

WORK CHOICES UPDATES - WHAT YOU NEED TO KNOW

WORK CHOICES UPDATE #20 - LABOR OUTLINES ITS WORKPLACE LAW POLICY

In a speech to the National Press Club on Tuesday 17 April 2007, federal opposition leader Kevin Rudd outlined Labor's policy on workplace law changes. At this stage Labor has not released a policy document and the outline lacked specific details in a number of areas. Labor's ability to bring about legislative change will not only require it to win Government by taking a majority of seats in the lower house of federal parliament, but also for the coalition to lose control of the Senate.

Main features

The primary objectives of Labor's workplace law platform is stated as returning the basic working conditions including penalty rates, overtime and public holiday pay. A minimum wage system will be maintained in order to maintain living standards. Workplace agreements will be collective in nature. This means that there will be no opportunity for employers and employees to make individual Australian Workplace Agreements. Labor will create a uniform, national industrial relations system for the Australian private sector. Labor intends to do this by either referral of powers by the States to the Commonwealth, or through other forms of co-operation and harmonisation. There will be limits upon the circumstances in which lawful industrial action can be taken. For instance, secret ballots will be mandatory and genuine good faith bargaining must occur beforehand. Strike pay will be prohibited

Labor will introduce new unfair dismissal laws. Employees in businesses with less than 15 employees will have the right to bring a claim if they have served 12 months employment. For other employees, the required period will be 6 months. A new industrial umpire will deal with unfair dismissal claims. This umpire will be situated in regional and suburban areas and will be able to meet parties at the workplace or at other agreed venues. The emphasis will be upon resolution by discussion and parties will be unable to have legal representation. Labor will create a Fair Dismissal Code. This code will outline the obligations of small business. Dismissal in compliance with the code will be considered fair.

Impact

The proposed changes to unfair dismissal laws will affect employers of 100 or fewer employees. Under current laws,

those employers are exempt from unfair dismissal claims. Certain aspects of the policy need to be clarified by Labor. For instance, with respect to representation in unfair dismissal matters, Labor will need to clarify whether parties will be able to be represented by unions and employer associations. It is also unclear what constitutes a small business for the purpose of the Fair Dismissal Code, or indeed, what will be contained in that code.

How the changes to minimum conditions will be implemented has not been explained. Whether this is done in a way that further limits what can be contained in workplace agreements will need to be determined.

How AWAs will be phased out has also not been explained.

Even if Labor gains government by winning a majority of seats in the lower house of federal parliament, it will need to also have the coalition lose its majority in the Senate for it to be able to have any opportunity to bring about any change. It appears likely that after the next federal election the Coalition will hold at least 33 Senate seats, Labor will hold at least 28 seats, at least 2 seats will be held by the Greens and 1 held by Family First. In a practical sense, there are 12 seats in the Senate that are truly open to change hands. If Labor succeeds in gaining 10 or more of these seats, a Rudd Labor Government will have a majority of seats in the Senate and this would pave the way for Labor's proposed changes

If neither the Coalition nor Labor gains a majority of seats, changes to industrial relations laws will be determined by where the support of non-Coalition senators lie. According to election analyst Malcolm Mackerras, the upcoming federal election will result in the Coalition holding only 37 seats in the Senate and Labor holding 31. In these circumstances, if Labor gains the support of all the non-Coalition senators, it will be able to pass its proposed changes. Further detail of Labor's policy is essential leading up to the next federal election and, as it comes to hand, we will analyse its likely impact. Undoubtedly, there is more to come.

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