

# WorkChoices and Women

## **WorkChoices – What is it?**

WorkChoices is the name given to the new federal laws governing work. It came into play on 27 March 2006. The new WorkChoices legislation draws on a combination of constitutional powers to cover the majority of employees and employers in Australia, including trading, financial and foreign corporations and their employees.

## **Will it affect me?**

The new system will be phased in over the next 3 to 5 years. It is possible that the new laws will apply to you immediately or not until you change jobs, or within the next 3 to 5 years as transitional arrangements cease. It is estimated that 85% of workers will be covered by the federal laws.

Many employees and employers who are covered by the federal system prior to WorkChoices will be able to receive the same entitlements and conditions that they are currently receiving.

There will be a separate transitional system for employers and employees who are not constitutional corporations in the federal system prior to commencement of WorkChoices. This transitional system will operate for up to five years to provide employers that are unincorporated businesses a chance to decide whether they want to incorporate and join the new federal system. At the end of the transitional period, employers and employees that have not moved into the new federal system will move into the state system.

Constitutional corporations and other employers who are not currently part of the federal system, but who are covered by WorkChoices, will move into the new federal system.

## **What is a Constitutional Corporation?**

The corporations power in the Constitution allows laws to be made that regulate foreign corporations and trading or financial corporations formed within the limits of the Commonwealth.

To be considered a trading or financial corporation an employer must meet 2 tests:

- an employer must be incorporated; and
- the employer's trading or financial activities must be 'significant' or 'substantial'

If an employer is unsure whether they are a constitutional corporation they should seek independent legal advice.

## **What about unions?**

The new laws don't remove your right to join a union. You can't be lawfully terminated because you belong or don't belong to a trade union. There are new requirements for unions who wish to enter workplaces. There are also new provisions about the content of union clauses in agreements and regarding industrial action.

## **Can I just be terminated?**

It is still unlawful under Workchoices to terminate you if:

- You are temporarily absent from work due to illness or injury
- You belong to a trade union
- You don't belong to a trade union
- You are seeking office as, or acting or having acted in the capacity of a representative of employees
- You have filed a complaint or participating in proceedings against an employer
- You have been discriminated against on the basis of race, colour, sex, sexual preference, age, physical or mental disability, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin
- You refuse to negotiate, sign, extend, vary or terminate an AWA
- You are absent from work during maternity leave or other parental leave
- You are temporarily absent from work because you are carrying out a voluntary emergency management activity

If you believe you have been unlawfully terminated you will be eligible to receive up to \$4000 worth of legal advice. This will be based on the merits of your case if you have a certificate from the AIRC and if you are assessed as having financial need.

Unfair dismissal laws will continue to apply to businesses with over 100 staff, though workers will need to have been employed by the company for at least 6 months before they can make an unfair dismissal claim.

#### **What if I am pregnant and working?**

You will be entitled to a maximum of 52 weeks unpaid parental leave, shared between both parents at the time of the birth of the child, or the adoption of a child under 5 years of age. If your award has a more generous entitlement then it will still apply.

If you are a casual employee you will be eligible for parental leave if you have been employed with the same employer on a regular and systematic basis for a period or sequence of periods of at least 12 months and you have a reasonable expectation of ongoing employment with the same employer.

You are responsible for notifying your employer if you intend taking parental leave. Check the Fact Sheet 'WorkChoices and Parental Leave' for more details on how to do this.

#### **What about my pay?**

Under WorkChoices, the Australian Fair Pay Commission is responsible for setting and adjusting minimum wages and casual loadings for employees in the federal workplace relations system. The Fair Pay Commission can also set a special federal minimum wage for juniors, trainees and apprentices and employees with disabilities. The Fair Pay Commission decides the timing, scope and frequency of wage reviews, the manner in which wage reviews are conducted and when wage decisions come into effect.

If there is no other relevant provision you should be paid on a fortnightly basis in arrears.

#### **What if I need help negotiating my terms and conditions of employment?**

You are entitled to get advice from your union or from a bargaining agent. For more information contact us, your union or [www.workchoices.gov.au](http://www.workchoices.gov.au)

#### **What if I am an outworker?**

If you perform outwork, especially sewing outwork, there are still provisions in WorkChoices that protect your rights. You should be paid fairly for the work that you do.

#### **Where do I get more information?**

For more information contact:

The Working Women's Centre

Your union

The WorkChoices Hotline on 1300 363 264

[www.workchoices.gov.au](http://www.workchoices.gov.au) (Fact Sheets available)

