do not have to provide this Certificate if –

- you have been unemployed for more than 12 months
- you have experienced sexual harassment or violence at the workplace
- your previous employer has closed down.

IS THERE A DELAY IF I WAS DISMISSED FOR MISCONDUCT OR VOLUNTARILY LEFT EMPLOYMENT?

If Centrelink considers that you left your job voluntarily ('without reasonable excuse') or became unemployed as a result of 'misconduct' **you may face an immediate eight week no payment penalty**. This penalty cannot be applied if you left because of harassment or for health reasons.

Once again, get the support of your union or [community legal centre](#) when dealing with Centrelink in this area.

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UNPAID WAGES

DOES YOUR BOSS OWE YOU MONEY?

Unfortunately some workers are not paid the correct wage or hourly rate for the work and the hours they do. In some cases workers are not paid their entitlements such as overtime allowances or penalty rates or payment for public holidays. In other cases employers have not paid a worker for annual leave or long service leave.

CAN ANY WORKER MAKE A CLAIM?

The right to make a claim for unpaid entitlements applies to **all** workers. Workers who have not been paid all their entitlements can take legal action to recover any money owed to them.

The **time limit** for taking legal action is **six years** from when the money was due to be paid.

WHERE CAN I MAKE A CLAIM FOR MY UNPAID ENTITLEMENTS?

Any worker who is covered by any award an enterprise agreement or an AWA (Australian workplace agreement) can make a claim in the Chief Industrial Magistrates Court, which is a specialist court that deals with unpaid entitlements claims. This Court is located in the Downing Centre in Sydney.

A worker can also choose to commence an action for unpaid entitlements in any [Local Court](#) in NSW.

Workers who are not covered by an award or an enterprise agreement or an AWA can also commence an action in any [Local Court](#) in NSW. The claim is referred to as common law claims for breach of contract.

Workers not covered by an award or an agreement do have the right to commence an action for unpaid long service leave in the Chief Industrial Magistrates Court.

You should get advice from your union, a solicitor or community legal centre before filing a claim in the [Local Court](#) or Chief Industrial Magistrates Court.

OTHER OPTIONS TO RECOVER UNPAID ENTITLEMENTS

Are you covered by WorkChoices, a federal award or federal certified agreement?

If you are covered by a federal award or certified agreement, you can make a complaint to the Australian Government [Workplace Ombudsman](#), who will assist you with your matter by attempting to resolve your claim with the employer. If the employer will not pay the debt, a certificate is issued which you can take to a NSW Local Court or the Federal Magistrates Court and commence an action against your former employer.

Are you covered by a NSW state award or enterprise agreement?

A worker covered by a NSW state award or enterprise agreement has the option of making a complaint to the [NSW Office of Industrial Relations \(OIR\)](#). The OIR will assist with the calculations and try to resolve the claim with the employer. Such a claim must be made **within six months** of you first becoming aware of the unpaid entitlements or **within six months** from the date you finished working for that employer.

Were you covered by a NSW state award or enterprise agreement and have been transferred to the federal system because of WorkChoices?

If you are employed by a company (where 'Ltd' or 'Pty Ltd' is added to your employer's business name), you are now probably covered by the new WorkChoices laws, which commenced on 27 March 2006.

In this case, you can make a complaint to the Australian Government [Workplace Ombudsman](#) about entitlements that should have been paid on or after 27 March 2006 and a complaint to the NSW Office of Industrial Relations about entitlements that should have been paid before 27 March 2006.

What is the best option for NSW workers now covered by WorkChoices?

Workers who have outstanding wages and/or other entitlements owed to them, which have accrued under both the NSW state system and the federal system, should file a claim in the NSW Chief Industrial Magistrates Court or any NSW [Local Court](#).

MONEY MONEY MONEY

How to find your lost superannuation

If you are between the ages of 18 and 70 and are paid \$450 or more in a calendar month, your employer generally should be making superannuation guarantee contributions for you to a complying fund. It doesn't matter if you are a full-time, part-time or casual employee.

You could be a lost member of a superannuation fund. This often occurs when the fund has been unable to contact you or perhaps your employer made contributions for you but the fund has not received any contributions or rollover amounts in the past two years.

The best place to find your lost superannuation is to go to the [Australian Taxation Office \(ATO\) website](#). The easiest way to search is by using [SuperSeeker online](#) or you can ring them on 13 28 65.

Finding other lost money

Go to the [Australian Securities and Investments Commission website](#), to find unclaimed money from banking institutions, insurance companies, friendly societies and companies (only money from the compulsory acquisition of shares resulting from takeovers).

Good luck!

WHERE TO GO FOR HELP?

To calculate the amount of money owed to you, you will need to find the award, agreement or contract that covers your employment. Generally workers are covered by either a NSW state award or NSW agreement or a federal award or federal agreement.

WORKCHOICES SYSTEM

1. Contact the [Workplace Info Line](#), 1300 363 264 for information about a federal award, federal agreement or the WorkChoices system
2. Contact the [Australian Government Workplace Ombudsman](#), 1300 363 274 for assistance with a complaint about unpaid wages and/or other entitlements

NSW SYSTEM

Contact the [NSW Office of Industrial Relations](#) 131 628 for information about –

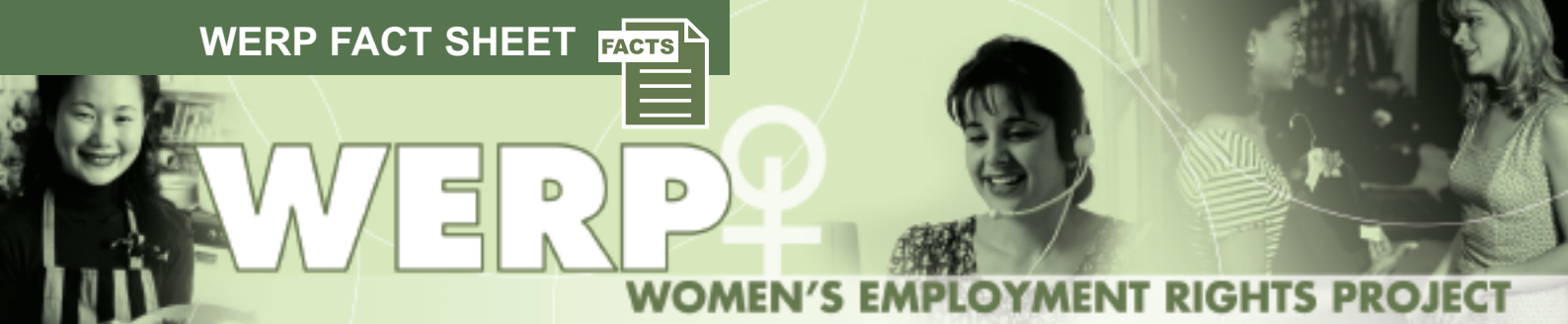
- ❖ NSW awards and how to calculate the debt
- ❖ recovering unpaid wages and entitlements.

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WAGES AND CONDITIONS

The setting of wages and conditions in most workplaces has fundamentally changed since the introduction of the workplace relations laws introduced on 27 March 2006 ('WorkChoices'). Under the old award system, workers were relatively 'safe' because an award acted as a safety net by providing protections, conditions and minimum wages with regular pay rises. The award (see below) system was of great assistance to disadvantaged and vulnerable workers.

PAY AND CONDITIONS - GO TO THE SOURCE

What determines my wages and agreements?

There are a number of different agreements that contain employees' wages and conditions of employment –

Awards

Awards are legally enforceable documents that provide a comprehensive list of conditions and wages applying to employees in a particular industry. There are different state and federal awards applying to different industries. For example, a worker employed by a NSW club would be covered by the conditions and wages set down in the NSW Clubs (State) Award.

