

Enterprise Agreement Rejected by Fair Work Australia

Fair Work Australia ("FWA") has rejected an employer application seeking approval of an Enterprise Agreement, because the employer had failed to issue a notice to employees informing them of their right to have a bargaining representative act on their behalf. This decision is a timely warning to clients to make sure that they understand the new procedural rules concerning Enterprise Agreements.

Representational Rights Notice

Under the *Fair Work Act 2009*, one of the obligations imposed on employers is to issue a representational rights notice to employees. Generally, this notice must be issued within 14 days of the time when the employer agrees to bargain or initiates the bargaining process for an Enterprise Agreement (refer EMA Note Issue 15).

Amongst other things, a Representational Rights Notice must:

- name the employer and describe the employees to be covered by the proposed Enterprise Agreement;
- inform the employees that they may appoint a bargaining representative to represent them; and
- explain that, in the absence of an appointment, the bargaining representative will be the union of which the employees are members, provided that union is eligible to represent the employees to whom the proposed Enterprise Agreement is to apply.

What is particularly important is that the employer cannot ask employees to approve an Enterprise Agreement until at least 21 days after the Representational Rights Notice has been issued.

Outcome

During the proceedings before FWA, the company's representatives conceded that, even though some employees had been represented in the negotiations, the company had failed to issue a representational rights notice. As a result FWA could not be satisfied the Enterprise Agreement had been genuinely agreed by the employees concerned, because genuine agreement requires compliance. In declining to approve the Enterprise Agreement, FWA emphasised that:

"... the requirement... upon an employer to provide a notice of employee representational rights is a mandatory pre-requisite to the bargaining process and cannot be waived or rectified by an undertaking..."

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 from the Resources section on the Products page. 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](#)

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Our Advice

Employers who are contemplating, or in the process of negotiating, an Enterprise Agreement are encouraged to speak with EMA Consulting about the compliance requirements of the *Fair Work Act 2009*. Failure to comply - even with what may appear to be a minor procedural requirement - can result in an agreement being rejected by FWA. In this case, the employer will have to recommence the process.