Enterprise Bargaining – What to consider before you start?

The LASA ER team often receives telephone calls from Members regarding enterprise bargaining.

The types of questions a Member may include seeking advice about an upcoming bargain, an agreement already in place or from a Member under the modern award system who is considering moving to an enterprise agreement or has been asked by a union to commence bargaining.

As staff costs represent approximately 85% of the total costs of aged care, the outcome of a bargain can be too costly not to get it right. With this, and where a Member is considering developing and implementing an agreement, our question to our Member is simple, yet rarely answered with confidence – “why”?

- Why do you want an agreement?
- Why do you need an agreement?
- What do you hope to achieve by introducing an agreement?

Generally, a Member will answer the “why” question with either or both of these reasons; they need an agreement because they feel restricted by the terms and conditions of the modern award they are operating under, or other aged care providers have an agreement in place and they want to remain competitive. The explanation behind either of these responses is reasonable and logical, an agreement can assist with attraction and retention of staff and assist an employer keep pace with other employers in the industry. Also, an agreement can enable an employer to change elements of a modern award that do not fit the way they do, or want to do, business with their clients and employees now and into the future.

However, there are a number of other factors that should part of an assessment when deciding whether you develop and introduce an agreement.

Specifically, an employer should be aware that:

- the Fair Work Act 2009 sets rules around bargaining including ‘good faith bargaining’. Good faith bargaining means parties must attend and participate in meetings at reasonable timeframes; disclose relevant information; respond to proposals made by other bargaining representatives; refrain from capricious or unfair conduct that undermines freedom of association or collective bargaining; recognise and bargain with the other representatives and give genuine consideration to the proposals of other bargaining representatives for the agreement and give reasons for the bargaining representative’s responses to those proposals;

- once an enterprise agreement is in place it is very difficult to terminate an agreement should an employer at some stage over time prefer to operate under the modern award system. Although terminating an agreement can and has been done, it is more complicated that simply deciding not to continue under an enterprise agreement and reverting to the modern award system;

- an agreement is likely to require continued renegotiations each time it expires;

- an agreement can modify and remove specific Modern Award terms and conditions, however to achieve these changes the agreement must make each employee better off overall when compared to their relevant Modern Award; and finally but not lastly,

- opening a bargaining period opens an employer to the ability for a party to the agreement to engage in protected industrial action.
Enterprise bargaining also offers a range of opportunities for an employer. An agreement can:

- allow an employer to amend/modify/remove terms and conditions otherwise applicable under the relevant Modern Award/s;
- allow an employer develop a classification table that more closely aligns with organisation positions;
- create career paths and recognition of positions otherwise not contained in the relevant Modern Award;
- create positive engagement opportunities with staff and demonstrate an employers’ commitment to staff representation and consultative committees by including such clauses in an agreement;
- enable an employer to develop language in an agreement that identifies with that employer’s mission, values, and objectives;
- offer security, by fixing the wages and terms and conditions in an agreement, an employer is less impacted by Modern Award review proceedings, national wage case outcomes and other proceedings that may influence terms and conditions for modern award system employers; and finally but not lastly
- allow an employer to develop terms and conditions that their current and future workforce seeks, improving attraction and retention of current and potential staff.

Members are reminded that the above points are detailed for consideration and not a position to, or not to, bargain. Each employer should, prior to bargaining (whether that be for the first time, or renewal process) consider their ‘why’ and what they want to achieve in their bargain.

We recommend you set your bargaining objectives, consider your bargaining framework and go in to a bargain prepared.

We also remind Members that while LASA engages in bargaining, and interprets agreements for members, we also offer a range of bargaining and preparation assistance, including reviewing and comparing agreements and wages tables, researching clause wordings and innovative inclusions in approved agreements in and outside the aged care industry and highlighting options available to Members depending on their current bargaining status/progress.