Since 27 March 2006, WorkChoices does not allow for new awards to be made.

Australian workplace agreement

An Australian workplace agreement is an individual agreement between the employer and yourself that sets out terms and conditions of their employment. You can appoint a bargaining agent to bargain on your behalf.

Union collective agreement

A union collective agreement is made between you and a union or unions that represent the employees. The agreement sets out the terms and conditions of employment. The union or unions negotiate on behalf of employees.

Common law agreement

Common law contracts are private agreements between employees and employers. They create legal obligations and rights for both parties.

Applicable awards, workplace agreements or AWAs override common law contracts to the extent that the terms and conditions of the common law contract are below those of awards, collective workplace agreements or AWAs. Common law contracts can provide employment conditions above those contained in awards, collective workplace agreements or AWAs.

Employer greenfields agreement

An employer greenfields agreement is an agreement in relation the future employees of a new project, business or undertaking.

Union greenfields agreement

A union greenfields agreement is an agreement between a union and the employer in relation to a new project, business or undertaking. The agreements are negotiated between the employer and the union on behalf of future employees.

Multiple business agreement

A multiple business agreement is a collective agreement that enables multiple employers to make a single agreement that applies to all of their businesses. Typically, a multiple business agreement could be used in a franchise operation where there are a number of businesses carrying on the same type of business that wish to offer their employees the same working conditions.

If you're not sure about the workplace agreement, contact either the [Workplace Ombudsman](#) or the [NSW Office of Industrial Relations \(OIR\)](#).

WHAT INDUSTRIAL JURISDICTION COVERS YOUR WAGES AND CONDITIONS?

Unfortunately, this is generally not a simple matter. Check the questions in *Are you covered by the federal workplace relations system (WorkChoices)?* (see below) and the accompanying diagram.

ARE YOU COVERED BY THE FEDERAL WORKPLACE RELATIONS SYSTEM (WORKCHOICES)?

- 1. Do you work for the Commonwealth or a Commonwealth authority?**
 - ❖ If **yes** - you are covered by WorkChoices
 - ❖ If **no** - go to question 2
- 2. Do you work for a corporation?**
 - ❖ Sole trader - No
 - ❖ Partnership - No
 - ❖ 'Ltd' in a name - Yes
 - ❖ Incorporated association - Yes
 - ❖ If **yes** - move to question 3
 - ❖ If **no** - you are probably not covered by WorkChoices
- 3. Is the corporation involved in trading or financial activities?**
 - ❖ If **yes** - you are probably covered by WorkChoices. If your employer is an Australian company with 'Ltd' in its name, it is very likely that you are covered by WorkChoices. Check with the Workplace Authority.
 - ❖ If **no** - you are probably not covered by WorkChoices - check with the [NSW Office of Industrial Relations \(OIR\)](#).

Still confused? Check with your local community centre or union.

WHAT WILL HAPPEN IN THE FUTURE?

State awards and agreements

All state awards were transferred under WorkChoices as a Notional Agreement Preserving a State Award (NAPSA). The conditions contained in the award will continue for 3 years from 27 March 2006 or until replaced by a new agreement. The exception concerns provisions relating to wages. While the pay classifications in state awards (also known as pay and classification scales) are protected, workers in this category now have to rely on a decision by the Australian Fair Pay Commission for any wage increases.

At any time during the life of a NAPSA or a PSA (Preserved State Agreement), workers and their employer can enter into another agreement, as described in *What determines my wages and agreements?* (see page 1)

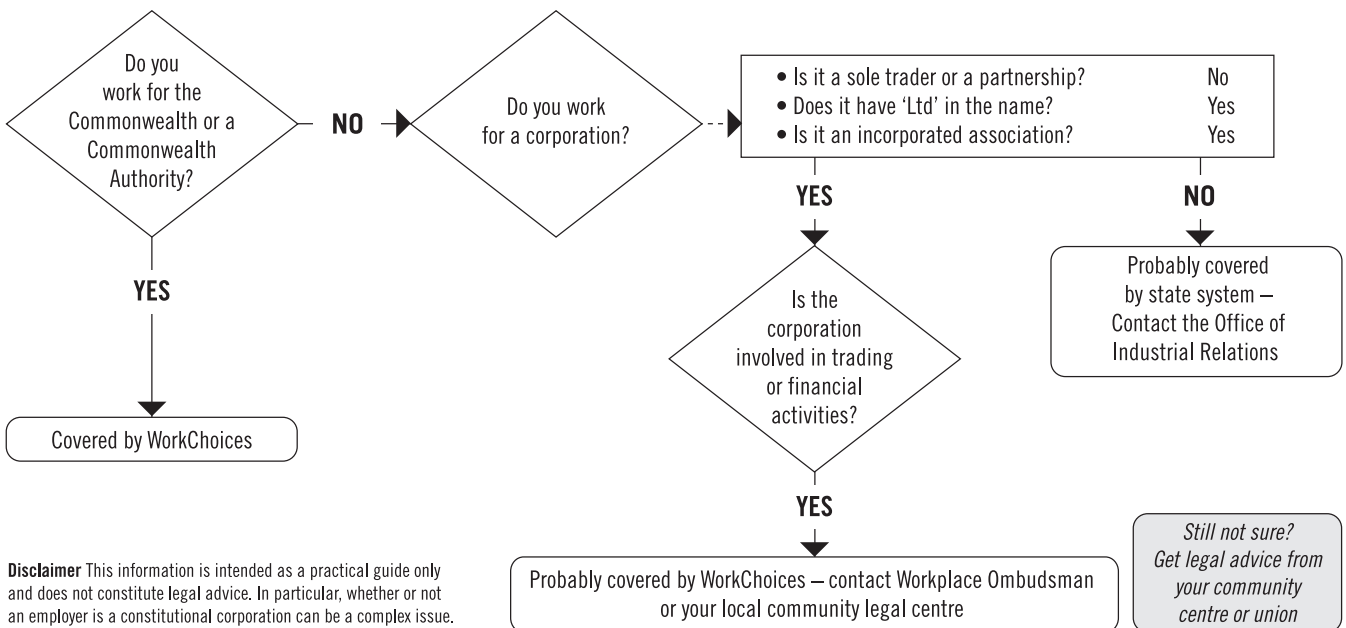
If a new agreement is **not** entered into during the life of a NAPSA or PSA, workers will automatically transfer to a similar federal award at the end of the three-year period for a NAPSA or when a PSA is terminated.

State enterprise agreement or certified agreement

These agreements were transferred under WorkChoices as a Preserved State Agreement and conditions as well as provisions for pay rises continue until the nominal expiry date of the agreement.

Federal awards and agreements

Employees covered by a federal award before 26 March 2006 continue to be covered by that award. However, under WorkChoices, any wage increases for workers have been removed



Disclaimer This information is intended as a practical guide only and does not constitute legal advice. In particular, whether or not an employer is a constitutional corporation can be a complex issue.



from awards and are now contained in pay and classification scales. Workers in this category also have to rely on the Australian Fair Pay Commission for any wage increases.

WHAT IS THE MINIMUM WAGE FOR WORKERS COVERED BY WORKCHOICES?

On 27 March 2006, WorkChoices established a standard minimum wage of \$484.50 for a 38-hour week. Last year the Australian Fair Pay Commission made a decision to increase the minimum wage by \$27.36 based on a 38 hour week. The minimum wage is now \$511.86/week (as at 1 December 2006). From 1 October 2007 the minimum wage will increase to \$522.12 for a 38hr week. Any worker covered by WorkChoices but not covered by an award or an agreement must be paid the standard minimum wage.

