

What are the National Employment Standards and how do they work?

The National Employment Standards (NES) are made up of 9 minimum employment conditions plus the [Fair Work Information Statement](#). Some aspects of the NES are comparable to the minimum standards under the previous legislation (eg annual leave). However, the NES expand the range of employer obligations, including redundancy pay, changed parental leave, and the right of working parents to request flexible working arrangements.

The NES are **minimum** provisions that apply to all 'national system employees' from 1 January 2010. The NES may be bettered by provisions in Modern Awards. The NES should be read in conjunction with the applicable Modern Award.

The minimum entitlements under the NES are:

1. Hours of work — The ordinary weekly hours which a full-time employee can be required to work is 38 hours. Employers can request that employees work additional hours provided they are 'reasonable'. Modern Awards and Enterprise Agreements may also include terms regarding averaging hours of work over a specified period.

An employer and an award/agreement-free employee also may agree in writing to averaging hours of work over a maximum period of 26 weeks.

2. Requests for flexible working arrangements — an employee who has responsibility for a child under school age or a person with a disability who is less than 18 years of age may request in writing a change in working arrangements to assist the employee meet their caring responsibilities. This entitlement only applies to an employee with at least 12 months continuous service with the employer. In the case of casual employees, this entitlement applies to longer term casual employees with periods of employment over a periods of at least 12 months who have a reasonable expectation of continued employment with the employer. An employer is entitled to refuse an employee's request for flexible working arrangements on reasonable business grounds but must provide written reasons for such a refusal within 21 days of the request.

3. Parental leave — an employee is entitled to 12 months unpaid parental leave, ie maternity, paternity or adoption leave, provided the employee has completed at least 12 months continuous service with the employer. An employee may also extend the leave period by an additional 12 months unpaid parental leave (total of 24 months) under certain circumstances. Such extension may only be refused on reasonable business grounds. Parental leave entitlements may also exist for the employee's partner.

4. Annual leave — a permanent employee (full-time or part-time) is entitled to 4 weeks paid annual leave for each completed year of service with the employer. Continuous shift workers (as defined in the relevant Modern Award) are entitled to 5 weeks annual leave each year (pro rata for an incomplete year). A part-time employee is entitled to a proportionate amount of leave based on their ordinary hours, while there is no entitlement to annual leave for casual employees. Annual leave accrues continuously and accumulates if it is not taken. An employee does not have to wait 12 months before being able to take any accrued annual leave.

Cashing out annual leave — the applicable Modern Award or enterprise agreement may contain a term that allows cashing out of annual leave but, if there is no award/agreement provision, cashing out is not permissible. Any cashing out provisions in a pre-Fair Work agreement continue subject to the provisions of the NES. The NES allows an 'award/agreement-free' employee to enter into an agreement to cash out a portion of their annual leave.

When cashing out occurs the employee will need to have at least 4 weeks annual leave remaining after the cashing out of leave has occurred. An employee is to be paid at their 'base rate of pay' for the period of annual leave, but Modern Awards often provide for 'ordinary pay' and the award provision would prevail.

5. Personal/carer's leave and compassionate leave — employees other than casuals are entitled to 10 days paid personal/carer's leave for each year of continuous service with the employer and up to 2 days paid compassionate leave for each occasion where a member of an employee's immediate family or household dies or has an illness or injury that poses a serious threat to his or her life. Entitlements are calculated on a pro-rata basis for part time employees. Casuals can take up to two days unpaid compassionate leave.

Personal leave, which can be taken as sick leave or carer's leave, accrues on the basis of the employee's ordinary hours of work and can be taken at any time subject to the employee providing reasonable evidence to the employer, on the employer's request.

Where there is no accrued personal/carers leave employees have an entitlement to take two days unpaid carer's leave when a member of an employee's family or household (as specified in the legislation) requires care or support because of illness, injury or unexpected emergency. Casual employees are entitled to up to two days unpaid leave per occasion.

6. Community service leave (including jury service) — an employee is entitled to take unpaid leave to engage in designated community service activities, such as a voluntary emergency management activity. In addition, employees, other than casuals, who take leave to provide jury service are entitled to be paid at their normal rate for a period of up to 10 days. The employer can require the employee to provide evidence the employee has taken all reasonable steps to obtain jury service pay, and may reduce the employers' payment to the employee by that amount.

7. Public holidays — an employee is entitled to a paid day off when a designated public holiday falls on a day the employee is ordinarily required to work. An employee can reasonably refuse to work on a public holiday. Penalty rates for work on a public holiday are determined by the applicable modern award or agreement.

The prescribed public holidays under the NES are: 1 January (New Year's Day), 26 January (Australia Day), Good Friday, Easter Monday, Anzac Day, the Queen's Birthday holiday (as determined by the relevant state or territory government), 25 December (Christmas Day), and 26 December (Boxing Day), plus any other day or part-day proclaimed as a holiday by a state or territory government for the state or territory or a region. When a public holiday is substituted it is the substitute day which applies.

8. Termination of employment — Notice of termination — the employer must give a minimum period of notice of termination, based on the employee's period of continuous service with the employer. The maximum period of notice is 5 weeks for employees who have completed 5 years service or more and who are aged over 45 years. The employer is also required to advise the employee in writing, of the date of termination no later than the date of termination. The requirement to provide written advice of the termination date applies whether or not notice is worked or paid out. This requirement does not apply to casuals, summary dismissal or term contracts.

9. Long service leave — in most cases, long service leave will continue to be provided by the relevant state or territory long service leave legislation. This is a transitional arrangement until a national long service leave standard is developed. State or territory law does not apply to an

employee whose entitlement to long service leave comes from an award or agreement which is continuing under transitional arrangements.

Fair Work Information Statement

Employers are required to issue a [Fair Work Information Statement](#) to all new employees before or as soon as practicable after the employee commences employment. The Statement includes information about the NES, modern awards and agreement-making under the Fair Work Act and is published by Fair Work Australia. The Statement does not need to be provided to employees who commenced work prior to 1 January 2010 or more than once a year to casual employees.

If you need any clarification on these standards, please contact us at [Inspire Success](#).