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HEADLINE: **Work law spells a boon for lawyers**

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BODY:

WORKPLACE relations experts have warned that businesses will need to become more sophisticated in their negotiations with unions and employees now they are subject to an obligation to bargain in good faith.

The changes could prove to be a boon for consultants, lawyers and finance experts called in to handle negotiations and justify responses to demands for wage increases.

Under Labor's new Fair Work Act, which came into force on July 1, businesses are obliged to bargain in good faith.

This includes a requirement for businesses to give genuine consideration to proposals and reasons for their response.

The new laws do not require concessions to be made during the bargaining process, but experience in the US shows the absence of concessions can be used as evidence of a lack of good faith.

Freehills partner Chris Gardner, who has just returned from a trip to the US with Melbourne barrister Stuart Wood and Arnold Bloch Leibler partner Henry Skene, said more regulation on bargaining meant a more sophisticated approach was needed from businesses.

The trio spoke to lawyers, regulators and academics in New York, Chicago and Washington to get a handle on what to expect in Australia under the new Fair Work regime.

In the US, Mr Gardner said, lawyers tended to conduct negotiations and finance experts helped to cost and prepare responses to union claims.

He doubted Australia would follow the US down that path, but businesses needed to put more resources into negotiations and to think through their bargaining tactics, he said.

``As with the US law, our law says there is no obligation to make concessions in negotiations," he said.

``But the learning from the US is that if you don't make concessions, that can be inappropriate

bargaining -- it can be a lack of good faith ... employers have to go into negotiations knowing they're going to have to make some compromises, and structure negotiations accordingly because otherwise they will be criticised for having a rigid position and not being open-minded and therefore not bargaining in good faith."

If that were the case, Fair Work Australia could step in and make a bargaining order.

Mr Gardner said it was also crucial that businesses could justify their response to employees' demands.

``What employers are going to be confronted with is a situation where if they can't or don't agree to a particular claim, they're going to have to justify why they can't agree," he said.

``It's therefore vital for employers to think through why a claim can't be met and be prepared to justify their position.

``If they can't, or their justification is wanting, the integrity of their negotiating position will be compromised."

Cochlear chief executive Chris Roberts said his business was trying to understand the consequences of the changes. He said there were a lot of unknowns until Fair Work Australia made its approach clear.

``In the meantime I think the sensible approach is to have a very deliberate, careful, step-by-step approach to try to understand the consequences of each action," he said.

The changes were bad for jobs in Australia, Mr Roberts said.

``Jobs will go offshore and jobs are going offshore," he said. ``The more business-unfriendly you make the environment in Australia, the harder you make it to invest in jobs in Australia."

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