Workers covered by pay and classification scales derived from awards or agreements, must be paid those amounts. As from 1 December 2006, workers earning above the minimum but less than \$700/week achieved an increase of \$0.72/hr (and an extra \$0.27 from 1.10.07) and workers earning more than \$700/wk achieved an increase of \$0.58/hr (and an extra \$0.14 from 1.10.07).

New workplace agreements must not undercut the minimum conditions as established by the Australian Fair Pay Conditions Standard. The Standard contains five minimal conditions –

- ⇒ Basic rate(s) of pay (set by the Australian Fair Pay Commission)
 - Federal Minimum Wage - currently \$511.86/wk or \$13.47/hr; or
 - Applicable Australian Pay and Classification Scale (APCS) (minimum wages are based on award classifications) (Note here that a worker may not be paid less than these rates unless they are a junior, disabled, apprentice or trainee).
- ⇒ **38 ordinary hours per week** but may be averaged over 12 months
- ⇒ **Annual leave - four weeks** (two weeks may be cashed out, by agreement). An extra week's leave for 24/7 shift workers
- ⇒ **Personal leave** (includes sick and carer's leave **10 days**, cumulative and two days (on each occasion) unpaid carer's and two days (on each occasion) paid compassionate leave)
- ⇒ **Parental leave (up to 12 months unpaid)** on the birth or adoption of a child

The agreement must also contain –

- ⇒ A nominal expiry date that does not exceed five years
- ⇒ A dispute settling procedure
- ⇒ Protected award conditions - some 'protected award conditions' will be taken to be part of an agreement unless the agreement clearly modifies or excludes the conditions. These are –
 - Rest breaks
 - Annual leave loadings
 - Penalty rates for working on public holidays and week ends
 - Incentive based payments and bonuses
 - State or regional-based public holidays and employee entitlements in respect of those days
 - Loadings for overtime or for shift work.

Note Redundancy payments and pay increases are not protected conditions.

KEY POINT!

Workplace Relations Fact Sheet is a must have. From 28 June 2007, all employers covered by the new workplace relations system ('WorkChoices') are legally required to provide the Workplace Relations Fact Sheet to all their workers. New workers must be given the document within seven days of commencing work and current employees must receive the fact sheet by 20 October 2007. This fact sheet is produced by the Workplace Authority - and outlines some of your employment rights.

WHAT IS THIS FAIRNESS TEST?

As from 7 May 2007, conditions provided in new workplace agreements (collective agreements and AWAs) will be subject to a Fairness Test. The Fairness Test requires that a workplace agreement provide fair compensation if it excludes one or more of the 'protected award conditions'.

HOW DOES IT WORK?

All workplace agreements must be lodged with the [Workplace Authority](#), (formerly the Office of Employment Advocate). The agreements will operate from the date they are filed.

The [Workplace Authority](#) will consider both the monetary and non-monetary compensation offered by the employer in relation to entitlements payable under the relevant award (an example could be forgoing penalty rates for working night shifts rather than day shifts because of the flexibility it provides a worker with a family).



In the event that the agreement does not meet the Fairness Test, the Workplace Authority will provide information on why the agreement is not fair and how it could be changed to make the agreement fair to both worker and employer. The Authority will also advise the amount of back pay to compensate the worker in these circumstances. Back pay would need to be paid to the date the agreement was lodged with the Workplace Authority.

If the employer refuses to vary the agreement so that it fairly compensates the employee within 14 days of notification from the Workplace Authority, the agreement will cease to operate and the worker's conditions will be covered by the relevant award.

ARE THERE ANY EXEMPTIONS TO THE FAIRNESS TEST?

The Test does not apply to agreements made before 7 May 2007 or (for an AWA) to newly employed workers earning \$75,000 or more per year.

In exceptional circumstances, the Workplace Authority may have regard to factors such as the industry, location or economic circumstances of an employer or the employment circumstances of the employee in determining whether the agreement provides fair compensation.

A workplace agreement that does not provide 'protected award conditions' may be a reasonable strategy to address a crisis in a business in difficult economic times or to revive a business and not be required to provide fair compensation. The circumstances of the employee may also be considered. For example, employers may not have to provide protected award conditions or compensation in lieu of award conditions, to young people and/or people returning to the workforce under the 'welfare-to-work' system (contact the [Welfare Rights Centre](#) for more information).

KEY POINT!

If you sign an Australian workplace agreement (AWA), check with the Workplace Authority that your employer has lodged your AWA and that the contents of the agreement have been considered under the Fairness Test.

CAN I BE SACKED IF I REFUSE TO SIGN AN AWA?

There are protections against employers who force employees into signing an agreement. Any worker, whose employment is terminated by a refusal to sign a workplace agreement, should make a complaint to the Office of the Employment Advocate, now called the [Workplace Authority](#).

If a worker is terminated in these circumstances it is possible that the termination was unlawful and an application for Unlawful Termination can be filed with the Australian Industrial Relations Commission, See the Fact sheet [Termination of Employment](#) for more information on how to file an unlawful termination application. However, an employer is allowed to require a new employee to make an AWA as a condition of getting a job.

AUSTRALIAN WORKPLACE AGREEMENT (AWA) STATISTICS

Conditions of employment

- ❖ **Overtime** - abolished or reduced in over 80 per cent of AWAs in 2006 (*Peetz 2006*)
- ❖ **Penalty rates** - abolished in over 60 per cent of AWAs (*Peetz 2006*)
- ❖ **Leave loading** - abolished in 64 per cent of AWAs (*Federal Employment Advocate 2006 - sample of 250 AWAs*)

Pay - how do women fare?

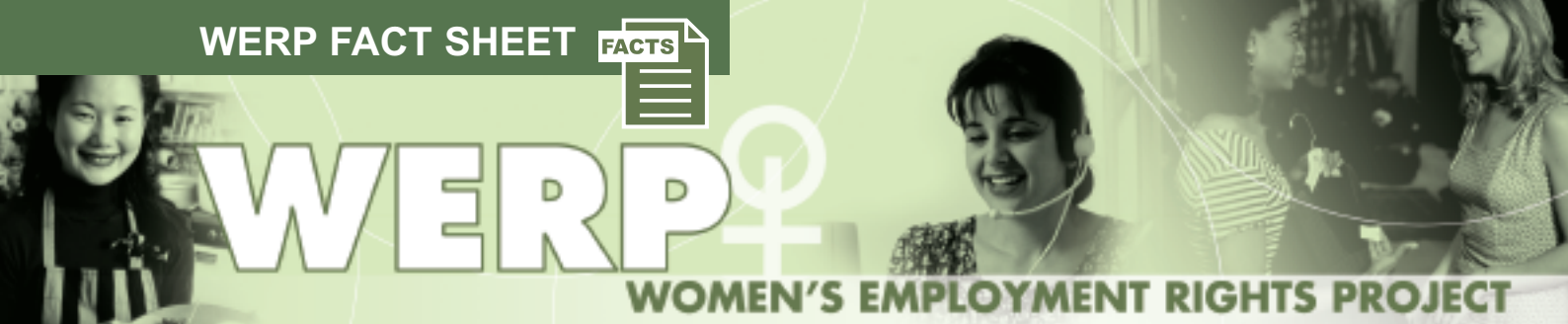
- ❖ Average hourly earnings for Australian women (non-managerial) are 11 per cent less than those on registered collective agreements
- ❖ Women's hourly pay on AWAs is 9 per cent lower for permanent full-timers and 15 per cent lower for permanent part-timers
- ❖ Average hourly earnings for casual female employees on AWAs were 7 per cent below the average award minimum
- ❖ In the private sector, gender pay ratio rose slowly from 79.6 per cent in Feb 1996 to 81.3 per cent by Feb 2006 - it fell sharply to 80.1 per cent by November 2006, ie 70 per cent of the gains achieved over ten years had been wiped off in nine months under WorkChoices. (*Peetz 2006*)

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Note: This information applies to people who live in, or are affected by, the law as it applies in the State of New South Wales, Australia.

