



Express Search



▶ NEWS ▶ HR STREAM ▶ IR/HR JOBS ▶ WHAT'S ON ▶ RESOURCES ▶ ABOUT US ▶ FREE TRIAL ▶ SUBSCRIBE ▶ CONTACT

Latest News

SESSION ACTIVE

▶▶ FWA junks fast food giant's agreement

27 April 2010 9:51am

Fair Work Australia has rejected McDonald's Australia's enterprise agreement, finding it was deficient and failed to meet pre-approval requirements and the no disadvantage test. FWA has also referred to the Fair Work Ombudsman apparent underpayments to employees by the corporation and its franchisees.

In a damning 105-page decision, Commissioner Donna McKenna has described the proposed agreement as exploitative and providing an "emphatic diminution" of terms and conditions for the 80,000 employees covered and McDonald's' evidence as unreliable and in "disarray".

She found the agreement failed to meet statutory requirements on a number of fronts, each of which, on their own, would have justified rejecting it.

Commissioner McKenna found the application itself deficient in providing "required information", even after McDonald's provided extensive supplementary material. It had still failed to submit information about "a wide range of matters that must be addressed" by agreement applicants, she said.

She said it was "put at its lowest, unsatisfactory" that the application should originally have been put to FWA with incomplete and inaccurate declarations (see Related Article).

"This is particularly so in circumstances where a major employer represented by a major industrial organisation (namely, the Australian Industry Group ("AIG")) and a major union [the SDA] have been involved in the processes for the application concerning the approval of an enterprise agreement proposed to cover approximately 80,000 employees", she said.

She also found that the company had failed to meet pre-approval requirements, when it failed to:

1. communicate to employees the time and place of the agreement ballot and the method of voting (s180(3)). She found the company had provided some material during the seven-day access period and proffered only "hearsay" evidence to support its claim that its franchisees and restaurant managers had told the 80,000 employees about the details of the ballot. She said the low turnout - just 44% voted - might have been due to deficiencies in the corporation's communications;
2. explain the terms of the agreement and their effects to employees (s180(5)(a)). The company hadn't provided necessary documents to employees, while posting information on the "metime" intranet didn't meet requirements. The company couldn't simply delegate the provision of the agreement to the SDA, she said;
3. explain the agreement in an appropriate manner. The company had failed to "differentiate" its approach for its predominantly young employees (65,600 under 21), or to direct attention to the potential special needs of the 2,400 employees with disabilities and 28,800 employees from non-English-speaking backgrounds;
4. ensure the agreement was genuinely agreed (s186(2)(a)) - she found that Tasmanian employees could not have genuinely agreed to wage rates in the agreement, which were below the federal minimum wage, while some summary materials put the "best gloss" on what was in the agreement rather than providing objective information about provisions such as minimum engagement; and
5. provide material to employees that is incorporated in the agreement by reference.

Commissioner McKenna also resumed her critique of the agreement's "opting out" arrangements that exclude level 4 employees - shift or trainee managers - from protection from unreasonable

LOGOUT ▶▶

SETTINGS ▶▶

COURSES ON

Strategic ER

Workplace relations & employee engagement

CLICK HERE FOR MORE INFO

WORKPLACE
▶▶ express
IR & HR Jobs

Click here to see more jobs

patterns of working time (see Related Article).

She rejected the contention by SDA advocate David Bliss that the deal provided "stringent protection" against rostering the managers for shift patterns not allowed under the award, saying it provided "potentially quite exploitative arrangements" for rostering young employees who would have limited practical ability to refuse "requests to work under such potentially unsatisfactory arrangements".

Multitude of disadvantages outweigh advantages

Commissioner McKenna said the agreement failed to meet the no disadvantage test, as its "multitude of disadvantages" hadn't offset its "marginal advantages".

She acknowledged it would have been an "onerous task" for McDonald's to develop a single national agreement when there were "markedly" different terms and conditions in each state and territory.

But the agreement, she said, "would represent an emphatic diminution in overall terms and conditions".

The 80,000 employees covered by the deal would be "poorly served" if FWA approved it, she said.

Not only did it fail the no disadvantage test, but it "it significantly compromises industrial standards that would be expected for agreement-reliant employees – considering, in particular, that these employees are mostly young and mostly casually employed".

She said she would refer to the Fair Work Ombudsman evidence that McDonald's and its franchisees had been underpaying employees.

Commissioner McKenna said McDonald's appeared to have failed to pay casual employees in NSW the annual leave payments they are entitled to under the Annual Holidays Act. It had also apparently underpaid meal allowances when it failed to provide the no-cost meals required under awards and possibly failed to pay the correct junior rate to 16-year-olds in WA.

[McDonald's Australia Pty Ltd on behalf of Operators of McDonald's outlets \[2010\] FWA 1347 \(23 April 2010\)](#)

PRINT PAGE 

Further Information

Related Article [FWA reserves decision on McDonald's enterprise deal](#)

Related Article [FWA threatening to reject McDonald's deal that excludes \\$360-a-week junior managers from key protections](#)

Advanced Search

Search for

Within From:
To:

Display 10 25

Words

Articles

SEARCH 

WORKPLACE
express
The source for IR/HR news

RSS 1.0

WEBSITE 

[Latest News](#) | [HR Stream](#) | [IR/HR Jobs](#) | [What's On](#) | [Resources](#) | [About Us](#)
[Free Trial](#) | [Subscribe](#) | [Feedback](#) | **RSS** 1.0

Specialist News

© Specialist News 2010