

## NEWSLETTER

Special Edition - September 2006

### Record Keeping Obligations imposed by Work Choice Regulations

New regulations introduced under the Work Choices legislation impose onerous record-keeping obligations on employers who are covered by the legislation (i.e. generally corporations and some other entities) as from 26 September 2006.

#### 1. General Obligation

Corporate employers will be required to keep records regarding each employee detailing:

- (a) the employee's name;
- (b) the employer's name;
- (c) the employee's date of birth;
- (d) any legislative instrument from which the employee derives employment benefits and the classification of the employee in that instrument;
- (e) whether the employee is full-time or part time;
- (f) the number of hours the employee is required to work;
- (g) whether the employee is permanent, temporary or casual; and
- (h) the date on which employment commenced.

#### 2. Hours Worked

Prior to Work Choices there was no obligation imposed on employers to record hours of work for any employees.

Corporate employers will now be required to record the starting and finishing times of all employees who are entitled to an **overtime loading** (whether the basis of the entitlement lies

in contract, pursuant to a legislative provision or an award).

A separate obligation is for the employer to record the total number of hours worked each day if the employee's "base annual salary" is **less than** \$55,000.00 or that amount increased in accordance with the regulations after 1 July 2007.

The "base annual salary" is that which is specified in a written instrument (including a workplace agreement or a contract) but does **not** include incentive based payments, bonuses, loadings, penalty rates or superannuation contributions.

#### 3. Pay

All records relating to the employee will have to contain:

- (a) the basis on which the employee's rate of pay is determined;
- (b) the gross rate of pay expressed as an hourly rate;
- (c) details of any incentive based payment, bonus or other such entitlement;
- (d) details of the period to which the payment relates;
- (e) the total remuneration received by the employee during the period – gross and net amounts;
- (f) dates on which the employee was paid;
- (g) deductions (if any) made from that remuneration and the name of the fund or account into which the deductions were paid.

#### 4. **Annual Leave**

- (a) Corporate employers will also have to maintain records of the nominal hours worked by the employee, the rate of accrual of annual leave, the date on which the employee was credited with annual leave, the balance of the employee's entitlement to annual leave, the amount of leave taken by the employee and the amount paid to the employee while on annual leave.
- (b) A record will also have to be maintained if the employee elects to cash out an annual leave entitlement.
- (c) If the employee is a shift worker, the periods worked by the employee and date on which the employee was credited with additional annual leave will also have to be recorded.

#### 5. **Personal and Other Leave**

Relevant employers will also be required to keep a record of the nominal hours worked by an employee, the rate of accrual of personal leave, the date on which the employee was credited with personal leave, the balance of the entitlement to personal leave from time to time, the amount and type of personal leave taken by the employee and the amount paid to the employee while on personal leave.

#### 6. **Superannuation Contributions**

Records relating to superannuation will have to be maintained in relation to each employee. They must contain the amount of contributions made, period over which contributions have been made, dates on which contributions have been made, name of any fund to which contributions were made and the basis on which the employer is liable to make contributions including the keeping of a record of any election by an employee as to the fund to which contributions are to be made and the date of such election.

#### 7. **Termination of Employment**

In relation to any employee whose employment is terminated, records will have to be kept containing information as to whether the employee resigned, was summarily dismissed or was dismissed with notice or in some other manner. The name of the person who acted to terminate the employment should also be noted.

If you have any queries concerning the Work Choices legislation, please contact Michael Kobras on [mkobras@schweizer.com.au](mailto:mkobras@schweizer.com.au) or Alison Drayton on [adrayton@schweizer.com.au](mailto:adrayton@schweizer.com.au).

*Alison Drayton – Senior Associate  
Accredited Specialist in Commercial Litigation*

#### **YOUR FEEDBACK**

If you have any comments about this newsletter, suggestions for improvement or would like to see any particular areas of law which interests you covered, please drop us a line at:

email: [mail@schweizer.com.au](mailto:mail@schweizer.com.au)  
fax: +61 2 9223 4729  
mail: PO Box H283,  
Australia Square NSW 1215