The information contained in this fact sheet is current as at 1 July 2007.



Funded by the Office for Women, NSW Department of Premier and Cabinet



IMPORTANT NOTE: THIS FACT SHEET ONLY APPLIES TO WOMEN WHO WORK IN NEW SOUTH WALES

EMPLOYMENT DOCUMENTS

SHOULD I KEEP COPIES OF ANYTHING?

It's very important that you keep copies of all documents relating to work. You will need them to check that you are being paid correctly and that you are receiving all your employment entitlements such as annual leave, overtime and allowances.

These documents will also be useful if you need legal advice on what is happening at work. This is vital if you encounter problems with your manager or your colleagues, hurt yourself at work and particularly if you are dismissed.

This checklist will help you keep track of the paper trail!

- Letter of offer (of employment), contract, or Australian Workplace Agreement or other employment agreement if you are given one.
- Job description
- Payslips - see side box for information about payslips
- Paperwork relating to other pay issues eg salary sacrifice, salary packaging, superannuation
- Rosters
- Applications for leave eg sick, annual, long service leave
- Worker's compensation paperwork
- Work performance commonly called Performance Review/Appraisal or Performance Management Plan
- Counselling or disciplinary meetings
- Any letters, emails or memos about your employment from your employer or sent by you
- Calculations regarding commission and/or bonuses.

PAYSLIPS

It is the law that employers must issue payslips to all employees.

Your payslip must contain:

- ❖ the employer's name
- ❖ your name
- ❖ your award or agreement classification (including full-time, part-time or casual status)
- ❖ the date on which the payment was made as well as the period to which that payslip relates
- ❖ if you are paid an hourly rate, the particular rate, hours worked at that rate and the amount of payment made at that rate
- ❖ if you are not paid an hourly rate, your salary expressed as an hourly rate
- ❖ the amount deducted for taxation
- ❖ the gross **and** net payment made to you
- ❖ any additional amounts paid, such as penalties, loadings, allowances bonuses etc
- ❖ details of any deductions made from the payment; and
- ❖ details of superannuation contributions.

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WERP

WOMEN'S EMPLOYMENT RIGHTS PROJECT

Funded by the Office for Women, NSW Department of Premier and Cabinet



IMPORTANT NOTE: THIS FACT SHEET ONLY APPLIES TO WOMEN WHO WORK IN NEW SOUTH WALES

DISCRIMINATION IN THE WORKPLACE

Women now make up 45 per cent of the Australian workforce so discrimination in the workplace is an important issue for women as it is in other areas of society.

Because freedom from discrimination is a basic human right, anti-discrimination law has been enacted at state and federal levels. In New South Wales the *Anti-Discrimination Act 1977 (NSW)* is administered by the [Anti-Discrimination Board \(ADB\)](#), whereas the federal anti-discrimination laws are administered by the [Human Rights and Equal Opportunity Commission \(HREOC\)](#).

WHAT DOES DISCRIMINATION MEAN?

Discrimination occurs when someone is treated unfairly because they happen to belong to a particular group of people or have a particular characteristic.

WHAT ABOUT DISCRIMINATION AND EMPLOYMENT?

In NSW many types of discrimination are against the law. You have the right to make a complaint to either the ADB or HREOC if you think you have been –

- ❖ refused employment
- ❖ dismissed
- ❖ denied promotion, transfer or other benefits associated with employment
- ❖ given less favourable terms or conditions of employment
- ❖ denied equal access to training opportunities
- ❖ harassed or bullied

because of your

- ❖ race - including colour, descent, national or ethnic origin
- ❖ sex - including pregnancy, family responsibilities and sexual harassment

- ❖ disability or medical condition - including past, present or future disability; whether it is permanent or temporary, physical, intellectual, psychiatric, neurological, sensory, whether it is work-related or not and includes association with a person with a disability (such as a child, partner or parent)
- ❖ age - young and old.

Other grounds of unlawful discrimination are homosexuality, transgender status, marital status and carer's responsibilities.

It is also unlawful to discriminate against an employee because of these characteristics of their family members or associates as well as being victimised because of a complaint about discrimination.

DO I HAVE TO BE A PERMANENT EMPLOYEE?

No. These laws apply to you if are –

- ❖ on probation
- ❖ casual, part-time, full-time or permanent
- ❖ an apprentice or a trainee
- ❖ a contract worker or a commission agent.

DO THE LAWS APPLY TO PUBLIC AND PRIVATE SECTOR EMPLOYERS?

The laws cover all types of employers and employment relationships including small business, Commonwealth and state government employees (except under the *Sex Discrimination Act*), private sector, and recruitment and application processes arranged through recruitment and employment agencies.

ARE THERE ANY EXCEPTIONS?

Discrimination laws have lots of exceptions and are usually called 'exemptions'.

WHAT ARE THESE EXEMPTIONS?

There are some exceptions for employers with fewer than five employees, some private schools, some charities and religious organisations and some jobs in the defence forces.

On the other side, discrimination laws also recognise that some types of unequal treatment are good for the community eg services that meet the special needs of a certain group, such as women's health centres etc. There is also an exception if the provision of special services or facilities for an employee with a disability would impose an 'unjustifiable hardship' on an employer.

Because this is a complex area of law, you should get legal advice about whether discrimination laws will cover your problem at work.

KEY POINT!

Making a complaint under discrimination laws is just one avenue. There are other legal options available eg lodging a workers compensation claim if the discrimination has caused you a physical or psychological injury etc. Get immediate legal advice on the best option (or combination of options) because there are time limits.

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION (HREOC) STATISTICS 2005/6

- ❖ Employment was the main area of complaint under all federal anti-discrimination legislation. Complaints regarding employment constituted –
 - ❖ 85 per cent of complaints under the Sex Discrimination Act (20 per cent alleged pregnancy and 19 per cent alleged sexual harassment)
 - ❖ 74 per cent of complaints under the Age Discrimination Act
 - ❖ 58 per cent of complaints under the Disability Discrimination Act
 - ❖ 48 per cent of complaints were under the Racial Discrimination Act
- ❖ There was an increase in the number of employment-related complaints lodged under all of these Acts.

ANTI-DISCRIMINATION BOARD OF NSW (ADB) STATISTICS 2005/6

- ❖ Employment was also the main area of complaint in NSW - 59 per cent

- ❖ 54.4 per cent of complaints were about work environment and harassment
- ❖ 15 per cent of complaints were about dismissal.

WHAT IS THE DIFFERENCE BETWEEN DIRECT DISCRIMINATION AND INDIRECT DISCRIMINATION?

Unlawful discrimination in the workplace can occur in a direct way or in a way that is not so obvious and known as indirect discrimination. An example of **direct** discrimination is where an employer terminates your employment because you are pregnant. This would be 'direct' sex discrimination. A more common example of direct discrimination in a workplace is where only the female employees are expected to get the coffee and collect the boss's dry cleaning.

Indirect discrimination is where a rule or policy that appears to apply equally to everyone is actually unfair because it disadvantages one group of people. For example, an employer's policy that provides wage increases to all workers who had worked continuously for 20 years may appear fair and generous on the face of it. But it is likely that many more women than men would miss out on the increase. Many women interrupt their working lives to have children and would not have worked continuously in one company for 20 years. This kind of unfair treatment is called indirect sex discrimination.

So the rule or policy must be 'unreasonable' for this discrimination to be unlawful.

Most discrimination against women in the workplace falls under the banner of **sex discrimination**.

WHAT IS SEX DISCRIMINATION?

