



## **NURSING UNION RAMPING UP PUSH FOR ENTERPRISE BARGAINING IN MEDICAL PRACTICES – COULD THIS FLOW ON TO DENTAL PRACTICES?**

### **Recent action by Nurses Union**

It has come to our attention that the a prominent Nurses Union has recently sent notices to various general medical practices notifying them of a log of claims, including a 20% wage increase, which the Union will be seeking to be applied across the industry.

This is possibly a prelude to forcing employers to the bargaining table and/or an exercise in roping in new members to the union with the promise of an increase in terms and conditions. The later has become more likely since several unions commenced outsourcing the recruitment of new members.

The question was asked of us as to whether it is possible the same could occur in regard to Award covered employees in the Dental industry and what employers can and should do in these circumstances.

The answer to the first part of this question, as to whether or not it can occur is of course; yes it can.

### **Can an employer be made to negotiate an Enterprise Agreement?**

Under the Fair Work Act an employer can be made to negotiate an Enterprise Agreement with their employees – or a representative appointed by the employees, such as a Union.

If the Union or employee's approach the employer seeking to have the employer enter into enterprise bargaining negotiations in circumstances where a majority of employees support this, then the employer will be required to negotiate an Agreement in compliance with the good faith bargaining provisions of the Act.

The good faith bargaining provisions include to:

- Recognise and bargain with the other bargaining representatives involved;
- Attend and participate in meetings at reasonable times;
- Disclose relevant information in a timely manner (this excludes confidential or commercially sensitive information);
- Respond to proposals made by the other bargaining representatives in a timely manner;
- Genuinely consider the proposals of the other bargaining representatives and provide reasons for the responses; and

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- Refrain from behaving in a way that undermines freedom of association or collective bargaining.

The Act does not require that the employer agree to what is requested throughout the negotiations – however it must take part in the process.

### What should you do if you receive such a notice from a Union?

Firstly, if you have not already done so, make sure the terms and conditions you provide to your staff comply with the requirements of the *Health Professionals and Support Services Award 2010*.

You are obliged to provide the Award terms and conditions to your employees as a minimum – so make sure you are doing this.

If you have varied the way the Award applies (ie. are paying a ‘rolled up’ hourly rate incorporating overtime or other terms) make sure you have done so in the correct manner – either via an enterprise agreement or a correctly drafted common law contract.

If you are complying with the Award you are on solid ground and have nothing to fear regarding potential underpayments or other such claims should the union push the issue.

Secondly, if you do not wish to enter into enterprise bargaining and are not aware if a majority of employees supports the push for an agreement you can refuse to bargain. The Union or employees will then be required to seek a majority support determination from Fair Work Australia to force you to negotiate.

Thirdly, if you are forced to negotiate – or are happy to do so – spend some time determining your bargaining strategy and what you are willing to negotiate on and to what extent. This will stand you in good stead throughout the process.

Finally, contact IR Assist to seek advice as to the Enterprise Bargaining process, your rights and obligations as required.

Always remember however that no matter what you are told by a Union forcing the issue, their log of claims or their evidence of ‘industry standard’ is irrelevant to your lawful obligations. The Award is your minimum obligation (subject to any above Award conditions you have contractually agreed to).

It is worth stating that there are great potential benefits from an appropriate enterprise agreement, so should you be requested to enter into the bargaining process it may be worth considering. It is however, important to do so from a position of knowledge regarding what you must do, can do and specifically wish to achieve.

**For further Workplace Relations advice Contact IR Assist on:  
p: 1300 393 519 | m: 0408826625 | e: [andrew@irassist.com.au](mailto:andrew@irassist.com.au)**