

focus

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The National Workplace Relations System

Bit by bit Australia is moving towards a single national workplace relations system. Most private sector employers in Australia are now part of the national system with the following groups of employers remaining outside the system:

- sole traders, partnerships, other unincorporated entities and non-trading corporations in Western Australia
- state government public sector employees in NSW, QLD, SA and Tasmania
- local government employees in NSW, QLD and SA.

For many of WorkSight's clients the current changes have required familiarisation with modern awards and the transitional arrangements contained within them as well as understanding other obligations arising from the Fair Work system.

Employers who have put in place enterprise agreements also need to be aware of the requirements arising under the National Employment Standards and ensure that minimum wage requirements are met within existing agreements.

National Employment Standards

The National Employment Standards (NES) apply to all national system employers from 1 January 2010 whether covered by a modern award or not. While all employees are covered by the NES, some entitlements for casual employees under the standard are limited.

The provisions of the NES include:

- maximum weekly hours
- requests for flexible working arrangements
- parental leave and related entitlements
- annual leave
- personal/carer's leave and compassionate leave
- community service leave
- long service leave
- public holidays
- notice of termination and redundancy pay.
- provision of Fair Work Information Statement

Fair Work Information Statement

From 1 January 2010, employers are required to provide new employees with the Fair Work Information Statement as soon as possible after they commence employment. The statement is produced in English and a range of other languages and can be downloaded from the Fair Work Ombudsman's [website](#).

Employers are required to deliver the statement by mail, fax, in person, by email or another method that ensures the employee receives the statement. Employers should keep a record of how and when the statement was provided to new employees. Many employers are including the Fair Work Information Statement in the range of documents provided to new employees as part of the induction program.

WorkSight takes the headaches and the hard work out of workplace relations and lets you concentrate on your business.

Modern Awards

The publication of the final group of modern awards by the Australian Industrial Relations Commission in December 2009 completed a massive task of reducing many hundreds of preserved federal and state awards into 122 modern awards. Although that part of the process was completed in 2009, the job is still not finished with many residual variations to be completed and Fair Work Australia having to manage hundreds of award variation applications in late 2009 and early 2010.

Employers should be aware that many awards are being varied and while the variations in some cases are minor there are also examples of significant changes to rates and conditions applying through an award variation. **Modern awards apply from 1 January with transitional arrangements allowing wages, loadings and penalties to be phased in from 1 July 2010 in 5 annual instalments.** As transitional provisions are fairly complex, employers may require advice where they think that a modern award may impact on current rates of pay. Award rates are likely to be varied by Fair Work Australia when it brings down its minimum wage decision which will apply from 1 July 2010.

Employers who are now in the national system because of a referral of their state workplace relations powers to the commonwealth (sole traders, partnerships, other unincorporated entities and non-trading corporations in New South Wales, Queensland, South Australia and Tasmania) have a further one year period during which they can continue to apply their preserved state awards. From 1 January 2011 these employers will also apply modern awards.

Employers employing apprentices and trainees in Queensland, while part of the national system, do not have to apply modern awards until after Fair Work Australia undertakes a major review into apprentice and trainee rates of pay which is scheduled for 2011.



Take-Home pay orders

The Fair Work Act provides for employees who have suffered a reduction in their take home pay as a result of award modernisation to seek a take home pay order.

FWA has published a guide to the process. Employers should avoid reducing the pay of any employee as a result of award modernisation as they could end up having a take home pay order made or they may be in breach of a common law obligation to continue paying existing rates.

A reduction in pay is also likely to adversely impact on the employee's commitment to the organisation. If you have discovered that the implementation of the modern award may result in a reduction in pay, seek advice before taking any action that may be detrimental to your employees.

The next phase of the award modernisation process will be the introduction of the minimum rates of pay from 1 July 2010. ”

What should employers have done by now?

- Are you covered by an award? If you have an enterprise agreement in place it continues although it must comply with the minimum rates in the award and the NES.
- What classification and rate of pay applies to any employees who are covered by the award?
- Employers need to check whether adjustments to allowances have occurred under the modern award, as all allowances (other than industry allowance which is subject to transition) in modern awards are payable from 1 January 2010.
- Are the times when ordinary hours of work can be rostered different under the modern award? Employees may be required to make adjustments. This may impact when overtime and penalty rates apply.
- Have you implemented the NES for all employees from the CEO down?

Fair Work Australia Minimum Wage Review

The Fair Pay Commission made its final wage determination in 2009, deciding that the impact of a general wage increase to award rates would have an adverse impact on employment. The responsibility for undertaking an annual review of minimum wages has now passed to Fair Work Australia which has established the Minimum Wage Panel to undertake this task. Public consultations will commence on 17 May 2010. Any decision will apply from 1 July 2010. More information about the 2010 review can be found at FWA website.

What are the next steps?

The next phase of the award modernisation process will be the introduction of the minimum rates of pay from 1 July 2010. Employers will need to assess whether they wish to adopt the transitional arrangements where rates are higher in the modern award, or adopt the modern award rate from day one. And where rates in the modern award are lower, existing employees cannot suffer a reduction in take home pay. The effect of adopting lower rates for new employees should be carefully considered, as they may find out fairly quickly that they are being paid less than their colleagues.

Individual Flexibility Agreements under the Fair Work Act

All modern awards (which commenced operating on 1 January 2010) and all new enterprise agreement must contain an individual flexibility provision.

A flexibility term allows an employer and an individual employee to agree on an arrangement which varies the effect of the modern award or enterprise agreement in order to meet the needs of the employer and the individual employee. The Fair Work Act requires that under such arrangements the employee covered by the Individual Flexibility Agreement (IFA) is “better off overall” compared to the relevant modern award or enterprise agreement. IFAs are limited to the matters referred to in the flexibility clause of the underlying award or enterprise agreement. Where the model flexibility term is incorporated into a modern awards or enterprise agreement it will only allow variation of the effect of:

- arrangements for when work is performed such as working hours
- overtime rates
- penalty rates
- allowances, and
- leave loading.

Some awards and enterprise agreement may not have adopted the model clause, so you should check what matters have been included in the flexibility clause of the relevant award or agreement.

An IFA is made by negotiation between the individual employee and the employer. Providing the employer is satisfied that the employee is better off overall, the agreement must be recorded in writing and signed by the parties to the IFA. If the employee is under 18 years of age, the parent or guardian of the employee must sign the IFA. IFAs do not need to be submitted to Fair Work

Balanced and practical workplace solutions

WorkSight provides balanced and practical workplace solutions to help your business run smoothly.

Contact WorkSight if you need advice on:

- Correct rates of pay and meeting your obligations
- Making an agreement
- Award interpretation
- Investigating workplace conflict
- Mediation between employees
- Dealing with employee problems
- Dismissal options
- Restructuring your staffing profile

This newsletter is intended to provide a general outline and is not intended to be and is not a complete or definitive statement of the law on the subject matter. Further advice should be sought before any action is taken in relation to the matters described in this newsletter.

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