
Paid leave for IEU delegates to undertake training

Under the *Fair Work Act 2009* (the Act), workplace delegates in businesses that **are not** small businesses (fewer than 15 employees) are now allowed reasonable access to paid time during normal working hours for the purposes of related training under the Act.

The IEU has now written to AISNSW stating that they will be holding one day of training for IEU representatives on either Wednesday 3 April 2024, or Wednesday 8 May 2024, at their offices in Ultimo, and that they have advertised this to members. The IEU note that under the new laws those school-based employees in attendance are entitled to receive paid leave.

AISNSW note that the proposed dates are coming up soon (particularly, 3 April) and it may be open to a school to argue that it has received insufficient notice of the training, and that the delegate should attend the later of the two days (that is, 8 May) or another day later in the year.

If an IEU representative at your school expresses an interest in the training, the IEU has indicated it will then write to the school to facilitate the attendance of the IEU representative.

There is currently a modern award review process being undertaken in relation to the new legislated delegates' rights and how this will translate into an award clause. As part of the award review, the Australian Chamber of Commerce and Industry (ACCI) has observed that a delegate should be entitled to a maximum of 5 days per delegate per year (non-cumulative).

ACCI is arguing that a minimum of 6 weeks' notice should be provided. There is currently no guidance provided on the minimum notice requirement for delegates to access paid leave.

If the School provides approval for a delegate to attend the IEU training on 3 April or 8 May, and the School is not a small business employer, then the School will be required to provide paid leave for the training.

Union communications

The IEU has also asserted that one of the implications of the new provisions is that IEU chapter committee members who may fall within the meaning of 'delegate' have a right to communicate with members and non-members using the school email system concerning industrial issues.

While this is one interpretation of the new and untested legislation, it is noted that the law states that the union communications must be “reasonable communication” with members and non-members about their “industrial interests”.

In the current Award review process for Delegates rights, the Australian Council of Trade Unions (ACTU) has argued that the word “reasonable” should be interpreted only as providing a limitation on the amount of time a delegate can spend performing such activities, that is a delegate cannot spend excessive time on such communications. The ACTU submit that a delegate should be able to communicate about any matter using the means of communication which is used in the workplace (ie for Schools this would include email). However, the ACCI has argued that the communications must be limited to matters concerning the “industrial interests” (ie disputes about the industrial instrument, consultation about restructures and hours of work, bargaining and discipline matters).

While some caution must be taken due to the laws being untested, ACCI’s interpretation is reasonable in that communications should be limited to industrial matters. In particular, all staff emails should not provide a platform for delegates to comment on the School, its operations, and/or its decision making.

Are union delegates now permitted to send ‘all staff’ emails?

It is not clear under the new laws whether a school will be able to safely withhold agreement for delegates to send all staff emails, without breaching the Act. In particular, there may be a risk in withholding agreement as this could be a breach of the right to reasonable communication, and there are protections for delegates under the Act (new section 350A of the Act provides that, “*The employer of a workplace delegate must not..... unreasonably hinder, obstruct or prevent the exercise of the rights of the workplace delegate under this Act or a fair work instrument.*”).

This legislation is new and at this juncture untested. AISNSW will continue to provide updated advice as case law evolves and as the modern award review process develops.

For further information or advice, please contact the AISNSW Workplace Management Team on 02 9929 2845.

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