



Australian Government

Fair Work

OMBUDSMAN

NSW HUNTER REGION METAL, ENGINEERING AND ASSOCIATED INDUSTRIES AWARD 1998 EDUCATION AND COMPLIANCE CAMPAIGN.

Dated 31 October 2009

Summary

The Newcastle office of the Fair Work Ombudsman (FWO) ¹ initiated this campaign in January 2009. Our Fair Work Inspectors investigated the level of employer understanding of changes to the federal *Metal, Engineering and Associated Industries Award 1998* (the Award) as they affected apprentices. As the metal industries sector employs an expected high level of apprentices, we considered it a good target for an education and compliance campaign. The new Award provisions recognise progression (and increases in pay) of apprentices based on competency rather than the period of time they have been employed.

The inspectors contacted relevant stakeholders, followed this with information activities, and in March 2009, carried out 15 random audits in the Cardiff, Rutherford and Muswellbrook regions. In 13 of the 15 audits, they found no contraventions, but in the remaining 2 audits, they found contraventions in pay slip content and time and wage records.

The inspectors confirmed that while most employers were complying with workplace laws, there was a clear lack of understanding of the changes to the award's provisions for competency rather than traditional time-based remuneration of apprentices. As an outcome of this campaign, the inspectors reported greater employer awareness of the changes, recommended closer working relationships and information sharing between the employers and the training provider (eg TAFE), and our inspectors are contributing to ongoing discussions with the stakeholders.

Results

15 random audits were conducted. No contraventions were identified in 13 of the audits. Contraventions were identified in 2 of the audits. The following table provides an overview of audit findings as at 31 October 2009.

¹ Campaigns prior to 1 July 2009 were commenced and undertaken by the Fair Work Ombudsman's predecessor the Workplace Ombudsman.

Outcome of Audit	
Total employers audited	15
Total audits completed	15 (100%)
No contraventions identified	13 (86.7%)
Contraventions identified	2 (13.3%)

Contraventions identified

The following contraventions were identified:

- One contravention in regards to content of pay slips;
- One contravention in regards to content of time and wage records.

13.3 percent of employers were failing to keep records and issue pay slips containing the appropriate information in accordance with the *Workplace Relations Regulations 2006* (as in force at the time). The employers have been notified of their obligations under the Act and Regulations and are now complying.

Anecdotal and other results

Fair Work Inspectors noted that, in general, the businesses audited had good record keeping practices, and most apprentices appeared to be paid above the minimum requirements of the relevant Australian Pay and Classification Scale (APCS) and the award. Due to the over award payments, there was little, if any, evidence of actual underpayments.

However, a number of employers were found to be not progressing apprentices according to the new award provisions. Issues for employers included:

- The date of effect of the change. The Award provisions were varied in May 2006, but the NSW Vocational Training Order did not take effect until March 2008;
- Who signs off to confirm that the apprentice is competent;
- Are the competencies signed on a regular or annual basis ;
- Can the employer support the electives nominated in the training contract.

Following discussions with stakeholders, Fair Work Inspectors agreed that the requirement for competency based progression began from the date of the NSW Vocational Training Order (March 2008), rather than the date on which the provisions were varied (May 2006).

Background

Variations to the provisions of the federal *Metal, Engineering and Associated Industries Award 1998* state that progression of apprentices should be based on competency rather than on period of time employed. As soon as an apprentice has met the competencies required for a particular stage (and been signed off as competent), he/she goes to the next stage of the apprenticeship, with wages adjusted accordingly.

For example, apprentices may complete Stage 1 of the apprenticeship in 6 months if they are signed off as achieving 25 percent of the total competency points for the relevant Australian Qualifications Framework (AQF) Certificate III qualification, specified in the training plan. Apprentices may complete Stage 2 if signed off as achieving 50 percent of the total competency points for the relevant AQF Certificate III qualification. The apprentice will progress to the next stage of the apprenticeship after 12 months, if they have not been signed off as competent prior to this date.

Campaign aim and objectives

Our aim was to improve compliance with Commonwealth workplace laws by increasing employer awareness of their responsibilities in record keeping, and in observing changes to the provisions of the federal *Metal, Engineering and Associated Industries Award 1998* regarding remuneration of apprentices. The metal industry sector employs an expected high level of apprentices. For this reason, we targeted these industries for an education and compliance campaign.

Our specific objectives were to:

- Engage metal industry sector employers to assist them to meet their obligations under federal legislation;
- Involve stakeholders (Australian Industry Group (AiG), Department of Education and Training (DET) and Australian Manufacturing Workers Union (AMWU)) at each stage of the campaign;
- Conduct random audits to determine compliance with the Act and Regulations and employer implementation of the changes to Award provisions regarding apprentices;
- Provide an ongoing contact point for stakeholders and employers during the period of review and implementation of the Vocational Training Order by NSW Department of Education and Training.

Stakeholder involvement

Stakeholders included the AiG, DET and the AMWU (Newcastle Office). In January 2009, we consulted with local representatives from the AiG, and sought the following assistance:

- Details of their members, with particular reference to the level of federal award coverage in the Hunter region;
- To provide the number of apprentices and trainees;
- To notify their members of the Fair Work Ombudsman's campaign and advise them that they may be visited by a Fair Work Inspector.

We undertook further consultation with DET to clarify issues identified during the audit phase of the campaign, in particular, the date of effect of the Vocational Order.

We also contacted the AiG after the audits had been conducted to discuss issues that may affect their members.

Methodology

We commenced the process with stakeholder engagement followed by information activities. In March 2009, we carried out random audits in the Cardiff, Rutherford and Muswellbrook regions to gauge the industry's understanding of the new provisions.

The methodology used to achieve the objectives was:

- We met with local AiG and DET representatives;
- We met with local Trades Hall and Australian Manufacturing Workers Union (Newcastle Office) representatives;
- AiG promoted the campaign to their members at their Business Briefing and in their members' newsletter;
- We prepared an information sheet advising of the targeted campaign, and detailing the changes to the provisions relating to the progression of apprentices employed under the federal *Metal, Engineering and Associated Industries Award 1998*;
- DET distributed the information sheet to local TAFE colleges;
- We conducted targeted field audits.

Conclusions

The targeted campaign was undertaken as the metal industry sector has an expected high intake of apprentices, and Fair Work inspectors understood that employers had a clear lack of understanding of the new progression provisions for apprentices in the federal Metal Industry Award.

This campaign has assisted in educating and raising the profile of the Fair Work Ombudsman. It has demonstrated that while employers were complying with Commonwealth workplace laws, there is still confusion as to the implementation of the progression provisions in the Award for apprentices. The campaign increased employer awareness of the competency assessment requirements, but it also raised some key issues. We are holding discussions with all stakeholders to assist in the effective implementation of the provisions.

A DET representative has advised us that TAFE is reviewing the way it interacts with employers in signing off competencies. The intention is that the review makes determinations in this area clearer. This is seen as the key to assisting in future compliance in this area.