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The Impact of the *Fair Work Act* on Employee Engagement

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Employee Engagement

- General factors which tend to increase employee engagement
 - Direct relationship between employee and manager
 - Open communications
 - Level of intervention of third parties
 - Degree of employee empowerment
- Legislative Changes rate high in employer concerns on employee engagement
- How will the Fair Work Act impact on employee engagement?



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Award Modernisation

- More employees will be covered by awards
- Greater potential for award overlap
- Who will the 'catch all' award cover?
- More unions will have access rights due to reliance on 'ability to represent'
- Impact on employees engaged on common law contracts



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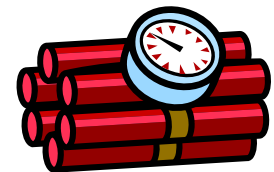
Enterprise Awards



- Parties can apply to FWA to modernise enterprise award
- FWA will consider application and may decide:
 - Not to make a modern enterprise award - enterprise award terminates
 - To make a modern enterprise award – content may change
- Will union responsiveness be retained?
- Applications to terminate can also be made
- If no application made by 31 Dec 2013, award will terminate from that date

Conditional Termination Instruments

- Instrument allows AWA/ITEA to automatically terminate when enterprise agreement commences
 - Entered into only by agreement if AWA/ITEA not expired
 - Employer must give notice of employee representational rights to employees on unexpired AWA/ITEA – explains right to representation if conditional termination instrument made
- Employee on unexpired AWA/ITEA can vote, be represented and take industrial action
- Why would an employer agree to this?



Majority Support Determinations



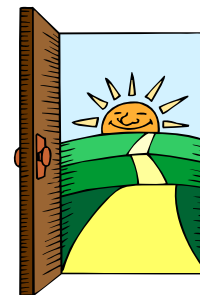
- If employer will not agree to bargain, bargaining representative can apply to FWA for determination that majority of employees to be covered by a proposed agreement want to bargain
- Criteria for making order specified in s.237(2)
- A determination will trigger the following:
 - A requirement to provide notice of employee representational rights
 - Good faith bargaining and potential for bargaining orders



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Union Right of Entry

- Potential for multiple union access to award covered workplaces
- Individual Agreements and Employee Collective Agreements will not be a shield to union access
- Will historical demarcations be reflected in future representational orders?
- Will there be a mechanism to pre-determine right of entry?





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Good Faith Bargaining




- Bargaining representative must meet these requirements:
 - Recognise the other bargaining representative
 - Attend and participate in meetings
 - Disclose relevant information (other than confidential or commercially sensitive information)
 - Respond to proposals in a timely manner
 - Give genuine consideration to proposals and reasons for responses
- BUT no obligation to make concessions or reach agreement
- Pre 1 July 2009 conduct considered if bargaining for collective agreement under WRA not concluded





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Agreement Content

- Matters that pertain to employer/employees
- Matters that pertain to employer/union 
- Matters that do not pertain not enforceable but will remain in agreement
- Demands may be made for:
 - Paid union meetings/junkets
 - TUTA leave
 - Nominated labour
 - Restrictions on use of contractors

Workplace Determinations

- Fair Work Australia has capacity to impose an agreement if:
 - Dispute causing or threatening to endanger safety, health or welfare of population (or part), or significant damage to Australian economy (or part)
 - Dispute causes significant economic harm to third party
 -  – Protracted dispute causing significant economic harm to employer and/or employees
 -  – Serious and sustained breaches of GFB orders

Parties to Enterprise Agreements

- Agreements appear to be made between an employer and their employees BUT
- A union that was a bargaining representative can notify FWA it wants to be ‘covered’ by agreement
 - No discretion for FWA
 - No requirement to be actively involved in bargaining process
- Provides enforcement rights
- Will FWA publicise agreement lodgements?



Retrospective application of NES

- From 1 Jan 2010 NES will apply to **all** employees regardless of any existing agreement
- Applies by a 'detriment rule' – line by line comparison
- FWA will be able to make orders varying agreements where provisions are uncertain
- Check your arrangements for
 - averaging of hours
 - annual leave cash out
 - incorporation of annual leave in roster
 - accrual rates of leave





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Where to from here?

- Review existing arrangements against NES and modern awards (as applicable)
- Consider extending a pre-reform agreement (if you have one)
- Consider making an agreement under WRA
- Review RoE procedures
- Review how confidential and personal information is handled
- Continue to improve employee communication
- Monitor dispute resolution mechanisms