

Get your bookwork in order

New regulations covering the keeping of employee records have come in to effect. The regulations are part of Work Choices and have created a new set of requirements for businesses.

Like any regulation, Work Choices has created new or different requirements for business to ensure compliance – and a failure to comply can carry some hefty penalties.

It's worth reflecting on a few of the more significant changes that affect your bookwork, and what you need to do to make it right.

Fines of up to \$33,000 can apply. This doesn't include any amount of underpayment that the courts may order an employer to make up to the employee. Having good records will help show compliance.

TRANSMISSION OF BUSINESS

While the rights of employees involved in a transmission of business have been altered by WorkChoices, there is some extra paper work for the employer who has taken over a business.

Businesses must give formal notices to employees who are transferring into their business that contain details of the employee's entitlements and copies of any relevant awards or agreements. Copies of the notices also have to be lodged with the Office of the Employment Advocate (OEA).

A failure to comply with these requirements could lead to a fine of up to \$33,000 for companies and \$6,600 for individuals. If you're looking to acquire another business, make sure that you or your advisers do comprehensive due diligence on employee entitlements early.

You have 28 days from the date the new employee begins employment with your business to give the required notices to the employees, and a further 14 days to lodge them with the OEA.

FLEXIBILITY, AWARDS & WORKPLACE AGREEMENTS

WorkChoices provides businesses with unprecedented opportunities to streamline remuneration arrangements, payrolls and working hours arrangements for employees. But many of these arrangements can only be effectively implemented with a Workplace agreement made under the Workplace Relations Act.

While it might be convenient to pay an employee flat hourly rates, or annualised salaries, employees must receive over the course of a 12 month period at least the minimum hourly rate fixed for the classification.

There are also award penalty rates, loadings and the like to be considered. Getting it right is critical.

Under the pre-WorkChoices system, employers had a safety valve in the form of the OEA or the Australian Industrial Relations Commission (AIRC).

An agreement could not be implemented without being approved by either of those bodies. Under WorkChoices, the onus is on employers to ensure that Workplace agreements comply with minimum standards.

Penalties abound for getting it wrong:

- For failing to comply with an Australian Fair Play and Conditions Standard;
- For failing to give employees the necessary notices and time for considering an agreement;
- For lodging an agreement not properly approved by the employee or employees; for not lodging a workplace agreement with the OEA;
- For not notifying employees that an agreement has been lodged with the OEA;
- For lodging an agreement with the OEA that contains prohibited content;
- For failing to comply with an applicable award term.

There are many other items that might arise in the life of a Workplace agreement. Most of the penalties that can be imposed by a court for breaching these requirements are up to a maximum of either \$33,000 or \$16,500 for companies.



LESSONS FOR EMPLOYERS

Employers need to make sure they keep up with the additional paperwork that WorkChoices has generated – non-compliance is a big issue for the Federal Government, and SMEs that don't keep up may find it is a costly oversight.

Assets transferred because of a binding financial agreement or arbitral award also qualify for rollover relief

Until recently, rollover relief on the breakdown of a legal or de facto marriage was available only for assets transferred to a former spouse because of a court order or consent order.

The changes mean assets transferred because of a binding financial agreement or arbitral award also qualify for rollover relief. For de facto couples, transfers made under certain written agreements also qualify for rollover. The changes apply to CGT events that happen after 12 December 2006.

EXAMPLE:

Following their separation and the permanent breakdown of their marriage, Bill and Joanne enter into a binding financial agreement. Under the agreement, Bill must transfer certain property to Joanne. The CGT event happens after 12 December 2006, so rollover applies and Bill does not incur a CGT liability on the transfer.

As a general rule, CGT applies to all changes of ownership of assets on or after 20 September 1985.

An overview of CGT and marriage breakdown

CGT rollover on marriage breakdown means capital gains tax is not payable on the transfer of assets to a former spouse but is deferred so that the former spouse pays any CGT when they later sell or dispose of those assets. The spouse receiving the asset is taken to have paid what the person who transferred the asset paid for it.

So when separating couples make their agreement, they should ensure they get any records they need relating to the assets they receive from their former spouse.

Under the rollover, any assets acquired before 20 September 1985 and transferred to a former spouse are also generally exempt when the former spouse sells or disposes of them.

Unlike most other CGT rollovers, rollover on marriage breakdown is not a choice. If the transfer meets the conditions, rollover automatically applies.

An informal arrangement for the transfer of assets that does not meet the eligibility conditions for rollover may result in a capital gains tax liability for the spouse transferring the asset.



PHISHING - why you should never take the lure

Phishing is a malicious form of junk or spam email that threatens the security of your personal information. Its aim is to deceive you into revealing sensitive, personal or financial information.

Phishing's commonest lure is an official look – perhaps posing as a bank or other organization. Add a sense of urgency, as phishing emails usually do, and you may not pause to question the authenticity.

A phishing email usually asks you to click through to a website. And if you take the lure, the site generally looks like the real thing – creating a false sense of security and increasing your temptation to divulge personal information.

Another risk posed by phishing emails is that they sometimes contain dangerous hyperlinks that appear to do nothing. Don't be fooled. These links may initiate malicious software downloads, including viruses and keystroke-logging programs that record your keyboard activity.

The growing sophistication and danger of phishing is revealed in a 2006 computer security survey that reported a single-year 27% increase in thefts attributable to Trojan and phishing attacks.

The clear messages are:

One:

Be wary of unsolicited emails – no matter how official they may appear to be – and do not click hyperlinks within them, and

Two:

Be particularly suspicious of those that ask for personal or financial details.



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