

Employment & Industrial Relations Client Alert

8 July 2010

Increase to the high income threshold

With the arrival of the new financial year, the high income threshold under the *Fair Work Act 2009 (Cth)* has increased from \$108,300 to \$113,800.

The increase in the high income threshold is relevant in three ways:

1. If no modern award or enterprise agreement covers an employee's position, that employee may only make a claim for unfair dismissal if their income is below the high income threshold;
2. Where an employee has been given a guarantee of annual earnings that exceeds the high income threshold, the Fair Work Act requires the employer to give written notice to that employee that any modern award that would otherwise apply to their position will not apply; and
3. Compensation payable on a successful claim for unfair dismissal is now capped at \$56,900.00, or the equivalent of six months of the dismissed employee's wage, whichever is lower.

Employers need to be aware that some "high income employees" who were previously excluded from accessing their award entitlements will now fall fully within the scope of the applicable award. Any high income guarantees where the total earnings are in the range between \$108,300.01 and \$113,800.00 are no longer effective to exclude the award.

Similarly, any employees whose earnings fall in the range between \$108,300.01 and \$113,800.00 were previously unable to claim unfair dismissal, but may now do so.

For the purpose of clarification, when calculating an employee's earnings to determine whether they are a high income employee, earnings do not include statutory superannuation payments, or payments such as bonuses or commissions which are not guaranteed.

If you have any questions about how an employee's entitlements may be impacted by the change on the high income threshold, or about employee entitlements in general, please contact the Employment and Industrial Relations Team at Russell Kennedy on (03) 9609 1555.

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