



Bargaining and workplace relationships

Termination of enterprise agreements after nominal expiry date

These amendments form part of an Australian Government commitment to ensure the process for agreement terminations is fit for purpose and fair.

What has changed?

The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* amends section 226 of the *Fair Work Act 2009* to provide that the Fair Work Commission (the Commission) must terminate an enterprise agreement that has passed its nominal expiry date, on application, if satisfied that it is appropriate in all the circumstances and:

- the continued operation of the agreement would be unfair to employees covered by the agreement, or
- the agreement does not, and is not likely to, cover any employees, or
- the continued operation of the agreement would pose a significant threat to the viability of the employer's business.

In deciding whether to terminate an agreement, the Commission must have regard to whether bargaining for a proposed replacement agreement is occurring and whether the termination would adversely affect the employees' bargaining position.

The views of the relevant employers, employees and unions covered by the agreement must also be considered.

Terminations approved because of a threat to the viability of the employer's business must also be likely to reduce potential job losses. Each employer covered by such an agreement must give the Commission a guarantee of termination entitlements relating to redundancy, insolvency or bankruptcy. This would preserve employees' redundancy and other termination entitlements, if they are more beneficial than a relevant award, as if the terminated agreement was still in operation, for a period of up to 4 years.

The amendments also provide that applications to terminate an agreement under sections 225 and 226 of the Act must be heard by a Full Bench of the Commission if the agreement still covers employees and the application is opposed by any party covered by the agreement.

Agreements are still able to be terminated with the consent of employees under section 223 of the Act.

What do these changes mean?

These amendments are intended to promote good faith negotiations by stopping agreement terminations from being used as a bargaining tactic, while ensuring that legitimate termination applications can continue to be made.

Agreements will continue to be able to be terminated or varied by consent.

When will these changes come into effect?

These changes came into effect on 7 December 2022.

For more information on the *Secure Jobs, Better Pay* package visit:

www.dewr.gov.au/workplace-relations.