

> Preparing for the Fair Work Act

The Fair Work Act 2009 and the transitional legislation commenced on 1 July 2009. From 1 January 2010 Modern Awards and the National Employment Standards will commence. ITEAs are no longer available and the Australian Fair Pay Standard ceases.

Employers are advised to prepare for the operation of the new legislation by checking your current documents and practices. The following checklist is a guide.

Modern Awards

Employers are advised to review the new modern awards to determine whether you are bound by these new awards. It is useful to develop a table showing the types of industries or occupations in your enterprise and this can assist you to determine your award coverage

Modern awards commence from 1 January 2010 and cover most businesses in the national workplace relations system. Modern awards were created to establish one set of minimum conditions for employers and employees across Australia who work in the same industries or occupations.

Modern awards together with the National Employment Standards (NES), which also commence on 1 January 2010, and the national minimum wage orders made by Fair Work Australia, make up a new safety net for employees covered by the national workplace relations system.

Employers and employees need to know:

- modern awards replace existing:
 - o federal (pre-reform) awards (except those applying to a single enterprise)
 - o notional agreements preserving state awards (NAPSAs)
 - o state reference transitional awards
- modern award wages start on 1 January 2010 (where the modern award contains no transitional provisions)
- transitional provisions in most awards mean that rates of pay and other conditions do not come into force until 1 July 2010 and may be phased in over 5 annual instalments.

Details of the modern awards can be found via the following link (Note: scroll down the webpage to see the listings): <http://www.airc.gov.au/awardmod/fullbench/awards.htm>

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National Employment Standards

The following provides guidance on the ten National Employment Standards which come into effect from 1 January 2010. A copy of the National Employment Standards is available from the following link

http://www.workplace.gov.au/NR/rdonlyres/1955FD28-3178-44CD-9654-56A3D5391989/0/NationalDiscussionPaper_web.pdf

1. Standard hours of work

- For full time employees this is 38hrs per week
- For all other employees, it is the lesser of 38 hrs and the employee's ordinary weekly hours.
- Have relevant modern awards been checked to see whether they allow an averaging of weekly hours over a specified period?
- Employees may be asked to work additional reasonable hours. In determining "reasonable hours", several factors may be taken into consideration for example the 'standard' in the industry, the effect on family responsibilities and the frequency of the request.

2. Flexible working arrangements

- Employees with a child or children under the age of six, or a child with disability under the age of 18 may request flexible work arrangements.
- In order to do this, a full time or part time employee has to have completed 12 months of continuous service. A casual employee has to have been employed in a regular and systematic pattern for 12 months, and have a reasonable expectation of continuing engagement with the employer.
- The request has to be made by the employee in writing, detailing the changes sought, and the reason for the change.
- The employer must inform the employee whether the request has been granted or rejected within 21 days of receiving it. The request can only be rejected on business grounds.
- If the request has been rejected, the employee must be informed in writing of the reason(s) for rejection.

3. Parental Leave

- Has the employee (other than a casual employee) completed at least 12 months of continuous service? If "yes" then employee is eligible for parental leave.
- If a casual employee, has the employee been engaged in a regular and systematic pattern for 12 months, and has a reasonable expectation of continuing engagement with the employer? If "yes" then employee is eligible for parental leave.
- Eligible employees are entitled to 52 weeks of unpaid parental leave.
- Parental leave must be taken in a single continuous period.
- For female employees who are pregnant, parental leave may start up to 6 weeks before expected birth of the child, but not later than the birth of the child.
- If pregnant employee continues to work through the period of 6 weeks before expected birth of the child, the employee is required to produce a doctor's certificate stating that she is fit to carry out the required duties.

- An employee's spouse/partner is entitled to take a period of 3 weeks or less concurrent leave after the date of birth of the child. (Note: leave may start earlier and end up to 3 weeks later if agreed to by employer)
- An employee is required to give notice of the intention to take parental leave at least 10 weeks before the start date of the leave. The notice must state the starting date and the end date of the leave.
- Unpaid parental leave can be extended by up to an additional 52 weeks, as long as notice to extend is given 4 weeks before the end of the first parental leave period.
- A female employee is entitled to special unpaid maternity leave if she is unfit to work due to a pregnancy-related illness; or if the pregnancy ends within 28 weeks of the expected birth of the child.

