

focus

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WorkSight's new website

WorkSight has proudly launched its new website showcasing the latest information in a user friendly format. We are excited about these changes and the progress of the business. Take a look around the site. [WorkSight](#).

A members only section is just around the corner.

Annual Wage Review 2011

Fair Work Australia has handed down its 2011 annual wage review [decision](#), adjusting award wages by 3.4%.

Features of the decision include:

- Allowances which are set by reference to the standard rate in awards will be adjusted by 3.4% as a result of this decision.
- Expense related allowances which are adjusted by reference to the relevant CPI adjustment factor in accordance with the modern award provisions will be increased by the percentage movement in the applicable Consumer Price Index figure between 31 March 2010 and 31 March 2011, published by the Australian Bureau of Statistics. Draft determinations in relation to each award will be published by Fair Work Australia for review before the orders to vary the awards are finalised.

- Preserved transitional award instruments including transitional APCs, State reference transitional awards and Division 2B State enterprise awards will be adjusted in accordance with this decision.
- Wages in Division 2B State awards relating to Queensland trainees and apprentices and to employees subject to specific Queensland labour market programs will be varied to achieve parity with minimum wages in the corresponding transitional APCs and State reference transitional awards
- The federal minimum adult wage for award/agreement free employees will increase to \$15.51 per hour or \$589.30 per week
- The federal minimum casual loading for award/agreement free employees will move to 22%.
- Casual loadings in awards will remain unchanged

Transition to modern awards—Stage 2

Modern awards commenced on 1 January 2010.

Where an award contains transitional provisions, the minimum requirement is that changes to pay may be gradually implemented over a four year period, ending on the first full pay period on or after 1 July 2014, providing existing employees do not suffer a reduction in take-home pay as a result of award modernisation.

The effect of the annual wage review decision is to introduce stage two of the transitional arrangements.

Termination of transitional instruments

Fair Work Australia has commenced terminating the NAPSAS and pre-reform awards. For more information visit:

www.fwa.gov.au/award_termination

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

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Contractors—a practical test

Many employers have been perplexed about how to determine if an employment or independent contractor relationship exists. A case that was recently heard in the Federal Court looked into the ever confusing world of independent contracting. The company, a translating company had treated their translators as independent contractors. They had relied upon information provided to them by the Australian Tax Office in 1990 which stated that on the basis of the information provided by the company there did not appear to be an employment relationship and therefore the translators were independent contractors.

However, more recently the Tax Commissioner decided the translators were casual employees and required the company to pay superannuation contributions for all staff on their books until June 2007. This was a five year period at which time there were 2500 translators on their books. The company challenged the decision of the Tax Commissioner in the Federal Court but Justice Bromberg found the translators did not own their own businesses and were not independent contractors but employees.

Justice Bromberg used the following test to determine if the translators were independent contractors

1. is the person performing the work of an entrepreneur who owns and operates a business; and
2. in performing the work, is that person working in and for that person's business as a representative of that business and not of the business receiving the work?

"If the answer to that question is yes, in the performance of that particular work, the person is likely to be an independent contractor. If no, then the person is likely to be an employee", he said. "The question which this approach poses appears to me to be the central question in the application of the totality test. The question provides the focal point around which the indicia thrown up by the totality test may be examined", he said.

The full decision can be found at: [On Call Interpreters and Translators Agency Pty Ltd v Commissioner of Taxation \(No 3\) \[2011\] FCA 366 \(13 April 2011\)](#)



Paid Parental Leave—employers to administer payments from 1 July 2011

From 1 July 2011, employers will be required to make PPL payments which until that time are being made by Centrelink unless the employer has already agreed to start processing such payments. Employers should ensure that they are familiar with their responsibilities and have registered with Centrelink where payments will be required to be made to any of their employees. Information is available to employers on the Centrelink [PPL](#) website.

FWO— confirms interpretation of leave loading on termination

The Fair Work Ombudsman (FWO) has recently confirmed its interpretation of the National Employment Standards (NES) in relation to payments of annual leave loading on termination of employment.

The NES provides minimum terms and conditions that apply to all employees within the federal system. Under the NES accrued annual leave which has not been taken when employment ends is required to be paid out at the same rate that would have applied if the leave had been taken during employment. This means that where an award or agreement provides for annual leave loading to be paid when leave is taken during employment, that leave loading must be paid on the component of annual leave paid out on termination even if the award does not create an entitlement for annual leave loading to be paid on all or part of the leave paid out on termination of employment. Where an award or agreement contains inferior terms and conditions to those contained in the NES, the NES prevails over those awards and agreements to the extent that any term or condition is inferior, which has led to this situation where the NES over-rides some award provisions to the contrary.

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
- Training and development

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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