

Fair Work | Fact Sheet



Modern Awards

The information in this sheet explains the new awards that will commence operation on 1 January 2010, called modern awards. Modern awards are different to awards that currently operate under the Workplace Relations Act (WR Act).

A key difference is that modern awards will apply to all national system and Victorian employers in a particular industry or employing persons in a particular occupation identified in the awards coverage clause.

Another difference is that modern awards will deal with more matters than awards under the WR Act. They will also contain mandatory terms, such as terms providing for consultation, representation and flexibility. Unlike existing awards, the minimum wages provisions in modern awards will apply to national system and Victorian employers.

You can find more information about modern awards at the Australian Industrial Relations Commission (AIRC) website www.airc.gov.au.

What is a modern award?

Throughout 2008 and 2009 the AIRC has been drafting a set of modern awards. These will replace existing awards and operate in conjunction with the National Employment Standards (NES) so as to provide a universal safety net of minimum terms and conditions of employment for employees of national system and Victorian employers. This safety net will commence operation on 1 January 2010.

The objects of the 'award modernisation' exercise being undertaken by the AIRC is to make awards simpler to understand, to reduce the overall number of awards, to minimise overlap of awards and to lessen the number of awards that may apply to a particular employee or employer.

The creation of modern awards is not intended to extend award coverage to employees, such as managerial employees, who have traditionally been award free.

The AIRC has published exposure drafts of modernised awards for the purpose of further consultation. The AIRC will complete the award modernisation process by 31 December 2009.



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Interaction with NES

Modern awards will not ordinarily deal with a matter dealt with under the NES. However, a modern award will cross reference a provision of the NES, or replicate it where the AIRC considers this essential for the effective operation of the particular modern award provision. Where a modern award replicates a provision of the NES, NES entitlements will be enforceable only as NES.

A modern award cannot exclude any provision of the NES. However, a modern award can provide ancillary or incidental detail in relation to the operation of an entitlement under the NES but only to the extent that the term is not detrimental in any respect, when compared to the NES.

A modern award may include industry-specific detail about matters in the NES. It may also supplement the NES.

The NES provides that particular types of provisions are able to be included in modern awards even though they might otherwise be inconsistent with the NES. Modern awards may include provisions dealing with these issues. For instance, the NES allows, but does not require, modern awards to include terms that:

- provide for loadings to be paid to school-based trainees and school-based apprentices in lieu of certain entitlements
- enable the averaging of hours of work over a specified period
- provide for the cashing out of paid annual leave by an employee, provided that certain conditions are met.

Typical provisions

Coverage

This provision will identify the class of employers covered by the award. It will usually exclude employers bound by another modern award or enterprise award with respect to employees covered by those instruments.

Consultation regarding major workplace change

Where an employer has decided to introduce major changes to its operations that are likely to result in retrenchments, the need for retraining, reduced promotion opportunities or job tenure or security, alteration of hours of work, transfer of employees to other work or locations, restructuring of jobs or other significant effects of employees, the employer must give relevant information to employees about the change as soon as reasonably practicable and discuss ways to mitigate their impact.

Dispute resolution

In the event of a dispute about a matter under this award, or a dispute in relation to the NES, the parties must attempt to resolve the matter by discussions at various levels of management, failing which a party to the dispute



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may refer the dispute to Fair Work Australia (FWA), to resolved by an agreed method or failing that any method of dispute resolution permitted by the Fair Work Act 2009 (Cth) that FWA considers appropriate to ensure the settlement of the dispute.

Employees may be represented in that process. While the dispute resolution procedure is being conducted, work must continue (subject to applicable occupational health and safety legislation).

Award flexibility

This provision allows an employer and an individual employee to agree to vary the application of certain terms of the award regarding working hours, overtime rates, penalty rates, allowances and leave loading.

The agreement must result in the employee being better off overall than the employee would have been if no agreement had been made.

The agreement must be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian. It must identify the award terms being varied, detail the variation and explain how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment. It must also state the date the agreement commences to operate.

The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.

The agreement must not require the approval or consent of a person other than the employer and the individual employee.

An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.

