

Enterprise Agreements – Critical Procedural Rules Apply...

Are you in the process of negotiating or finalising an agreement with your employees? Are you about to commence negotiations for an agreement with your employees? From 1 July 2009, the Fair Work Act 2009 obliges any such employer to send a notice to employees. This EMA Note explains why.

On 1 July 2009 the Fair Work Act 2009 ("Act") and its associated regulations commenced. Any new collective agreement approved by employees on and from 1 July 2009 must comply with the new rules for Enterprise Agreements. One of the rules is to issue a notice to all affected employees.

The Employer must advise employees of its intention to make an Enterprise Agreement.

Regardless of how far negotiations have progressed (well down the track or about to start), the employer must send a notice to employees advising them of the employer's intention to make an Enterprise Agreement and to advise employees of their bargaining rights. This is known as a Notice of Employer's Representational Rights ("Notice").

Importantly, an employer may not ask employees to approve an Enterprise Agreement until at least 21 days after this notice is issued.

Time of the Notice

The Act prescribes that the Notice must be sent by the employer when either one of the following events occur:

- the employer agrees to bargain or starts the process of making an Enterprise Agreement; or
- the employer is ordered by Fair Work Australia to start the process as a result of a bargaining representative of employees seeking such an order.

When one of the above events occurs, the date on which this occurs is known as the "notification time".

The employer must prepare and send the Notice to employees within 14 days of the notification time. Where, as at 1 July 2009, bargaining is already underway, the notification time will be 1 July 2009, meaning that the Notice must be sent by no later than 14 July 2009.

Content of the Notice

The Notice must contain the following elements:

- The employer and a precise description of the employees and/or area(s) that are proposed to be covered by the Enterprise Agreement.
- Specify that the employee may appoint a bargaining representative to represent the employee:
 - in bargaining for the agreement; and
 - in a matter before Fair Work Australia ("FWA") that relates to bargaining for the agreement.
- Explain that (in cases other than bargaining resulting from an FWA low paid authorisation):
 - if the employee is a member of a union that is entitled to represent the industrial interests of the employee in relation to work that will be performed under the proposed agreement; and
 - the employee does not appoint another person as his or her bargaining representative for the agreement;

the union will be the bargaining representative of the employee.

- Explain the rights of an employee to appoint another person as his/her bargaining representative, including nominating themselves, and that a person is a bargaining representative of an employee only if the employee appoints, in writing, that person as his or her bargaining representative for the agreement.
- That the appointment of a bargaining representative comes into force on the day specified in the employee's instrument of appointment. Copies of instruments of appointment must be given by an employee to the employer.
- If the agreement will cover employees who are otherwise bound by an ITEA or an AWA, explain to those employees what they must do in order to have bargaining rights under the agreement and in order to vote to approve the agreement and to covered by it.

Provided that there is no misleading information, the employer may put other information in the notice that it believes is desirable.

Distributing the Notice

The notice may be given to affected employees in any number of prescribed way, including:

1. by giving it to them personally;
2. by posting it;
3. by emailing it, or
4. by displaying the notice in a conspicuous location at the workplace that is known by and readily accessible to the employee.

Effect of not providing the Notice

An employer will not be able to have an Enterprise Agreement approved by FWA if the notice has not been given to the employees as described. Further, there are critical rules relating to the voting process for an Enterprise Agreement that operate from the notification time.

Do you need a template Notice?

If you require help drafting a template notice please click the following link to our website and download the free notice. We strongly recommend that once you have drafted your notice, you have it checked by your local EMA Consulting office before sending it out.

[EMA Consulting website](#)

Enterprise Agreement Training

EMA Consulting will be running in-depth one day workshops from August 2009 dealing with all of the aspects of the new Enterprise Agreement rules, including studies and exercises on good faith bargaining. Further details will be released next week. Subject to client interest, these sessions will be conducted in Adelaide and Melbourne.

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