Sex discrimination happens in a workplace when you are treated less favourably or differently because of your sex or pregnancy or potential pregnancy. It also includes being dismissed from employment because you have carer's responsibilities. See 'What about carers?' (see page 4)

WHAT IS SEXUAL HARASSMENT?

Sexual harassment is against the law. In terms of anti-discrimination law it is any **unwanted** or **unwelcome** sexual behaviour that makes a person feel offended or humiliated and the reaction is reasonable. Sexual harassment has nothing to do with people attracted to each other, and it's not about mutual flirting.

It's about sexual behaviour you don't want and didn't invite. Everyone has the right to be safe and free from harassment at work.

Examples of sexual harassment are –

- ❖ staring, leering or unwelcome touching
- ❖ suggestive comments or jokes
- ❖ having to look at sexually explicit material including offensive emails or SMS messages
- ❖ insults or taunts based on sex
- ❖ unwanted invitations or requests for sex
- ❖ intrusive questions about a person's private life
- ❖ displaying pornographic posters, magazines or screensavers

EXAMPLE OF SEXUAL HARASSMENT AND VICTIMISATION IN EMPLOYMENT

A woman was employed in a civilian administrative position at a naval base. The sexual harassment initially included physical contact, requests for sex and pornographic messages by a male employee who worked for the Australian Defence Force in the same office. The woman told him to stop the conduct. A few weeks later she attended an after-work dinner at the home of two co-workers that he also attended. The woman passed out after drinking wine, but awoke to find the man raping her at his own home.

The Federal Magistrates Court found that sexual harassment had occurred and that the ADF was vicariously liable for it. The Court also found that the rape at the dinner party was work-related because it involved work colleagues, and that the woman had been victimised at the workplace by managerial staff and other employees after making a complaint of sexual harassment. The woman was awarded damages of \$100,000 for hurt, suffering and humiliation. It was also possible that the woman could get compensation for economic loss and medical expenses, plus payment of legal costs.

Source: CCH Equal Opportunity Alert, May 07

KEY POINT!

Sexual harassment can include sexual behaviours that are criminal offences eg sexual assault, indecent exposure, stalking and obscene communications and should be reported to the police. You should get immediate legal advice.

WHAT ARE THE RIGHTS OF PREGNANT WORKERS?

It is against the law for someone to treat you less favorably than another worker simply because you are pregnant or because you may become pregnant.

Pregnancy discrimination can occur if an employer –

- ❖ refuses to employ or promote a pregnant woman
- ❖ dismisses or retrenches a pregnant woman
- ❖ excludes a pregnant woman from a training course
- ❖ transfers a pregnant woman except for a valid medical or safety reason (there are very few situations where this applies)
- ❖ demotes a pregnant woman.

EXAMPLE OF ALLEGED PREGNANCY DISCRIMINATION

The complainant advised that she commenced full-time employment as an office administrator with a small training consultancy company in September. She claimed that three months later she advised the company director that she was pregnant and was suffering from pregnancy-related illness. She alleged that when advised of this the Director said words to the effect: "Look, this will jeopardise your position". The complainant claimed that a few weeks later when she advised the Director that she was again ill, the Director said, "That's it. I have had enough. Pack your stuff and go" and terminated her employment. The complainant claimed that the company signed a separation certificate that indicated that her employment was terminated due to her pregnancy and frequent illness.

The company denied that the complainant was discriminated against on the basis of her pregnancy and associated illness. The company stated that it had accommodated the complainant's medical appointments and had allowed her to take sick leave. The company denied that the complainant's employment was terminated but rather claimed that the complainant resigned. The company stated that the details on the separation certificate had been completed by the complainant prior to signature by the company.

The complaint was resolved by conciliation with the company agreeing to provide the complainant with written and verbal references and an ex gratia payment (ie a payment based on special circumstances rather than legal obligation) of \$6,000.

Source: www.hreoc.gov.au

MATERNITY/PARENTAL LEAVE RIGHTS

The *Workplace Relations Act 1996* and the *NSW Industrial Relations Act* clearly state that women have a lawful right to unpaid maternity leave of one year as a result of the birth or an adoption of a child.

If a woman has worked for an employer for 52 weeks in a full time or part time capacity or as a casual who worked continuously on a regular or systematic basis during the preceding 12 month period, she is entitled to unpaid maternity leave of up to one year. This includes six weeks compulsory leave after the birth.

Some workers, especially in the public sector, are covered by enterprise agreements or awards providing paid maternity leave. However, paid maternity leave is not an entitlement paid to the majority of workers.

Do I have to come back on full-time duties?

NSW awards and some federal awards (provisions are not protected under WorkChoices) now provide a right to request unpaid leave to work part-time up to the child's second birthday. This would mean a maximum of two years' maternity leave.

In NSW women have the right to request part-time work until her child reaches school age.

Can my partner take unpaid parental leave at the same time?

Both parents have a right to request a simultaneous period of unpaid parental leave up to eight weeks.

Can the employer refuse?

An employer does have a right to refuse a request by an employee to extend her maternity leave for two years; or allow her to work part-time until the child reaches school age; or allow both parents to take simultaneous unpaid parental leave up to eight weeks. **But** if the employee challenges this refusal to a tribunal or court, the employer must demonstrate that the proposal had been carefully considered and the refusal was reasonable.

Can I go back to the same job?

Upon returning to work, a woman is entitled to return to the same job she held before going on leave. If she had been transferred to another safer job before taking maternity leave, she has the right to return to the job she held before the transfer. If the job she held before taking maternity leave no longer exists, the worker is entitled to a job similar in pay and status, or in some cases a redundancy payment.

KEY POINT!

If you are having problems extending your maternity leave beyond one year or trying to return to work part-time, you should complain to the ADB or HREOC *regardless of whether you are employed in the NSW system or covered by WorkChoices. Get advice immediately.*

WHAT ABOUT CARERS?

Carers are responsible for the care or support of a dependent child or another immediate family member. Immediate family members include a spouse or former spouse of the employee, grandchildren, parents and step-parents of the employee or their spouse or former spouse and brothers and sisters of the employee or of their spouse or former spouse. 'Spouse' in this case has the same meaning as in the amended *Property Relationships Act 1984 (NSW)* and includes same-sex partners.

If you are treated unfairly or harassed at work because you are a carer you may have been unlawfully discriminated against. For example, an employer can only refuse an application from an employee for a change in hours or rosters because of her carer's responsibilities, if such a change in hours will cause unjustifiable hardship.

Depending on the nature of the employment it may be reasonable for the employer to –

- ❖ Allow you to work from home for some or all of your workdays. This may mean that the employer may have to provide equipment to do this, such as a phone, a computer and/or modem.
- ❖ Allow you to work your hours over fewer days or allow you to work part time instead of full time, or job share.

EXAMPLE OF ALLEGED DISCRIMINATION ON THE GROUND OF FAMILY (CARER) RESPONSIBILITIES

The complainant advised that she had been employed as a full-time sales assistant with the respondent retail store for approximately six years. She claimed that when a new store manager commenced, her hours were changed from 8.30am-4.30pm to 10.30am- 6.30pm. The complainant said that she advised the manager that she could not work the new hours as the day care centre her daughter attends closes at 6pm. The complainant claimed she spoke with the Area Manager about a possible transfer to another store but was told that even if she transferred, she would be required to do the later shift two days

per week. The complainant subsequently resigned from her employment.

In response to the complaint the company stated that changing business needs and trading patterns had required changes to all employee shifts. The company claimed that various options were discussed with the complainant and that she was offered a transfer to another store where she could work two days on a later shift and three days on her usual shift but she refused this offer.

The parties agreed to resolve the complaint on the basis that the company would re-employ the complainant full-time at a particular store on the 8am-5pm shift. The parties agreed that the complainant may be rostered to work at other agreed stores providing the company gives the complainant at least two days notice. The parties also agreed that no break in the complainant's employment would be recorded.

