

Employment Agreements

Status of Employment Agreements from 1 January 2010

In Queensland, the industrial organisations authorised to represent the industry have sought to clarify:

- whether employment agreements made prior to 1 January 2010 (when the new federal awards take effect) continue to be enforceable; or
- if there is a need to replace existing agreements as of 1 January 2010.

The Australian Industrial Relations Commission (AIRC), which issued the new awards applying to corporations, does not give legal advice in such matters, but generally awaits such questions being raised in an application (e.g. a wage claim). The AIRC then considers the application and determines a legal position, at which time the determination becomes “case law”, or precedent.

The **Real Estate Industry Award 2010** was published on 4 December 2009, some of the legislation is still to be enacted, and no relevant case law or precedent exists. Therefore our best option has been to seek legal advice as to how the award, and the validity of agreements made prior to the award, would be most likely be interpreted by the AIRC. The Real Estate Employers' Association (REEA) and the Property Sales Association of Queensland (PSAQ) have now sought and obtained advice from specialist Counsel.

The preferred position of both REEA & the PSAQ is that existing agreements would be permitted to continue until their expiry date, however it seems that the new legislation does not support our preference . . .

Corporations (employers in the Federal system)

To summarise the advice from Counsel, most (if not all) agreements made before 1 January 2010 will NOT comply with the requirements of the new award, and will therefore need to be replaced.

As an example, many “commission-only” agreements in force currently state that annual leave is not applicable. However annual leave is one of the National Employment Standards (NES). Under the new Real Estate Award annual leave may be paid for as part of the “commission-only” structure agreed between the parties **but** it must be set out as a separate calculation in the agreement **and** in the pay slip provided to the employee. The same applies to all NES items.

Further, since the award only comes into existence on 1 January 2010, an agreement made prior to that date could not fulfil many of the new award's requirements.

Consequently, to comply with the new Real Estate Industry Award 2010, it will be necessary for employers and their employees to make new agreements that meet the standards required by that award.

Additionally, as per Schedule E to the Real Estate Industry Award, **agreements made under that award must be registered with QPIR (www.qpir.com.au)**.

What About AWAs, ITEAs & Collective Agreements?

Under transitional legislation, if a term of an AWA, ITEA or Collective Agreement is detrimental to the employee when compared to the National Employment Standards (which come into force on 1 January 2010) then the term is of no effect. Further, the rate of pay in such an agreement cannot be less than that set by a modern award.

Most (if not all) AWAs, ITEAs & Collective Agreements fall short of the standards prescribed above, especially in matters relating to commission-based employment.

As a result, it would be prudent for employers and their employees currently using such agreements to make and register new agreements as required by the new Real Estate Industry Award 2010.

Please Note: Commercial providers of such agreements may provide an alternative view to that expressed above. If in doubt, we suggest that independent advice is sought from a specialist industrial relations lawyer.

Non-Corporation Employers (e.g. sole traders & partnerships)

The Queensland Government is in the process of handing its remaining private sector industrial relations powers to the federal government. There is a Bill to this effect before the Parliament now, which is expected to take effect from 1 January 2010.

This means that the conditions of the current State Awards for Salespeople, Property Managers (and Clerical staff) employed by non-corporations will continue to apply for a period of 12 months, covering current and future staff, except where a certified agreement applies.

Accordingly, agreements currently registered under the State Awards will remain in force for 12 months from 1 January 2010 and agreements under those awards must continue to be made for new employees until 31 December 2010.

While the current terms of those awards will continue, they must not cause a detriment to employees when compared with the federal National Employment Standards (NES), which apply to all forms of leave, etc.

Registration of Written Agreements

The Real Estate Industry Award states that every employee must have a written agreement registered with the Queensland Property Industry Registry (QPIR). The requirement to register an agreement with QPIR also continues to apply to employers & their employees under the State awards.

Failure to register an agreement with QPIR means that the employee cannot be a commission-only employee, and that the minimum weekly wage must be paid in addition to any commission, bonus or incentive.

Agreement Suppliers for Corporations

The following suppliers have developed agreements that appear to be suitable for employers under federal legislation:

- Basic agreements – Realworks Live (www.realworks.com.au) – available from 1 January 2010
- Comprehensive agreements – REPS Australia (www.repsa.com.au) – available now.

Agreement Suppliers for Private Employers

Realworks Live (www.realworks.com.au) has for many years provided agreements that appear to be suitable for those employers under state legislation.

In Conclusion

There may be self-appointed “experts” who provide “advice” contrary to that given herein. You now have some choices to make – rely on this information sheet, contact us for clarification, and/or seek your own advice, independently. If you do seek independent advice, make sure you speak to a **specialist industrial relations lawyer** – these matters are simply too complex to do otherwise.

Employees

If **PSAQ members** have any questions, please contact:

- Barry Gannon (E: barry.gannon@psaq.com.au; P: 07 3841 6977); or
- Tom French (E: tom.french@psaq.com.au; M: 0419 787 526).

For those employees who are not PSAQ members, please visit the PSAQ web site (www.psaq.com.au) and submit a membership application **before** contact us.

Employers

If **REEA member** employers have any questions, please contact Bruce Siebenhausen (E: bsiebenhausen@reea.org.au; P: 07 3376 1397; M: 0411 208 794).


For those employers who are not REEA members, please visit the REEA web site (www.reea.org.au) and submit a membership application **before** you make contact.

Yours faithfully,



BRUCE SIEBENHAUSEN.
Real Estate Employers' Association

Yours faithfully,



BARRY GANNON.
Property Sales Association of Queensland

Please Note: An extract of the advice from specialist Counsel is also available, via either www.reea.org.au or www.psaq.com.au.