



# keynotes

Human Management Recruitment & Training



## 2010

Wishing you a very Happy New Year and a Prosperous year ahead.

It's the beginning of a new decade so let's hope it heralds a better time for everyone.

Already we have seen signs of a return in consumer confidence.

In Australia we have been somewhat protected and our economy seems to be improving earlier than others such as the UK and US markets.

Now is the time to reflect on the last decade!

Remember Y2K and what we were threatened with? Well we survived that as well as the last twelve months!

Look forward to the next year and decade ahead. Take time to live, love and laugh and hopefully life will be good to you.

Best wishes,

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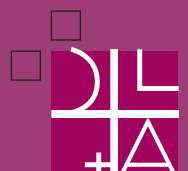
Gardening Leave Explained

Happy Birthday – DLA is 21!

### Denise Lock and the DLA Team

Member of **NPA/CML** which promotes and ensures the highest standards of Ethics, Quality and Professionalism. Offices in 64 countries.

Corporate Member **RCSA**- Australia and NZ's Recruitment and Consulting Services Association.



## Best Practice Guide – The Fair Work Act

Parts of the Fair Work Act commenced on July 1st 2009 including new unfair dismissal laws and the small business fair dismissal code, along with requirements for employers and employees to bargain in good faith whilst making enterprise agreements.

Other changes, such as the National Employment Standards (NES) and Modern Awards, commence from January 1st, 2010. It is best practice to be aware of and prepare for all the changes.

From January 1st 2010, all national system employers must provide ten minimum entitlements to full time and part time employees.

(See DLA's Winter 2009 Keynotes for further clarification here, or contact DLA and we will happily forward to you).

The NES will replace the five entitlements that currently make up the Australian Fair Pay and Conditions Standard.

The NES minimum entitlements are:

- Right to request flexible arrangements;
- Parental Leave;
- Annual Leave;
- Personal/Carer's Leave & Compassionate Leave;
- Community Service Leave;
- Long Service Leave;
- Public Holidays;
- Notice and Redundancy Pay;
- Fair Work Information Statement;
- Hours of work

**Modern Awards** will consolidate existing awards so that they are industry or occupation-based. It is anticipated that this will be easier for both employers and employees to use and understand. By January 1st, 2010 most industries will be subject to a modern award.



Once the Modern Award system is established it will be administered by Fair Work Australia.

Many managers or higher income employees may not be covered by a modern award even if there is a relevant modern award for the industry in which they work. It will not apply to those employees who have a written guarantee of annual earnings at or above \$108,300 (indexed annually).

A Modern Award will not apply if the employer has an Enterprise Agreement that covers the employees that would otherwise be covered by a Modern Award. However, the base rate of pay in the enterprise agreement cannot be less than the Modern Award or the National minimum wage.

As an Employer you also have an obligation to keep records in respect of each employee containing certain information such as:

- Your business name;
- The employee's name;
- Whether the employee's employment is full time or part time;
- Whether the employee's employment is permanent, casual or temporary;
- The date on which the employee started work;
- Your ABN (from January 1st, 2010)

You will also need to provide your employees with payslips within one working day of paying them. Failure to comply with these obligations will see the employer liable for various penalties.

Employees are also protected against **Unlawful Dismissal**. There are no exemptions for small businesses. Examples include dismissing someone because of age, marital status, family or carer's responsibilities, pregnancy, physical or mental disability, race, sex, colour, religion and sexual preference.

It is unlawful to terminate an employee if they are temporarily absent from work due to illness, injury or parental leave.

If you are an Employer you should have a Best Practice checklist in place.

This will include:

- Finding out which Award your business is currently covered by and which Modern Award you will be covered from January 1st, 2010;
- Will your business comply with the NES when it comes into effect on January 1st, 2010?
- Keeping required records and giving all employees payslips;
- Are you aware of your options for making an Enterprise Agreement with employees?
- Do you understand how to bargain in good faith if you want to make an Enterprise Agreement with employees?
- Is your business equipped to prevent unlawful dismissals from arising?

For further information please visit:

**[www.workplace.gov.au](http://www.workplace.gov.au)**;

Remember if in doubt, check first!

## Gardening Leave Explained

“Gardening Leave” clauses in employment contracts can be effective as it allows company secrets to be kept away from competitors, as well as preventing departing employees from disrupting the workplace.

Employees who are dismissed and paid in lieu of notice are free to immediately approach competitors. Those who resign or are retrenched and stay on for the duration of the notice period can become unproductive, disruptive to others or may even collate confidential information to be used at a later date.

A “Gardening Leave” clause allows employers to direct an employee who has resigned or is retrenched to stay away from the workplace and discontinue working anywhere for a pre-determined period of time.

In other words, the employee remains 'in the employment' of the organisation and is restricted in the short-term from obtaining work with a competitor, by the obligations of his/her

employment contract, including confidentiality and restraint clauses.

Please note:

“Gardening Leave” clauses have been found invalid by the Courts in the past if an Employee can argue that:

- Skills will be lost through inactivity;
- Ongoing employment is needed to maintain public reputation;
- Remuneration is dependant on bonuses and commissions

In most cases these clauses are generally binding.

Employers also have the right to obtain a court injunction if Employees ignore their “Gardening Leave” clauses and seek opportunities with a competitor in breach of their employment contract.



# Happy Birthday – DLA is 21!

## Twenty-one!!

Thank you to all of our clients and candidates who have supported us since January 1989 when Denise Lock opened the doors with Clive Lucas being the first person to join the business.

How time flies! Since then we have had a number of moves, opened and closed an office in Sydney, have been “Highly Commended for Excellence in Customer Service” by the Australian Achiever Awards for the past nine years, joined NPA and CareersMultiList (CML) which gives us 500 National and International partner Agencies that we work with across Asia Pacific and the Middle East.

Client assignments and candidates come from a wide range of countries including the UK and US as well as Singapore, Hong Kong, Thailand, Malaysia, Dubai, Beijing and Shanghai and of course closer to home across Australia and New Zealand. These are sourced from our own networks or via NPA and CML.

We look forward to being of assistance to you in 2010.

As usual we are closed from December 23rd until January 4th.

Best wishes,

**Denise Lock.**



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