Source: www.hreoc.gov.au

HOW DO I MAKE A COMPLAINT?

If you have decided to make a formal complaint to the [Anti-Discrimination Board \(ADB\)](#) or the [Human Rights and Equal Opportunity Commission \(HREOC\)](#) you must do the following –

- ❖ **Lodge your complaint within 12 months of the act of discrimination**
- ❖ **Lodge your complaint in writing.** Both the ADB and HREOC require a complaint in writing. The ADB has a complaint form that you can complete or you can simply write a letter. HREOC also has a complaint form that can be completed and sent online. If you need assistance with your written complaint you can contact the ADB or HREOC or your nearest community legal centre.

HOW DO I CHOOSE BETWEEN THE ADB AND HREOC?

You must choose whether to make your complaint to the ADB or HREOC as you cannot make a complaint to both of them about the same issue. Some areas of discrimination are only covered by state laws (ADB) and some are only covered by federal laws (HREOC). Therefore it is important to check before you make your complaint with either the ADB on (02) 9268 5555 or HREOC on 1800 670 812 that your complaint is going to the right place.

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WHAT WILL HAPPEN TO THE COMPLAINT?

- ❖ The ADB or HREOC will send the employer a copy of your complaint and ask them to respond in writing. They will generally arrange a meeting (called a conciliation conference) with the employer to try and reach a resolution or settlement of your complaint. An officer from the ADB or HREOC will act as the mediator in the meeting.
- ❖ A settlement may include an apology from the employer, compensation, attendance at training courses by the employer to learn about discrimination, reprimand or transfer to another position of the employee who perpetrated the discrimination. In serious cases, the perpetrator may be dismissed.

WHAT HAPPENS IF THE COMPLAINT IS NOT RESOLVED?

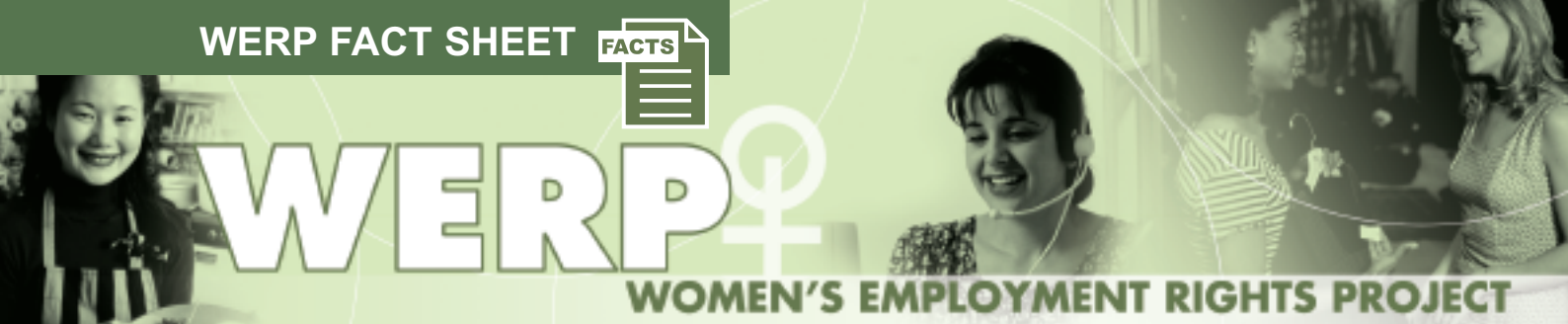
An unresolved ADB complaint may be referred to the Equal Opportunity Division of the Administrative Decisions Tribunal. An unresolved HREOC complaint will be terminated. The complainant then has 28 days to make an application to the Federal Magistrates' Court. Both these bodies can make legally binding orders.

KEY POINT!

Get legal advice before making a decision to take the matter to the Administrative Decisions Tribunal or the Federal Magistrates' Court.

USEFUL CONTACTS

- ❖ [Human Rights & Equal Opportunity Commission](#)
- ❖ [Anti-Discrimination Board](#)
- ❖ [Combined Community Legal Centre Group](#)
- ❖ [Kingsford Legal Centre](#)
- ❖ [Legal Aid Commission of NSW](#)
- ❖ [LawAccess](#)



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IMPORTANT NOTE: THIS FACT SHEET ONLY APPLIES TO WOMEN WHO WORK IN NEW SOUTH WALES

WORKERS COMPENSATION

WHAT IS 'WORKERS COMPENSATION'?

A person who is a worker or deemed to be a worker can claim workers compensation in the event of a work-related injury.

Injured workers are entitled to receive weekly payments to cover loss of earning capacity, payment of medical expenses and vocational rehabilitation expenses to assist them to get back to work. Lump sum compensation for any permanent impairment is also available.

All NSW employers must have a workers compensation policy to insure themselves against compensation claims for workplace injuries.

A claim for worker's compensation should be made **within six months** of the date of the injury but this time limit is frequently extended to 3 years and can be extended beyond that in some circumstances.

HOW CAN I MAKE A CLAIM FOR WORKERS COMPENSATION?

- ❖ Advise your employer that an injury has occurred and provide medical information. The employer must then notify their insurer within **48 hours**
- ❖ Provisional liability payments should start within **seven days** (for most injured workers); and
- ❖ The insurer will investigate the facts and decide to continue or stop further payments.

WHAT IS AN INJURY?

According to Section 4, Part 1, of the *Workers Compensation Act 1987*, 'injury' -

- ❖ means personal injury arising out of or in the course of employment
- ❖ includes -
 - a disease which is contracted by a worker in the course of employment and to which the employment was a contributing factor; and
 - the aggravation, acceleration, exacerbation or deterioration of any disease where the employment was a contributing factor to the aggravation, acceleration, exacerbation or deterioration.

It should be noted that injuries could be physical or psychological.

HOW LONG DO I HAVE TO WAIT TO FIND OUT IF THE INSURANCE COMPANY ACCEPTS OR REJECTS MY CLAIM?

- ❖ After the initial notification of the injury and commencement of provisional liability payments a claim form is submitted, the insurer has either **21 days or until the period of provisional liability expires** to make a decision. Provisional liability is decided by the insurer prior to the commencement of payments. Although the maximum is usually 12 weeks, the insurer may also decide to extend provisional liability for a further period.



DO I HAVE TO FILL OUT A CLAIM FORM?

- ❖ Not in most cases but you may be asked to complete one if –
 - ❖ the insurer requests one
 - ❖ you need weekly payments for 12 weeks
 - ❖ medical expenses are more than \$7,500
 - ❖ the provisional liability payments don't start or are stopped and you disagree.

WHAT BENEFITS ARE AVAILABLE?

Depending on the individual claim, you may be eligible for all or some of the following payments –

- ❖ weekly benefits
- ❖ medical or related treatment
- ❖ occupational rehabilitation services
- ❖ ambulance service
- ❖ hospital treatment
- ❖ travel expenses to attend appointments for medical and other treatment
- ❖ lump sums for permanent impairment
- ❖ lump sums for pain and suffering
- ❖ vocational re-education and retraining, work aids and equipment, work trials
- ❖ when the injury results in the death of the worker, the dependent family members may be eligible for death benefits and/or funeral expenses.

KEY POINT!

It's easy to make a claim for workers compensation.

Notify your employer of the injury, they then notify the insurer, who considers the facts and starts provisional liability payments. This means you will have a regular income while the insurer gets more information to support or dispute the claim.

If the claim is accepted, further benefits are paid to you in accordance with medical certificates.

WHAT IF MY EMPLOYER THINKS THE INJURY IS NOT RELATED TO WORK?

