



## Fair Work Briefing

All workplaces will be affected by the new Fair Work legislation, much of which comes into effect from 1 January 2010.

What are some of the key issues I need to know:

- be aware of changes in the [National Employment Standards](#) and implications for employment contracts and policies.
- be aware of [modern award](#) issues.
- be aware of changes to [unfair dismissal](#) laws.
- be aware there is a requirement to distribute to all new employees [Fair Work Statement](#).
- if I have questions where do I go to get [further information](#)?

### NATIONAL EMPLOYMENT STANDARDS

The NES are set out in the *Fair Work Act 2009* and comprise 10 minimum standards of employment. In summary, the NES involve the following minimum entitlements:

**Maximum weekly hours of work** – 38 hours per week, plus reasonable additional hours.

**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.

**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.

**Annual leave** – 4 weeks paid leave per year, plus an additional week for certain shift workers.

**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.

**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.

**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.

**Public holidays** – a paid day off on a public holiday, except where reasonably requested to work.

**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.

**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.

### Action Required by the Employer

A review of your Employee Policies and Procedures and contracts of employment ensuring that they reflect these changes is **essential** – e.g. Flexible Work Arrangements, Parental Leave, Community Leave.

The employer must ensure that copies of the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

## MODERN AWARDS

From 1 January 2010 modern awards replace existing awards in most industries.

Modern awards are industry or occupation-based enforceable minimum employment standards which apply in addition to the NES.

Modern awards cover all employers and employees who perform work in those industries or occupations covered by a particular modern award. 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.

**As of 1<sup>st</sup> January 2010 our current awards no longer apply and they will be replaced with the “Clerks – Private Sector Award 2010”**

[http://www.airc.gov.au/awardmod/awards/clerks\\_private3\\_t.pdf](http://www.airc.gov.au/awardmod/awards/clerks_private3_t.pdf)

**and the “Road Transport and Distribution Award 2010”**

[http://www.airc.gov.au/awardmod/awards/clerks\\_private3\\_t.pdf](http://www.airc.gov.au/awardmod/awards/clerks_private3_t.pdf)

The new Modern Awards include an award flexibility provision which states:

Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

- arrangements for when work is performed;
- overtime rates;
- penalty rates;
- allowances; and
- leave loading.

It needs to be noted that this provision also states that:

The employer and the individual employee must have genuinely made the agreement without coercion or duress.

### **Action Required by the Employer**

The employer must ensure that copies of these awards are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

Review the awards to ensure you will be meeting the provisions outlined and make changes where required.

## **UNFAIR DISMISSALS**

An employee has been **unfairly dismissed** if Fair Work Australia (FWA) finds that:

- they were dismissed, and
- the dismissal was harsh, unjust or unreasonable, and
- the dismissal was not a case of genuine redundancy.

It's not an unfair dismissal if the employer is a **small business** employer - **employs fewer than 15 employees (up to 1 January 2011 this means 15 full-time equivalent employees)** and they follow the Small Business Fair Dismissal Code when dismissing an employee.

Small business employers will benefit from:

- a minimum employment period of 12 months instead of 6 months (employees can't make an unfair dismissal claim in this 12-month period)
- a simple Fair Dismissal Code to help employers ensure dismissals are not unfair
- a specialist service for small and medium sized businesses from the Fair Work Ombudsman.

There's also a helpful checklist that small business employers can follow to ensure the dismissal is not unfair.

The Small Business Fair Dismissal Code and Checklist link as per below.

<http://www.fairwork.gov.au/Termination-of-employment/Documents/Small-Business-Fair-Dismissal-Code.pdf>

When FWA considers whether a dismissal is harsh, unjust or unreasonable, they take into account a range of factors including:

- if there's a valid reason for the dismissal relating to the employee's conduct or capacity
- if the employee is notified of the reason and given an opportunity to respond
- if the dismissal relates to unsatisfactory performance, then whether the employee is warned about it before the dismissal.

Note: An employer has the right to summarily dismiss an employee for serious misconduct.

Employees applying for unfair dismissal must be:

- covered by the national workplace system
- eligible to apply.

To be eligible to apply, an employee must have:

- completed a minimum employment period of at least 6 months (or 12 months if your employer is a small business employer who employs fewer than 15 full-time equivalent employees)
- at the time of dismissal, been in one of the following categories:
  - covered by a modern award
  - covered by a pre-modern award instrument, such as a federal award, a state reference transitional award or a notional agreement preserving state award (NAPSA)
  - covered by an enterprise agreement or an agreement based transitional earning less than \$108,300 a year.

Employees must apply to Fair Work Australia (FWA) within **14 days** after a dismissal takes effect, although FWA may accept late applications in limited circumstances. Employees are required to pay an application fee. This fee may be waived on the grounds that its payment would cause serious hardship

When employees apply, FWA will check the application to see if it's complete. FWA will notify you as their employer. Usually, a conciliation is then arranged, to assist both sides to resolve the matter by agreement.

If a resolution can't be reached, a conference or hearing will be held and if FWA finds that the dismissal was unfair, you as employer can be ordered to either reinstate the employee (give you back your job), or compensate the employee for up to 26 weeks pay (up to a maximum amount of \$54,150).

You can apply to the FWA for an application to be dismissed if it's lodged outside of the prescribed time limits, the applicant is not covered by the unfair dismissal laws or is not eligible to make an application and the complaint is frivolous, vexatious or has no reasonable prospects of success.

### **Action Required by Employer**

Read and understand the [Small Business Fair Dismissal Code and work through the Checklist](#).

Ensure employees are offered a support person in any dismissal discussions.

## **FAIR WORK STATEMENT**

The Fair Work Statement must be given to each employee commencing employment from the 1<sup>st</sup> January 2010.

An employer must give each new employee the Statement before (or as soon as practicable after) the employee starts his or her employment.



Fair Work  
Information Statement

### **Action Required by Employer**

Ensure the Fair Work Statement is given to the new employee personally, by post to residential address, email address including an electronic link to the Statement or by fax.

## **FURTHER INFORMATION**

It is recommended that you use the Fair Work Australia website as a resource to answer any of your on-going questions or contact them on [Fair Work Info line: 13 13 94](#).

<http://www.fwa.gov.au/>