

# WORKPLACE RELATIONS CIRCULAR

CIRCULAR No.	CASE FILE No.	CIRCULAR DATE	IMMEDIATE EFFECT
2015/117	ALL MEMBER	18/12/2015	IMMEDIATE

## FAIR WORK ACT AMENDMENTS

The Federal Parliament has passed a number of changes over nearly two years to have the legislation approved. The Fair Work Amendment Bill 2014 was passed by the House of Representatives on Wednesday 11 November 2015 and came into effect on 27 November 2015, with a number of amendments. The Fair Work Ombudsman's obligation to pay interest on unpaid parental leave is also included.

### Amendments

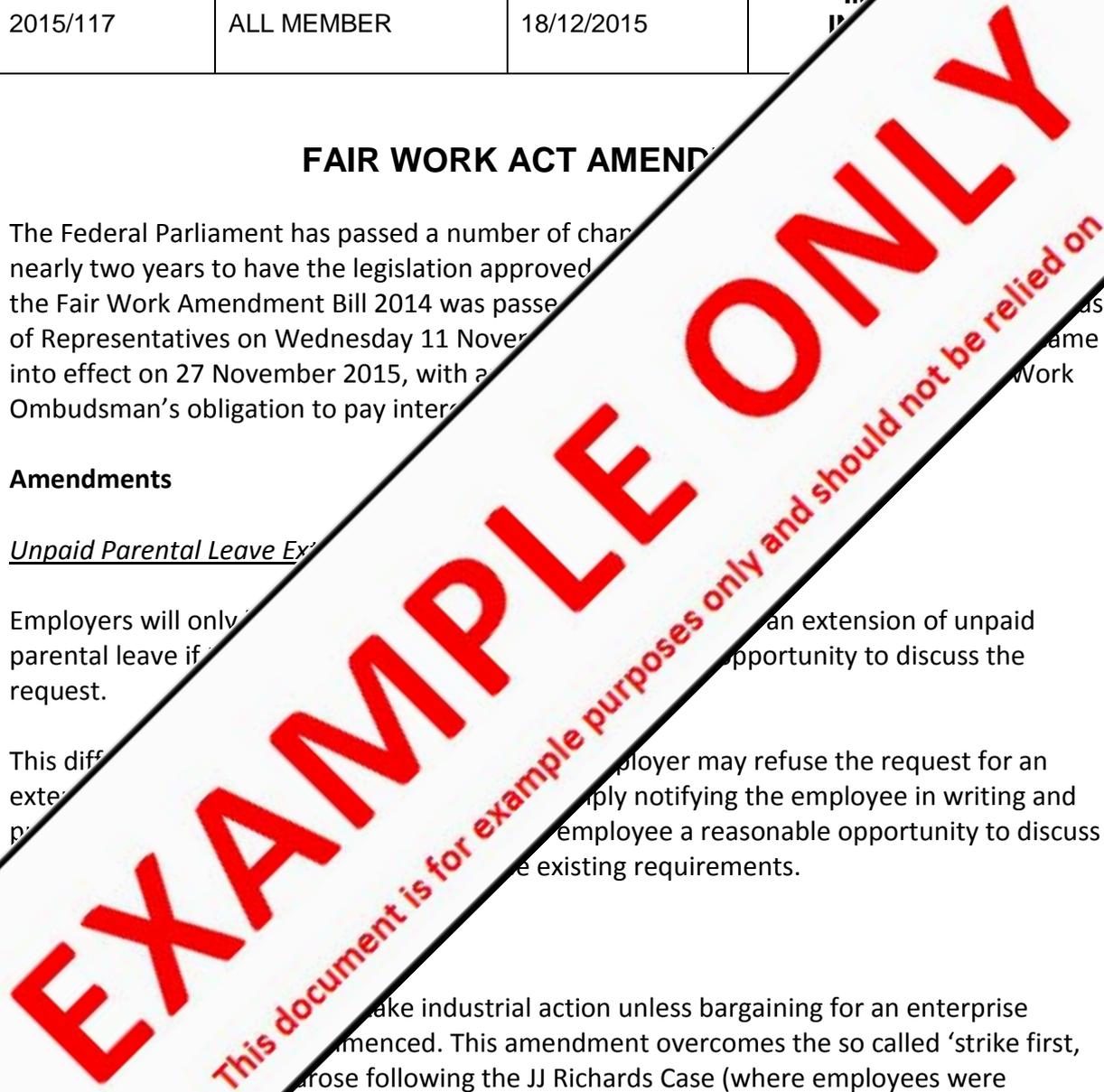
#### Unpaid Parental Leave Extension

Employers will only be required to grant an extension of unpaid parental leave if the employee has a reasonable opportunity to discuss the request.

This differs from the current law where an employer may refuse the request for an extension of unpaid parental leave simply by notifying the employee in writing and providing the employee a reasonable opportunity to discuss the request in light of the existing requirements.

Under the amendments, an employer may not take industrial action unless bargaining for an enterprise agreement has commenced. This amendment overcomes the so called 'strike first' rule that arose following the JJ Richards Case (where employees were permitted to take industrial action in order to pressure an employer into agreeing to bargain).

Under the amendments, for a protected action ballot order to be issued by the Commission, bargaining must have commenced either by the employer agreeing to bargain, or by a majority support determination being issued by the Commission.



## Greenfields Agreements

Employers who are bargaining for a proposed Greenfields Agreement will have the option of applying to the Fair Work Commission for approval of the proposed enterprise agreement even where the relevant union involved in the bargaining does not consent.

Employers will be able to make the application to the Commission unilaterally if no deal has been reached with the union within a negotiating period of six months.

## Unclaimed Monies

The Fair Work Act provides that employers can pay unclaimed monies owed to the Fair Work Ombudsman in situations where the employee cannot be located. There is an interest to be paid on unclaimed monies in excess of \$100 that have been outstanding for at least six months.

## **Changes Not Approved**

The original draft of the Bill contained amendments relating to annual leave on termination as well as new rules relating to the accrual of annual leave and compensation.

The original amendments proposed to:

- only require that annual leave be accrued (unless otherwise specified); and
- confirm that annual leave is accrued for employees on workers compensation.

These proposals were not included in the final draft of the Bill as they were recently passed.

This means that:

- employees are not entitled to an award of annual leave when they take a period of leave, annual leave is accrued (as per the decision in Centennial Northern [2015] FCAFC 100); and
- an employee is on workers compensation if required to be so in each state or territory (as per the decision in Anglican [2015] FCAFC 81 5 June 2015).

The amendments that would have affected transfer of business were not included in the final draft of the Bill as they were recently passed.

**Workplace Relations Helpline on 1300 765 123 if you wish to contact us or require further information.**

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