- ❖ Then the employer or the employer's insurer must provide evidence to support that assertion eg medical evidence that the medical condition already existed and has not been aggravated by work, or factual evidence that the injury occurred in circumstances not arising out of or in the course of employment.

WHAT WILL I BE PAID IF I'M TOTALLY UNFIT FOR WORK?

- ❖ For the **first 26 weeks** payments are at the award rate or agreement rate of pay, capped at a maximum weekly amount. Overtime, shiftwork, payments for special expenses and penalty rates are excluded
- ❖ Casual workers are entitled to their average weekly income based on what was earned over the previous 12 months (unless they are employed under an award rate)
- ❖ **After 26 weeks** your payments will be at the statutory rate. This is adjusted twice a year and depends on whether you have a dependent spouse and/or children.

WHAT IF I CAN ONLY RETURN TO WORK ON PARTIAL DUTIES?

- ❖ If you return to work on partial (suitable) duties and earn less than before the injury, then 'make-up' pay (additional) will be paid. 'Make-up' pay is the difference between the normal gross weekly wage before the injury (including overtime, shift work, payments for special expenses and penalty rates) and the actual weekly earnings after the injury.

WHAT DO I GET IF I'M FIT TO GO BACK TO WORK ON SUITABLE DUTIES BUT MY EMPLOYER CLAIMS THEY DON'T HAVE ANYTHING SUITABLE?

- ❖ You can receive what are called 'section 38 payments' which include –
 - ❖ Not more than the award/agreement rate of pay within the first 26 weeks of incapacity, and
 - ❖ Not more than 80 percent of the award rate between 27 and 52 weeks of incapacity.
- ❖ Section 38 payments **stop after a maximum 52 weekly payments** after which you may continue to receive make-up pay or statutory rate payments

WHEN SHOULD I GET LEGAL ADVICE?

- ❖ If you think you may have a permanent impairment as a result of the injury
- ❖ If the injury was serious and you believe it resulted from your employer's or some third party's negligence



- ❖ If you are not sure you are receiving the correct make-up pay or pay while incapacitated
- ❖ If there is any dispute about your medical treatment. eg the insurer won't pay for some recommended treatment or your rehabilitation program
- ❖ If you wish to dispute any decision of your employer and/or insurer, for example, if the insurer denies liability or your employer does not provide you with suitable duties upon your return to work.

NEED MORE INFORMATION?

For more information on workers compensation entitlements and any 'minor' disputes about weekly payments, medical expenses and rehabilitation, contact **WorkCover NSW** (ph13 10 50).

For legal advice, contact your **local community legal centre**.

TOP TIPS!

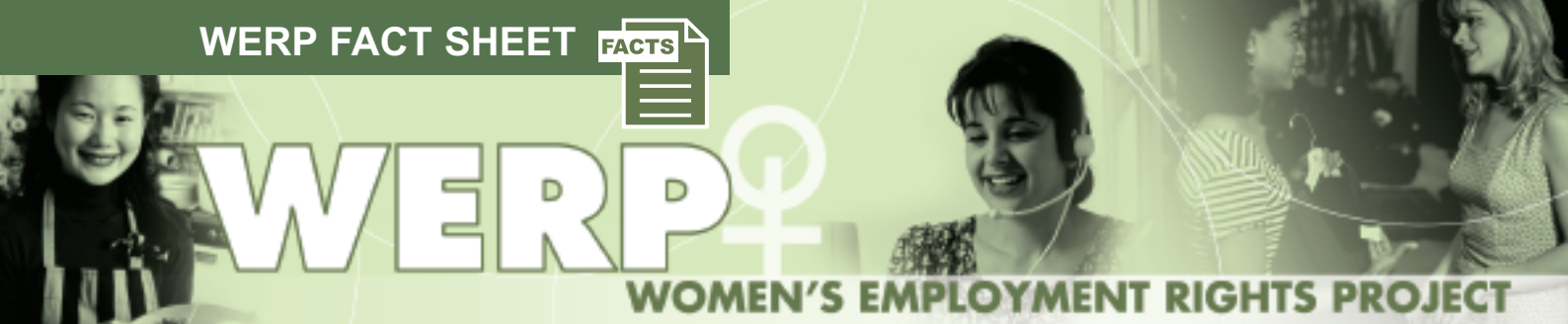
1. **Notify the employer immediately after a workplace injury**
2. **Remember what happened, when, how – write it down and any witnesses' names (if any)**
3. **Keep a copy of all documentation that you send to the employer or the insurance company and all documentation that is sent to you**
4. **Keep a diary of events. Some workers compensation claims can go on for weeks, months, even years so it's important to keep a detailed record of what happens.**
5. **Get *early* legal advice. Solicitors cannot charge injured workers for acting in workers compensation claims – the insurer has to pay your solicitor's bill when the claim is finalised.**

Disclaimer The information contained in this fact sheet is only intended as a guide to the law and should not be used as a substitute for legal advice. If you have any further questions we strongly suggest you seek legal advice.

The views expressed herein do not necessarily reflect the views of the Office for Women, NSW Department of Premier and Cabinet.

Note: This information applies to people who live in, or are affected by, the law as it applies in the State of New South Wales, Australia.

The information contained in this fact sheet is current as at 1 July 2007.



WOMEN'S EMPLOYMENT RIGHTS PROJECT

Funded by the Office for Women, NSW Department of Premier and Cabinet



IMPORTANT NOTE: THIS FACT SHEET ONLY APPLIES TO WOMEN WHO WORK IN NEW SOUTH WALES

WORKPLACE RELATIONS: ABBREVIATIONS AND ACRONYMS

ABS	Australian Bureau of Statistics
ACTU	Australian Council of Trade Unions
ADB	Anti-Discrimination Board of NSW
AFPC	Australian Fair Pay Commission
AFPS	Australian Fair Pay Standard
AIRC	Australian Industrial Relations Commission
ATO	Australian Taxation Office
AWA	Australian workplace agreement
AWE	Average weekly earnings
DEWR	Department of Employment and Workplace Relations
FMC	Federal Magistrates Court
HREOC	Human Rights and Equal Opportunity Commission
ILO	International Labour Organisation
IR	Industrial relations
NAPSA	Notional Agreement Preserving a State Award
NSW IRC	Industrial Relations Commission of New South Wales
OH&S	Occupational Health & Safety
OECD	Organisation (for) Economic Co-operation (and) Development
OIR	Office of Industrial Relations
PSA	Preserved State Agreement
PTY LTD	Proprietary Limited

USEFUL CONTACTS:

Women and Work - Useful Numbers and Websites

GENERAL EMPLOYMENT LAW INFORMATION / ADVICE

Law Access NSW

Ph: 1300 888 529

Web: <http://www.lawaccess.nsw.gov.au>

Local community legal centre

Web:

<http://www.nswclc.org.au/CCLCGBrochure2007%20.pdf>

WAGES AND CONDITIONS

Workplace Ombudsman (previously Office Of Workplace Services)

Ph: 1300 363 264; 1300 724 200 (Complaints)

Web: <http://www.wo.gov.au>

Workplace Authority (previously Office of the Employment Advocate)

Ph: 1300 363 264

Web: <http://www.oea.gov.au>

Department of Employment and Workplace Relations

Web: <http://www.workplace.gov.au>

NSW Office of Industrial Relations (OIR)

Ph: 1300 366 632

Web: <http://www.industrialrelations.nsw.gov.au>

Australian Industrial Relations Commission

Ph: 1300 799 675

Web: <http://www.airc.gov.au>

NSW Industrial Relations Commission

Ph: 9228 7766

Web: <http://www.lawlink.nsw.gov.au/irc>

DISCRIMINATION

Anti-Discrimination Board of NSW (ADB)

Ph: 9268 5555

Web: <http://www.lawlink.nsw.gov.au/adb>

Human Rights and Equal Opportunity Commission (HREOC)

