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Employers win right to pay below minimum wage

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Employers will be able to undercut minimum wages under the government's industrial relations system by entering agreements with employees to average out pay over periods of up to 12 months.

New provisions in the workplace relations regulations open the way for employers facing seasonal fluctuations in business activity to pay below the minimum wage during some periods, provided they make up the difference at other times of year. The minimum wage averaging provision, not previously announced, is included in hundreds of pages of regulations that yesterday sparked fresh political debate over the government's industrial reforms, which come into effect next Monday.

The regulations impose onerous obligations on employers to maintain detailed records of all employees' working hours and other arrangements for seven years.

The regulations exclude middle managers and executives earning more than \$94,900 a year from the new unfair dismissal jurisdiction.

They also give third-party businesses or workers who are not involved in a dispute but are being commercially damaged by unlawful industrial action greater scope to pursue penalties from the striking workers or their unions.

Prime Minister John Howard yesterday insisted the regulations did not contain any surprises.

"We've had a lengthy debate about this and obviously that debate will go on. It's a democracy. But this legislation is not extreme," he said.

But the country's top arbitrator, Australian Industrial Relations Commission president Geoffrey Giudice, has warned that the Work Choices legislation would have a significant effect on the incomes of the lowest-paid workers.

"People with low skill levels, low bargaining power, are heading for the Fair Pay and Conditions Standard, which will have an effect on their incomes,"

Justice Giudice told an Australian Mines and Metals Association conference in Launceston last week.

"This will be accompanied by a slowdown in the rate of growth of minimum wages. That is what the Fair Pay Commission is for," he said.

"There is no doubt that the statutory criteria that the Fair Pay Commission must apply are directed at the market clearing rate and that is not the regime the [AIRC] was required to have regard to."

Justice Giudice's comments - reported by industry newsletter Workplace Express and confirmed by a spokesperson yesterday - are embarrassing to the government, which has insisted that the Fair Pay Commission will not preside over lower increases in minimum wages.

One of the most contentious regulation issued by Workplace Relations Minister Kevin Andrews at the weekend is regulation 7.1, which deals with the application of the act's minimum wage guarantee.

The head of Minter Ellison's Sydney human resources and industrial relations practice, Andrew Cunningham, said it allowed employment agreements or contracts to average rates of pay over a period of up to 12 months.

The legislation's Fair Pay and Conditions Standard on minimum wages would be satisfied if the pay rates under such deals met the minimum taken over the entire 12-month period rather than during each pay period.

ACTU secretary **Greg Combet** said: "Anything which allows the minimum standards to fall below the absolute minima is a great risk for employees because people who are in the position of receiving minimum standards are by definition without bargaining power and very vulnerable."

Business is also likely to have concerns with Part 19 of the new regulations, which significantly extend obligations for employers to maintain records for their employees.

Employers will have to keep records for each employee, including senior executives, for at least seven years and will be subject to strict legal liability and fines of up to \$2750 for any contravention.

The records will not only have to include details of how much an employee is paid and leave entitlements but also daily starting and finishing times of work.

Mr Cunningham said the regulations extended existing obligations under state and federal industrial law to keep time and wages records, making personnel record-keeping requirements broader and more onerous.

He said the requirement to record starting and finishing times would create a challenge for employers of white-collar workforces and senior managers.

The NSW government, which is spearheading a High Court challenge by the states against the Work Choices legislation, echoed business concerns about the liability of employers for fines.

NSW Industrial Relations Minister John Della Bosca said employers, particularly small business, would be buried under red tape.

Caption :PHOTO: Workers in Melbourne rally against the new industrial relations regime. Photo: SIMON O'DWYER

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