

Changes afoot in 2009



2009 will be an interesting year for many reasons and here are just a few that impact our businesses.

- Pre Christmas talk of increasing ratios in child care will lead to more vacancies within centres based upon the affordability of parents to cope with increasing financial demands;
- The introduction of the Federal Government's Fair Work Bill (once approved) will mean some Industrial Relations changes for more than 60% of ACSEA's membership as will the introduction of the new National Employment Standards (as per ACSEA web site 8/8/08);
- ACSEA will also receive its QLD Federal coverage from the Australian Industrial Relations Commission (ARIC)

PRE CHRISTMAS MIGHT NOT BE THE BEST TIME TO FIRE

Pre Christmas closure found many of our members deciding that, just before Christmas was the best time to commence staff disciplinary procedures, terminate staff for a range of reasons, and or make staff redundant, etc. Many of these activities which the ACSEA were asked to assist with could have been managed and affected well before Christmas if appropriate planning had been undertaken, therefore reducing the members stress levels and making for a better overall business.

ITS UNIFORM TIME AGAIN FOR P&C'S

Our thoughts go out to those parents in Queensland who collectively will outlay over \$50 million in uniforms this year. Uniform convenors will be kept busy in early 2009 issuing new and pre-loved uniforms.

CHILDCARE AND FACEBOOK – IT'S A NO NO!

Already this year we have dealt with employees who disregard both centre policy and procedures, aspects of privacy and the Child Care Act, by including pictures of both themselves and the children at their place of employment on their personal Facebook page. Parents and committee members need to ensure that employees are both trained and educated that this practice is not acceptable under any circumstance.

NEW COMMITTEE ASSISTANCE SEMINARS ARE FREE

Based upon some of the feedback from our membership our "much in demand" FREE seminar series will be timed to coincide with the elections of the bulk of the new committee/s. The Seminar series will commence in March starting in Cairns and finishing on the Tweed border. We look forward to seeing and assisting the new committee members.

INCREASING COMMITTEE TENURE IS A SMART MOVE



Many of our members (Management Committees, Executive Committees, etc) hold office for just 12 months before they are either re-elected or voted out. Many of our members, from a wide range of areas, would like to hold office for 24 months or more. ACSEA supports and encourages those who hold those positions to make changes to their own constitutions to allow this to occur, or lobby their state body/s for changes to be made in this area.

Many of the Committees that we represent are frustrated because of the 12 months lifecycle they operate under. The first 3-6 months is about getting to know staff, the School, other relationships, past actions, and coming to grips with the all of the intellectual history of the job, then just when that has occurred there is precious little time to effect any real change.

On top of that these Committee lifecycles are exacerbated if the Committee has;

- Inherited a mess from the previous Committee;

- The Bookkeeping is all over the place;
- There is suspected fraud/theft and an audit is required;
- There are staffing issues which have not been dealt with by previous committees.

All of these things take a lot of time to work through and before you know it's time to leave and pack up shop ready for the next Committee to come in and do it all over again. In short committees can be identified into 2 broad categories;

**Those that want to make changes, and
Those that just want to see out their term.**

All committees run business and generate profits. In the corporate world you wouldn't change your management structure with the frequency of the Not for Profit world, - it just doesn't make commercial sense so let's see if we can change the way we operate and try for 24 month terms.

Long service leave - your questions answered

What is Pro-Rata Long Service Leave?

As from 3 June 2001, employees are entitled to receive proportionate payment of long service leave on termination of employment after completing 7 years continuous service. This payment is often called pro-rata long service leave.

If an employee has completed 7 but less than 10 years continuous service, they are entitled to pro-rata long service leave only if:

- The employee's service is terminated by their death
- The employee terminates their service because of their illness or incapacity or because of a domestic or other pressing necessity
- The employer dismisses the employee for a reason other than the employee's conduct, capacity or performance or
- The employer unfairly dismisses the employee

Long Service Leave cannot be taken after 7 years of service while still employed.

Are Casual Employees entitled to Long Service Leave?

Yes – Prior to 23 June 1990, casual employees generally were not entitled to long service leave. From that date new legislation became effective which recognised the service of casuals as continuous for long service leave purposes

provided 32 hours were served in every consecutive 4 (four) week period.

Except where an award or agreement determines otherwise, the legislation operative from 30 March 1994 prescribes:

- Casual service before 23 June 1990 generally does not accrue long service leave
- Casual service between 23 June 1990 and 29 March 1994 accrues leave according to the formula in the 1990 Industrial Relations Act (Ss 164, 166 [5]). (See above comment).
- Casual service from 30 March 1994 is aggregated as continuous service for leave purposes.
- All of the rules prescribed in the Act for calculating continuous service apply to casuals. In particular, a break in service of more than three (3) months breaks the continuity of employment.

When can an employee take long service leave?

At the conclusion of 10 years continuous service.

The time and manner of taking long service leave should be agreed between the employer and employee. If an agreement cannot be reached, then the employer can direct an employee with three (3) months written notice to take at least four (4) weeks of their long service leave.



Can Long Service Leave be 'Cashed In'?

Only if it is permitted under their industrial agreement or award. If there is no such provision, then an employee would have to make application to the Queensland Industrial Relations Commission (QIRC) for an order to make such a payment. The QIRC may make such an order only if satisfied that the payment should be made on compassionate grounds or on the grounds of financial hardship.



BUYING A BUSINESS AND LONG SERVICE LEAVE = BUYER BEWARE

We are often asked what should be considered when businesses are being taken over either within the not for profit sector or within the commercial sector.