Ph: 9284 9600

Web: <http://www.hreoc.gov.au>

Disability Discrimination Legal Centre (NSW)

Ph: 9310 7722 or 1800 800 708

Web: <http://www.ddlcnsw.org.au>

Women's Legal Resource Services NSW

Ph: 9749 5533

Web: <http://www.womenslegalnsw.asn.au>

Kingsford Legal Centre

Ph: 9385 9566

Web: <http://www.law.unsw.edu.au/centres/klc/>

For lesbian and transgender women

Inner City Legal Centre

Ph: 9332 1966

Web: <http://www.iclc.org.au>

OHS/WORKERS COMPENSATION

WorkCover Authority of NSW

Ph: 13 10 50

Web: <http://www.workcover.nsw.gov.au>

Commonwealth employees only

Comcare

Ph: 1300 366 979

Web: <http://www.comcare.gov.au>

USEFUL CONTACTS: Women and Work - Useful Numbers and websites (continued)

TAXATION + SUPERANNUATION

Australian Tax Office

Ph: 132 861

Web: <http://www.ato.gov.au>

TRAINEESHIPS/APPRENTICESHIPS

Department of Education and Training

Ph: 132 811

Web: <http://apprenticeship.det.nsw.edu.au>

Australian Apprenticeship Centre

Ph: 133 873

Web: <http://www.australianapprenticeships.gov.au>

YOUTH

National Children's and Youth Law Centre

Web: <http://www.lawstuff.org.au>

Youth Action and Policy Association (YAPA)

Ph: 9319 1100

or 1800 627 323 (*tollfree NSW only*)

Web: <http://www.yapa.org.au>

CENTRELINK (+ Welfare to Work)

Welfare Rights Centre

Ph: 9211 5300 or 1800 226 028 (*rural*)

Web: <http://www.welfarerights.org.au>

UNIONS

Unions NSW

Ph: 9264 1691

Web: <http://www.council.labor.net.au>

Australian Council of Trade Unions (ACTU)

Ph: 1300 362 223

Web: <http://www.actu.asn.au>

CASE STUDIES:

Impact of workplace law changes on NSW workers: 2007 case studies

WHAT'S HAPPENED TO A 'FAIR GO'?

Over the past year, community legal centres across NSW have been sending information to the Inner City Legal Centre about clients who have been dismissed from their job or who have experienced other workplace problems such as discrimination. This information, which contains no identifying client information is analysed and recorded for statistical purposes.

Here are just a few examples of female clients who have been disadvantaged by the new laws.

EMPLOYMENT TERMINATION

1. An accounts manager worked for a timber manufacturer for 11 years. She arrived at work to discover a redundancy notice (effective immediately) in her pigeonhole. 'Operational requirements' was given as the reason for her termination. Later the client discovered someone had been employed to do her job. The client was paid all her outstanding entitlements.

Under WorkChoices, there is no remedy for an unfair dismissal for this client because there were fewer than 100 workers employed by the timber manufacturer. Since another worker was employed in the accounts manager's position after her termination, the redundancy in this case was a sham, given that the position was not redundant. The employer's action was in breach of the Australian taxation laws.

2. A 38-year old assistant-in-nursing worked for a Sydney nursing home for 18 years. She was made redundant involuntarily, being told by the manager that the termination was 'for operational reasons'. No other workers were dismissed. She did receive all her entitlements.

Under WorkChoices, there is no remedy for an unfair dismissal for this client because there were fewer than 100 employees employed by the

nursing home. Also under the new laws, an employer does not have to demonstrate that a fair process is in place before retrenching staff.

3. An airline worker had worked for over four months. She was dismissed two days after a senior male employee made comments of a sexual nature to female staff, and the client told him to 'get lost'. The company refused to give her reasons for the dismissal, saying only that she was still on probation. The company had extended the client's probation for a further 3 months and then terminated her employment. The client's dream was to work as a flight attendant.

Under WorkChoices, there was no remedy for unfair dismissal because the client was on probation and she had worked for the company for less than six months. The client was advised to make a discrimination complaint about the sexual harassment to the Human Rights and Equal Opportunity Commission (HREOC) or the Anti-Discrimination Board of NSW (ADB).

4. A 41-year-old RSL club worker in a rural town, with over seven years service, passed on a caricature (of a clown) of the general manager of the club to another worker. She wasn't at all involved in the drawing but was sacked for 'gross misconduct'. The club refused to pay the client all her outstanding entitlements, including long service leave.

Under WorkChoices, there was no unfair dismissal because the Club employed fewer than 100 employees. Since the club wrote 'gross misconduct' on the client's separation certificate, Centrelink imposed an 8-week payment penalty. The allegation of 'gross misconduct' also created difficulties for the client in getting another job. The client was advised to start proceedings for the unpaid entitlements in the local court.

CASE STUDIES: Impact of workplace law changes on NSW workers: 2007 case studies (continued)

5. A 23-year-old waitress had worked as a casual in a small cafe for over two years, averaging 35 hours/week. After she told her employer she was pregnant in March 2006, the employer started reducing the client's hours so that by August she was only working 20 hours/week. Because of the perceived mistreatment by her employer, the waitress resigned and intended leaving on 31 August 2006. On 17 August, the employer told her "you are retiring today" and issued her with a separation certificate providing 'pregnancy' as the reason for termination.

As the employer was not a corporation, the client was advised that she could either file an unfair dismissal claim in the NSW Industrial Relations Commission or file a complaint in the NSW Anti-Discrimination Board on the ground of pregnancy discrimination. The outcome of the matter is unknown.

Although this client was not directly affected by the WorkChoices legislation, this case study is an example of the attitude of some employers to pregnancy in employment. This client was able to consider unfair dismissal proceedings but if her employer had been a corporation, the WorkChoices legislation would have applied and she would not have had this option (although she would have been able to pursue an unlawful claim).

AUSTRALIAN WORKPLACE AGREEMENTS

1. A client was offered an Australian workplace agreement (AWA) where she would be paid \$118 for a six-hour shift. Under her award the client was entitled to \$181 for the six-hour shift. The AWA also only provided seven days for sick and carers leave per year as opposed to 10 days under the award.

2. A client was a sales representative who worked for a manufacturing company for more than 2 years. The client and 24 other sales staff were covered by the Commercial Travellers (State) Award and had a written agreement covering bonuses and commission. There were subsequent discussions between the manager and all the staff to change this agreement. However, when the sales staff received the new written agreement, the document also contained other conditions that had never been discussed or agreed to. All sales staff refused to sign this document. The company then withheld payment of all staff bonuses/commission for the July/September quarter.

Under duress, all the client's work colleagues then signed the agreement but the client refused. The company continued to withhold the client's unpaid bonuses and commission, which were due for payment in September. The client was advised to lodge a complaint with Department of Employment and Workplace Relations because the employer was in breach of the award provisions by withholding the client's bonuses and commission. This award provision is protected under the WorkChoices legislation. Maximum penalty under the Workplace Relations Act for breaching a NAPSA (Notional Agreement Preserving State Award) is 300 penalty units (\$33,000).

3. A 52-year-old client had been employed on a casual basis for five years when her employer gave her an AWA to sign. The AWA changed her employment to part-time, dropped her wages from \$17.80 to \$12.75 per hour and provided only three weeks' annual leave. Under enormous pressure from the employer to sign the AWA, the client subsequently resigned.

FEEDBACK:

Tell us what you think about our website

Phone 1800 244 481
OR
(02) 9332 1966

Email Inner_City@clc.net.au

Fax (02) 9360 5941

If you are faxing your feedback, please provide a suitable contact so that the WERP team can contact you if required.

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By fax (02) 9360 5941

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website: www.iclc.org.au