

Practice Notes for Brokers

Understanding insurance obligations imposed by union led collective agreements

Introduction

To date there have been few markets available to accommodate the full cover required by some union collective agreements. This has led to brokers forgoing what can sometimes be large commissions and losing control of part of their client's portfolio to competitors. With greater understanding and access to a new fully-compliant market, there exists a great opportunity for organic growth.

Union led collective agreements come in numerous forms, such as:

- Site Specific Agreements;
- Project Specific Agreements;
- Industry Specific Agreements; and
- General Agreements.

These agreements can be State or Federal ratified and are often referred to as Enterprise Bargaining Agreements "EBAs" or Certified Agreements "CAs".

Employers who enter into such agreements will often find there is an obligation to arrange certain insurances for their employees, the most common being Group Personal Accident & Sickness Insurance (GPAS). This paper will focus on the insurance requirements imposed under the CFMEU (WA) Union Collective Agreement.

Insurance requirements of the CFMEU (WA) collective agreement

Let us now look at and analyse the insurance clauses of this agreement:

35. INCOME PROTECTION INSURANCE

35.1 24 Hour Accident and Sickness Insurance

- a) The Employer must insure employees for 24 hour accident and sickness income protection from the date the Agreement comes into operation.
- b) The Insurance must be a policy with entitlements **no less than** the entitlements contained in the model Insurance policy including, **but not limited to**, 24 hour cover, weekly benefits of 100% of the employees' Ordinary Wages to a maximum of not less than \$2,200 per week, a 7 day waiting period (28 days for sporting injury claims), a benefit period of 104 weeks maintained for persons up to the age of 70 years and funeral benefits of not less than \$10,000." (name of model wording removed, bold and underline added)

Analysis

The benefits and limits contained in this clause act as a guide only due to the two key "cover-all" phrases of: "...no less than..."; and "...not limited to...". Thus to ensure an alternate insurance program fully complies with this clause, a full review of the cover provided under the model wording and policy schedule is required to understand all benefits and limits provided.

Common areas of non-compliance with S35.1

Some of the most common areas of non-compliance with clause 35.1 include:

Age

Illness cover ceasing at age 65.

Illness cover needs to be up to the age of 70.

Death and Capital Benefits

Not including \$100,000 Death and Capital Benefits cover.

The schedule of benefits is listed in the policy wording but you will only find the limit of indemnity (or "entitlement") on the policy schedule.

Stress

Stress and/or mental health exclusions.

Subject to an Insured Person being treated by a psychiatrist, psychologist or similar specialist, the policy needs to respond to such claims.

Epidemic exclusions

Swine and/or Bird flu exclusions.

No such exclusions exist in the model wording or in most competitor wordings. Some competitors however have these exclusions as compulsory endorsements in their quote/renewal terms making the terms non-compliant.

Wages Definition

The definition of wages within the policy not matching the definition of "Ordinary Time Earnings" (refer to clause 35.3 of the agreement). *Wages definitions which do not take into account items such as: overtime; superannuation; and all allowances (such as meal allowances; tool allowances; travel allowances and the like) are non-compliant.*

Insured Persons Definition

Cover limited only to those employees named on the declaration. *The policy needs to cover all employees required to be covered under an Employers EBA. Variations such as: "all persons specified in the Schedule" or "all persons listed in the application" or "all persons employed at the beginning of the period of insurance" are all non-compliant.*

Pre-existing Condition Definition

A typical definition is: "...was aware of OR for which the Insured Person has received medical attention..." whereas the definition required is: "...was aware of AND for which the Insured Person has received medical attention..."

It is also common for there to be an unlimited or 12 month time frame applying to pre-existing conditions. Only a 6 month, or lesser, time frame complies.

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35.2 Workers Compensation Top-Up Pay

- (a) The Employer must insure employees for Workers' Compensation Top-Up Pay ("Top-Up Pay") from the date of signing the Agreement"
- (b) For the purposes of this clause "Top Up Pay" means a weekly payment by the Employer to the employee of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the Workers' Compensation and Injury Management Act 1981 (WA) (as amended from time to time) and the employees Ordinary wages

Analysis

This clause and the cover required is self-explanatory. With the current maximum level of cover provided by Workers Compensation exceeding the \$2,200 per week cap on the Accident & Sickness policy, this cover is generally only called upon after the Insured Person has been incapacitated for longer than 13 weeks (which is when the Workers Compensation benefits in WA step down to 85% of average weekly earnings).

- 35.4** If the Employer does not have current 24 hour Accident and Sickness or Top-Up pay insurance pursuant to subclauses 35.1 and 35.2, the Employer will be liable for all such claims arising, with payments to be made under the same terms and conditions as those outlines in subclauses 35.1 and 35.2.

Analysis

If a policy is arranged which does not fully comply, the Employer is deemed to be the insurer and will incur an uninsured loss. If a client provided a copy of their EBA to the broker, or if the broker failed to make reasonable enquiries as to the insurance requirements of their client, this is where the E&O exposure to the broker becomes clear and any uninsured loss may be recoverable from the broker.

36. Trauma Insurance

- 36.1 The Employer must insure each employee for trauma insurance providing financial compensation in the event of a work related accident resulting in death of the employee or permanent and total disablement.
- 36.2 The trauma insurance referred to in subclause 36.1 must be a policy with entitlements no less than a lump sum payment of \$270,000 in the event of the employee's death or permanent and total disablement.

Analysis

Unlike the Life Insurance "Trauma" product which can cover things such as: cancer; stroke; open heart surgery; brain surgery and the like, the cover required here is limited to death or permanent and total disablement arising from a work related accident.

Common areas of non-compliance with S36

There are two main areas of non-compliance with clause 36, which are:

Insured Persons Definition

Refer to notes under common pitfalls of clause 35.1 above.

Limit of Indemnity

Although the policy must provide a lump sum benefit of \$270,000, some insurers apply the following, non-compliant, schedule:

Age	Benefit
65	5 x annual salary to a maximum of \$270,000
66	4 x annual salary to a maximum of \$270,000
67	3 x annual salary to a maximum of \$270,000
68	2 x annual salary to a maximum of \$270,000
69	1 x annual salary to a maximum of \$270,000

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- 36.3** If the Employer fails to take out trauma insurance pursuant to subclause 36.1, the Employer will be liable for all such claims arising, with payments to be made under the same terms and conditions as those outlined in subclause 36.1 and subclause 36.2.

Analysis

See analysis notes for clause 35.4 above.



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