Irrespective of not for profit or commercial, transition of business and employee entitlements work as follows. If the employee is moving to a new employer then all entitlements including annual leave, sick leave and long service leave by way of accrual are transmitted to the new employer. This usually happens in the form of handing over a cheque or there is some form of reduced consideration over the transfer price.

If employees are not to be re-employed as a result of the transition then the employee will receive only those entitlements to which they are lawfully entitled.

The new business owner needs to be careful with Long Service Leave (LSL) entitlements in the purchase phase of the process because some employees may not at the time of transmission be entitled for LSL however may become due after the deal has concluded. If there has been no allowance (\$\$\$) made for this fact then the new owner will be up for the full entitlement.

Not for profit community groups and commercial members of the ACSEA need to be aware that there is financial exposure to their business in taking on/ taking over other businesses when it comes to employee entitlements and transition of business.

If you have any questions in relation to what can be a very costly aspect of buying a business please do not hesitate to contact ACSEA before signing any contracts.

Footwear in the workplace



ACSEA regularly receives calls to clarify whether the employer can mandate the type of footwear that can be worn by employees in the workplace, in particular, closed in shoes.

In short the answer is YES.

As an employer any risk at the workplace must be assessed and addressed either by following a prescribed risk management procedure such as a code of practice provided from time to time or developing a method of controlling risk at your particular workplace. S27 of the Queensland Workplace Health & Safety Act 1995 says that if no standard exists the employers may ensure an appropriate way to control risk using reasonable precautions and exercising proper diligence.

To properly manage exposure to risks, a person should consider the appropriateness of control measures in the following order;

- Eliminating the hazard or preventing the risk
- If eliminating the hazard or preventing the risk is not possible, minimising the risk by measures that must be considered in the following order;
 - Substituting the hazard giving rise to the risk with a hazard giving rise to a lesser risk
 - Isolating the hazard giving rise to the risk from anyone who may be at risk
 - Minimising the risk by engineering means
 - Applying administrative measures
 - Using personal protective equipment.

Under S36(a) of the WHS Act the employee must comply with instructions given for their safety – so they need to wear closed in shoes when you tell them to. To ensure proper diligence the employer must inform the employees of the control measures, monitor and ensure compliance regularly. Further assistance in relation to this matter can be offered by calling the ACSEA.

BACK TO THE FUTURE FOR INDUSTRIAL RELATIONS

The new Fair Work legislation has provisions which could seriously effect both larger and smaller employers, including;

- New provisions for reinstatement applications on termination of employment even for the smallest employer
- Provisions for redundancy payments for small employers
- New Federal Awards which could impact on all ACSEA members depending on what the State Government does with its Industrial Commission
- New provisions relating to the hours of work which might not make it easy for flexible staffing
- New provisions requiring employers to engage in collective bargaining with Unions

Your membership of ACSEA has never been more important than now so if you have been thinking about whether you need the help of ACSEA think again!

Membership of a strong independent advocate like ACSEA, who knows and understands your business, is your best insurance in these difficult times as employees will not go quietly if you have to make changes to your staffing for any reason.

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The importance of employer confidentiality



While employees have a responsibility to maintain confidentiality in regards to clients and children's personal information, so do employers have the same obligations with regards to information pertaining to employees.

It is the executive members of the Board of Management/P&C Association that have the responsibility to deal with employee matters that relate to terms and conditions of employment, wages, discipline and counselling.

ACSEA frequently hears of situations, where the intimate details of a matter of discipline with

an employee, are openly discussed at a general meeting of the association. This practice puts the association at risk of action from the employee because they have breached the confidentiality of the employee and should never happen.

Elected members of a management committee/P&C Executive take on the responsibility as managers of any employees and those employees are entitled to have their personal details treated with respect and confidentiality.

For example, if there is a disciplinary matter being handled by the executive, it is not appropriate to give all the details at a general meeting but it does not mean that the executive cannot advise the association in general terms of what is happening. In broad terms it could be reported for example that an incident/s occurred involving one of the employees (not divulging the name or position of the employee) and this incident related to alleged theft, behaviour, breach of policy or failure to obey lawful directions. You would also inform the meeting that the executive has contacted their industrial relations advisor, ie ACSEA, to seek advice and is acting on that advice.

Although pressure may be exerted by members to divulge more information than is necessary, it is important that as Management Committee/P&C Executive members you maintain and respect the confidentiality of your employees.

Are employees pay levels progressing correctly?



One of the most common enquiries we get at ACSEA is when to change employees pay levels and it is very important to ensure that all child care employee's pay levels (under the Children's Service Award – State 2006) are being "progressed" correctly.

In June 2006, as part of the Child Care Pay Equity case the progression of casual employees

was part of the decision. At the time of the decision, ACSEA posted the full decision on its website, alerted members of the Award changes and advised members to get full details from the posted decision.

Progression refers to the increase of salary/wage from the employees current pay point in their classification to the next pay point in the classification e.g. assistant unqualified year 1 to assistant unqualified year 2.

Full-time employees progress yearly on the anniversary date of their employment.

Part-time employees will be required to complete a minimum of 1000 hours of service from the time of their first appointment or previous increment date before being eligible for the next increase. Such increment will be payable at the expiration of 1000 hours service or 12 calendar months, whichever will occur later, and the increment date will be adjusted if necessary.

Casual employee's progress yearly on the anniversary date of employment based on a decision by Queensland Industrial Relations Commission handed down on 27 June 2006 (clause 9.4).

If you require any further information on the subject do not hesitate to contact ACSEA.

STOP PRESS

ACSEA has applied for and been granted full Federal Registration in Queensland through the Australian Industrial Relations Commission. This means that we will be able to better represent our members who are covered under the Federal jurisdiction.



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