The agreement may be terminated by either party by giving 4 weeks' written notice.

Types of employment

This provision will deal with full-time, part-time and casual employment. It may also make provision for seasonal work or piece work. NES rely on modern awards to define a piece worker and set out rules relating to the payment of NES entitlements (based on ordinary hours of work) for a piece worker.

Termination and redundancy

Notice of termination will be provided for in the NES. However, modern awards will usually provide for notice of termination by an employee. It will also provide for an entitlement to paid leave for job search when an employee is serving notice.



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NES will make provision for entitlements to redundancy pay for employees or large employers (15 or more employees). However, modern awards may supplement this provision by making provision for redundancy pay entitlements for employees of small employers. The modern award may specify that the NES redundancy pay entitlement does not apply where the award contains an 'industry specific redundancy scheme'.

Minimum wages and classifications

Modern awards will provide for minimum wage rates for all employees including, where appropriate, junior employees, employees to whom training arrangements apply and employees with a disability. The modern award will set out different work classifications.

Allowances

Modern awards will include terms dealing with allowances, including expenses incurred in the course of employment, responsibilities or skills that are not taken into account in rates of pay, or disabilities associated with the performance of particular tasks or work in particular conditions or locations. Allowances will be clearly and separately identified, with a formula for automatically adjusting relevant allowances when minimum wage rates are adjusted.

Superannuation

Modern awards will usually stipulate default industry funds to which employers must make compulsory superannuation contributions, unless individual employees choose their own superannuation fund.

Ordinary hours of work

Many entitlements in the NES rely on modern awards to set out ordinary hours of work on a weekly or daily basis for an employee covered by the modern award. Modern awards will specify the ordinary hours of work for each classification of employee and how these can be altered. It may also make provision for rostered days off.

Breaks

Modern awards will make provision for meal breaks and rest breaks.

Overtime rates and penalties

Modern awards will include provisions dealing with entitlements to overtime payments, weekend and evening penalties and time off in lieu of overtime.

Leave and public holidays

Annual leave is provided for in the NES. Modern awards will define a shiftworker for the purpose of the additional week of annual leave provided for in the NES. They may also provide for annual leave loading and payment of



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leave in advance of accrued entitlement. A modern award may include terms requiring an employee, or allowing an employee to be required, to take paid annual leave in particular circumstances, but only if the requirement is reasonable.

Personal/carer's leave, compassionate leave and community services leave are provided for in the NES.

Public holidays are provided for in the NES. However, modern awards may provide for substitution of other days for a public holiday.

Other matters

Modern awards will deal with accident make-up pay, frequency of payment of wages, method of payment, shift work, supported wage system, and the National training wage.

Long service leave

So as to not pre-empt the development of a nationally consistent approach to long service leave between Commonwealth and State governments, modern awards will not include long service leave provisions.

Guarantee of annual earnings

Employers can put in place arrangements on and from 1 July 2009, to prevent a modern award from applying to high income employees.

A high income employee is an employee earning above the high income threshold. The high income threshold is \$100,000 per year for full time employees, indexed from 27 August 2007 onwards, and then annually from 1 July each year (pro rata for part time or casual employees).

In calculating whether an employee's earnings exceed the high income threshold, include wages, salary sacrifice benefits and other payments which are guaranteed or determined in advance, but exclude compulsory superannuation contributions, commissions, incentive based payments, bonuses and overtime payments.

An employer may implement this arrangement by guaranteeing payment to the employee of a certain level of earnings over a period of 12 months or more.

The guarantee must be in writing and include a statement that the award will not apply to the employee whilst they are subject to the guarantee. In the case of new employees, the guarantee must be signed by the employee within 14 days of the employee commencing employment. In the case of existing employees, it must be signed by the employee within 14 days of the employee's terms and conditions of employment being varied (for example, after receiving a pay increase).

While a guarantee is in operation, modern awards will not apply to the employee. However, the National Employment Standards and unfair dismissal laws will still apply.

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Templates

Award Flexibility Agreement

Guarantee of Annual Earnings



Find out more at:
www.fairworkaustralia.ahri.com.au