

## Workplace Law Fact Sheet

### Did you register for a \$33,000 penalty? Changes to the Real Estate Industry Award 2010

The Fair Work Ombudsman ('FWO') has recently commenced a targeted compliance campaign focused on the Real Estate Industry.

This campaign is aimed at auditing employers in the Real Estate Industry to ensure compliance with the Real Estate Industry Award 2010 ('Award'), the Fair Work Act 2009 ('Act') and the Fair Work Regulations 2009 ('Regulations').

#### Amendments to the Award

Recently, an amendment has been made to Schedule E of the Award.

The Schedule E amendment applies to Real Estate Industry employers in New South Wales and Queensland and their employees who are engaged under a property or strata management classification or a property sales classification.

#### New obligation

The obligation under Schedule E of the Award requires that all applicable employers in Queensland must ensure that the relevant employment agreements are registered with the state regulatory body, which is the Queensland Property Industry Registry ('QPIR').

Until an agreement is registered, an employer may not employ a commission only employee unless all payments are made on a weekly basis in accordance with the minimum wage standard provided in the Award.

#### Practical tips for employers

The change in Schedule E of the Award affects many employers and employees in the Real Estate Industry.

It is only as a result of the FWO's recent targeted campaigns that employers are realising that new obligations under the Award apply to their business.

Having said this, it is also important that employers are aware of and carefully consider that there are alternatives available to them before they act to register their employment agreements with the QPIR.

These options include:

- Entering into an enterprise bargaining agreement;
- Ensuring employees are not paid on a commission only basis and may receive a bonus; and
- Engage the services of independent contractors.

Additionally, employers must allude to the fact that FWO has the power to investigate all industrial relations matters in accordance with the Act and the Regulations and are able to issue fines of up to \$33,000 for each breach by an employer.

For this reason, employers should consider seeking legal advice in relation to their employment contracts to ensure that employees, including commission only employees, are not employed under a sham arrangement and that the contracts comply with the National Employment Standards.

#### Contact:

**Jonathon Hadley**  
**Partner – Workplace Law**

**T:** +61 7 3002 8722

**F:** +61 7 3221 3068

**E:** [JonathonH@hemhart.com.au](mailto:JonathonH@hemhart.com.au)

This fact sheet provides general information only and does not constitute legal advice.