

## What do you need to know from 1 January 2010?

From 1 January 2010 there are important changes in Australia's workplace laws that affect all employers and employees in the national workplace relations system.

The changes include the introduction of new National Employment Standards (NES); many employers in New South Wales, Queensland, Tasmania and South Australia are moving into the national system, and the commencement of modern awards.

Employers and employees need to be prepared for these changes.

- National Employment Standards (NES)
- Fair Work Information Statement
- Sole traders, partnerships & others moving into the national system
- Modern awards
- Transition to modern awards

## National Employment Standards (NES)

The Fair Work Act provides a safety net of enforceable minimum employment terms and conditions through the National Employment Standards (NES).

The NES sets out 10 minimum workplace entitlements which apply to all employers and employees in the national workplace relations system from 1 January 2010 (however only certain entitlements apply to casual employees).

1. **Maximum weekly hours of work** – 38 hours per week, plus reasonable additional hours.
2. **Requests for flexible working arrangements** – allows parents or carers of a child under school age or of a child under 18 with a disability, to request a change in working arrangements to assist with the child's care.
3. **Parental leave and related entitlements** – up to 12 months unpaid leave for every employee, plus a right to request an additional 12 months unpaid leave, plus other forms of maternity, paternity and adoption related leave.
4. **Annual leave** – 4 weeks paid leave per year, plus an additional week for certain shift workers.
5. **Personal / carer's leave and compassionate leave** – 10 days paid personal / carer's leave, two days unpaid carer's leave as required, and two days compassionate leave (unpaid for casuals) as required.
6. **Community service leave** – unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service.
7. **Long service leave** – a transitional entitlement for certain employees who had certain LSL entitlements before 1/1/10 pending the development of a uniform national long service leave standard.
8. **Public holidays** – a paid day off on a public holiday, except where reasonably requested to work.
9. **Notice of termination and redundancy pay** – up to 4 weeks notice of termination (5 weeks if the employee is over 45 and has at least 2 years of

continuous service) and up to 16 weeks redundancy pay, both based on length of service.

10. **Provision of a Fair Work Information Statement** – employers must provide this statement to all new employees. It contains information about the NES, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, rights of entry, transfer of business, and the respective roles of Fair Work Australia and the Fair Work Ombudsman.

The NES replaces the non-pay rate provisions of the Australian Fair Pay and Conditions Standard (the Standard), which applies up to and including 31 December 2009.

### Fair Work Information Statement

From 1 January 2010, all employers covered by the national workplace relations system have an obligation to give each new employee a Fair Work Information Statement (the Statement) before, or as soon as possible after, the employee starts employment.

### Sole traders, partnerships & others moving into the national system

From 1 January 2010, sole traders, partnerships, other unincorporated entities and non-trading corporations in New South Wales, Queensland, South Australia and Tasmania are covered by the national system rather than their own specific state system. Employers that were already operating under the national system continue to be covered (eg. Pty Ltd businesses, employers in the ACT, NT and Victoria).

There are special transitional rules for employers in these states to help them move into the national system, including:

- State awards that covered these employers and employees before 1 January 2010 continue to apply and are known as Division 2B State awards. They automatically terminate at the end of 31 December 2010 (except for State enterprise awards). These employers and employees are then covered by a relevant modern award.
- State employment agreements that covered these employers and employees continue to operate until terminated or replaced and are known as Division 2B State employment agreements

However, state awards and state employment agreements operate alongside the National Employment Standards (NES). This means that, employees must receive at least the minimum entitlements in the NES (to the extent that they apply), along with any other entitlements in their state award or workplace agreement (provided that these are at least as beneficial as the corresponding NES entitlement(s)).

- [What happens in my state? – state specific information](#)

### Modern awards

Another big change comes in the form of new "Modern Awards".

The Government intends to consolidate 2,500 awards into about 120, without taking away any advantages or benefits for employees or increase business costs. However, many businesses are still unsure whether their employees will be covered under certain awards, and whether the "miscellaneous award", which covers employees not covered by another modern award, applies to certain workers. However, modern awards may not apply to some managers or higher income employees (who have an appropriate guarantee of annual earnings of more than \$108,300 annually) even if a modern award covers the industry in which they work.

Modern awards contain terms and conditions about:

- minimum wages
- overtime and penalty rates
- types of employment
- work arrangements (eg. rosters, variation to working hours)
- hours of work
- rest breaks
- classifications
- allowances
- leave and leave loadings
- superannuation
- procedures for consultation, representation and dispute settlement.

Some modern awards also contain terms about redundancy.

### Transition to modern awards

Modern awards were created to establish one set of minimum conditions for employers and employees across Australia who work in the same industries and occupations.

As the modern awards replace thousands of federal and state-based awards, the impact of the wages and conditions in the modern awards vary between states, industries and employers.

To lessen the financial impact of the new arrangements, modern awards may contain transitional provisions which allow increases and decreases in minimum conditions to be progressively phased in. Modern awards may contain:

- a model phasing schedule
- transitional provisions specific to the modern award
- no transitional arrangements at all.

In modern awards containing the model phasing schedule, new rates of pay will not come into force until 1 July 2010 and may be phased in over 5 annual instalments.

If there are no transitional provisions in a modern award, then the wages specified in a modern award need to be paid from 1 January 2010.

The Fair Work Ombudsman has released a checklist for employers to consider:

- Do you know which Award your business is currently covered by and which Modern Award will apply from now on?
- Are arrangements in place so that the business will comply with the National Employment Standards now that they are in force?
- Are you keeping the required records and giving employees pay slips?
- 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?
- Do you understand and are you able to comply with the Small Business Fair Dismissal Code if terminating an employee's employment?

Remember – the role of the Fair Work Ombudsman is to investigate workplace complaints and enforce compliance with Australia's workplace laws. They will help employees make a complaint relating to their pay and conditions, workplace rights or discrimination. They also advertise a scheduled timetable of workplace compliance audits and [targeted campaigns](#) in certain industries. It pays to be prepared and pass one of these audits – [litigation](#) is only one of the outcomes if you don't comply!

[Do you need some help interpreting this information?](#)

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