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LawTalk Blog



Is the Federal Government attacking your penalty rates?

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Former Prime Minister John Howard historically lost Government and his own seat in Parliament in 2007 after 11 years in power. A significant factor contributing to Mr Howard's loss was his dramatic attacks on the Australian workforce via the WorkChoices legislation.

That major legislative reform (which was operational for about 14 months) dispensed with [unfair dismissal](#) protections for companies with fewer than 100 employees, stripped unions of many rights and individualised employment relations (removing the strength associated with workers collectively negotiating with their employers).

The subsequent Rudd Federal Government abolished WorkChoices with former Industrial Relations Minister Julia Gillard responsible for dismantling WorkChoices and introducing a system viewed to be more fair and equitable across the board. This led to the introduction of the *Fair Work Act* which is still operational today.

Prime Minister Tony Abbott now leads the current Federal Government. A number of members of this Government are advocating for a return to many of the controversial elements of WorkChoices. However, Mr Abbott has voiced that he has learned the lessons from Mr Howard's era – namely, if you treat the Australian workforce with contempt and strip away workers' rights, it can be at your peril.

Mr Abbott has famously repeated that "[WorkChoices is dead, buried and cremated](#)". But this doesn't mean there are no alternate ways that the Government can seek to reduce workers' rights.

A topical example centres on the current debate about penalty rates. Penalty rates are a specific percentage increase to a worker's remuneration. Many members of the Australian workforce have relied on higher rates of earnings at specific times during the week and year. For example, whilst the rest of society can spend public holidays enjoying leisure activities with their friends and family, others are working to serve us and provide the community with other important services. It seems sensible and fair that these workers who sacrifice time with their friends and family are compensated accordingly through increases to their pay.

Senior members of the Federal Government have targeted penalty rates and made comments including that penalty rates are "unfair" and this is a policy area that the Government "must reform".

There is a lot of commentary around penalty rates (which some may perceive as scaremongering) causing businesses to close down or not operate on days when these additional rates need to be applied to the workforce. But penalty rates, particularly on weekends or late in the evening, have been around for about 100 years, and this has not contributed to the collapse of the Australian economy. This debate requires significant empirical evidence that penalty rates are severely damaging business and the Australian economy and without this evidence, there seems to be little justification to remove these entitlements from Australian workers.

Many of the recipients of penalty rates are those in society who need it most – people who are generally not highly remunerated, including people working in hospitality and retail, the cleaning industry and other service industries. Low paid workers often appreciate the opportunity to work nights, on weekends and during public holidays because they know they will see a boost in their payslip to counteract the unusual hours and absences from their family life. Without penalty rates, many workers will see no incentive to work these unsocial and inconvenient shifts.

But it is not only workers in our bars, restaurants and shops who work unsocial hours – nurses, paramedics and other workers who look out for our safety and wellbeing are surely also deserving of extra remuneration when they work late at night or on public holidays.

At a time when many families are already struggling with cost of living pressures, removing or reducing penalty rates will simply add further strain on household budgets that are likely to cause a knock-on effect at many other levels in our community.

At Andersons, we are carefully following the political debate regarding penalty rates because we believe that fair and equitable workers' rights should be protected.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to Australian Federal legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.