Change for employers tendering and performing building work

Employment Update Australia

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By:

At a Glance

The Turnbull government is likely to secure an earlier commencement date for provisions within an important component of the new Australian Building and Construction Commission laws ("ABCC laws") — the Code for the Tendering and Performance of Building Work 2016 (Cth) ("Code"). This change means that companies that have not achieved Code compliant enterprise agreements by the end of August 2017 will not be eligible to perform Commonwealth funded building work.

What is the Code?

The Code applies to participants in certain Commonwealth funded building projects (as outlined in Schedule 1 of the Code). Relevantly, s 11 of the Code prohibits certain 'union-friendly' provisions in enterprise agreements, such as limits on labour hire workers, contractors and visa workers.

Companies who enter into non-compliant enterprise agreements will not be eligible to be awarded Commonwealth funded building work in which the Commonwealth's contribution either exceeds AU$10 million or is between AU$5 million to AU$10 million and represents at least 50 per cent of the overall construction value.

What has changed?

The ABCC laws, including the Code, were first passed in November 2016. To secure the passage of the laws through the Senate, significant amendments were made to the Code, including extending the "transition period" for compliance with s 11 of the Code from nine months to two years. This meant that companies could still tender for and be awarded Commonwealth funded building work until 29 November 2018, irrespective of whether they had entered into enterprise agreements which were Code compliant.

That position has changed as a consequence of the Turnbull government’s agreement with Senator Derryn Hinch yesterday, and the subsequent introduction of the Building and Construction Industry (Improving Productivity) Amendment Bill 2017 ("Amendment Bill"). The Amendment Bill reduces the "transition period" for Code compliance back to nine months. The government has agreed that the proposed changes will be sent to a Senate Committee, which is expected to report back next week. After the report is received, the Amendment Bill will be put to a vote and is expected to pass.

What does this change mean for employers?

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.
Assuming that the bill passes, employers will only have until the end of August 2017 to renegotiate any enterprise agreements which do not comply with s 11 of the Code. A non-compliant agreement on foot after August 2017 will preclude a company from being awarded a Commonwealth funded building project.

These changes are likely to lead to intense negotiations between companies and unions to achieve Code compliant enterprise agreements. Given the time constraints and what is at stake for companies in these negotiations, unions will have substantial leverage to insist on increased wages and conditions in exchange for the removal of non-compliant clauses. Companies are advised to move swiftly to formulate a strategy for renegotiation of any non-compliant enterprise agreements and to seek further legal advice to ensure that any renegotiated agreements are Code compliant.

DLA Piper’s employment practice has extensive experience assisting employers meet their obligations under the workplace relations framework for the building and construction industry.

For further information please contact the author.