

New Fairness Test

This Publication Covers:

- The New Fairness Test
- The New Name and Role of the OEA
- The New Name and Role of the OWS

Introduction:

A New Fairness Test will be introduced on the 7th of May 2007 for Agreements of Employees earning less than \$75,000.

The Fairness Test will be conducted by the Office of the Employment Advocate, which will be renamed the Workplace Authority.

The Office of Workplace Services will be renamed the Workplace Ombudsman and will take on a greater role in ensuring that employers comply with their obligations.

The New Fairness Test:

The New Fairness Test will apply to:

- Award covered employee; and
- Employees earning less than \$75,000 per year; and
- Agreements that are lodged after the 7th of May 2007

The New Fairness Test will not apply to agreements that have been lodged before the 7th of May 2007.

Who Will Conduct The Fairness Test:

The Fairness test will be conducted by the Workplace Authority.

The Workplace Authority will advise whether the agreement has passed or fails the fairness test.

What Happens When The Agreement Fails The Fairness Test:

If an agreement fails the Fairness test, the employer and the employee will have 14 days to make it fair. The Workplace Authority will provide advice on why the agreement has failed the fairness test and will advise on how it can be changed to make it fair.

If an agreement fails the fairness test back pay from the date the agreement was lodged with the Workplace Authority will need to be paid. The Workplace Authority will advise on the amount of back pay to compensate the employee.

New Name and Role for the OWS:

The Office of Workplace Services will be renamed the Workplace Ombudsman. In their expanded role the Workplace Ombudsman will investigate alleged breaches, undertake compliance audits and prosecute those employers who breach the law.

If an employer does not comply with the advice given by the Workplace Authority within 14 days, the Workplace Ombudsman will enforce a declaration from the Workplace Authority.

The Workplace Ombudsman will be a statutory appointee, guaranteeing their independence.

Unclear Areas:

Information on the following areas has not been made available:

- Whether the fairness test can be appealed
- Whether the \$75,000 is earnings from usual hours or the total package.
- How the fairness test will decide whether compensation is more beneficial than the protected award condition

First IR will advise on these areas when more information is made available.

Advice for Clients:

Employers that have been using an AWA made before the 7th of May for all new employees should not make any further lodgements and seek advice on whether any adjustments to the agreement need to be made.

Further Information:

If you require any further information regarding the new fairness test please don't hesitate to contact First IR Consultancy



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