4. Annual leave

- All employees other than casuals are entitled to 4 weeks of paid annual leave for each year of service; or
- If a modern award applies and defines the employee as a shift worker, the employee is entitled to 5 weeks of annual leave for each year of service.
- Annual leave is accrued progressively during the years of service
- Annual leave is taken during a period agreed to between the employee and employer
- Public holiday days are not counted as annual leave days if they fall within a period of annual leave.
- An employer must pay an employee the base rate of pay for the hours that would have been worked during the annual leave period
- When employment comes to an end, the employee must be paid for any untaken accrued annual leave
- If any modern awards apply to positions in your organisation, check the following provisions:
 - Provisions for cashing out of paid annual leave
 - Provisions for requiring an employee to take paid annual leave under certain circumstances
 - Any other provisions related to annual leave

5. Personal, carer's and compassionate leave

- Employees other than casuals are entitled to 10 days of paid personal/carer's leave for each year of service
- Entitlement to personal/carer's leave accrues progressively during each year of service according to the ordinary hours worked.
- If a public holiday falls during a period of personal/carer's leave, it is not taken to be a day of personal/carer's leave.
- An employer must pay the employee at the base rate of pay for the ordinary hours which would have been worked during the period of paid personal/carer's leave.
- Check any modern awards which may apply to positions in your organisation for provisions for cashing out of paid personal/carer's leave

- An employee is entitled to 2 days of unpaid carer's leave for each occasion where a member of the immediate family or household requires care due to illness or emergency.
- Unpaid carer's leave cannot be taken if employee has paid carer's leave available.
- Unpaid carer's leave can be taken as a continuous period of up to 2 days, or as agreed to by employee and employer.
- An employee is entitled to 2 days compassionate leave on each occasion

6. Community services leave

This form of leave applies to jury service, voluntary emergency management activity or any other activity that is of a community services nature prescribed in regulations.

With exception of jury service, an employee is entitled to be absent from employment for:

- the time that they are engaged in that activity
- reasonable travelling time associated with activity
- reasonable rest time following that activity
- Employee must give notice to employer regarding start and end date of leave.
- Employer may request evidence of community service
- For employees other than casuals who are performing jury service, the employer must pay the employee at the employee's base rate of pay for their ordinary hours of work for that period.
- The employer may request the employee to provide evidence of total amount of jury service pay. In this case the amount payable to the employee is reduced by the total amount of jury service pay that has been paid.
- If an employee is absent due to jury service for periods of more than 10 days in total, the employer is only required to pay the first 10 days of absence.

7. Long service leave

- An employee is entitled to long service leave in accordance with applicable award-derived long service leave provisions unless
- There is a workplace agreement or AWA in place which is applicable or any other agreement or award as stated in section 53 (1)(b)

8. Public holidays

- An employee is entitled to be absent from work on a public holiday, and to be paid for that day
- An employer can ask an employee to work on a public holiday if the request is reasonable.
- An employee can refuse to work on a public holiday under certain circumstances
- Check provisions in modern awards for provisions for the substitution of day or part-day that would otherwise be a public holiday

9. Notice of Termination and Redundancy Pay

- Employer must give employee a written notice of the date of termination before the date of termination

- The time between giving notice and termination date is at least the minimum period of notice (Section 57)

Service	Minimum notice period
Not more than 1 year	1 week
More than 1 year but not more than 3	2 weeks
More than 3 years, but not more than 5	3 weeks
More than 5 years	4 weeks
The notice is increased by 1 week if the employee is 45 years of age and has completed at least 2 years of service with employer	

- The employer may pay the employee in lieu of notice at the full rate of pay for the hours that the employee would have worked until the end of the minimum notice period.
- Check any applicable modern award for provisions specifying the period of notice an employee must give in order to terminate employment
- An employee may be made redundant if the position no longer exists in the organisation or because of insolvency or bankruptcy of the employer
- In this case the employee is entitled to be paid redundancy pay
- Redundancy pay should meet the minimum requirements set out in Section 60 (2)

Service	Pay
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks

- Section 60 does not apply if the employee's continuous service was less than 12 months or the employer was a small business

10. Fair Work Information Statement

- Ensure that the Fair Work Information Statement is provided to all existing employees
- Provide a copy of Fair Work Information Statement is provided to all new employees
- Provide all employees with a copy of the Fair Work Information Statement if any changes are made to this document by Fair Work Australia

Employment Contracts

- Update legislative references in contracts
- Include flexibilities eg. Agreement about taking annual leave

- Update long notice periods and redundancy
- Review for the provisions of modern awards (do not mention the name of the award in your contracts)
- Determine which awards apply to your organisation
- Classify employees under relevant awards
- Look at the award provisions – in particular the exemptions and transitional arrangements
- Compare the modern award terms with the employees' current terms.
- Consult with employees on any amendments to be made.
- Provide employees with access to the awards which cover them

Policies/Guidelines

Employers are advised to review existing documentation and update or create guidelines to manage the employment matters covered by the introduction of the Fair Work Act. Be careful of going further than you need to in your guidelines, or of creating contractual obligations.

Useful Websites

Information for employers from Fair Work Australia

<http://www.fairwork.gov.au/Pages/employers.aspx?role=employers>

Access to Modern Awards

<http://www.airc.gov.au/awardmod/fullbench/awards.htm>

Access to the National Employment Standards

http://www.workplace.gov.au/NR/rdonlyres/1955FD28-3178-44CD-9654-56A3D5391989/0/NationalDiscussionPaper_web.pdf

For further assistance contact:

Office for Employment Relations

Australian Catholic Bishops Conference

T. 03 9663 1775

F. 03 9663 1747

E. oeradvisor@catholic.org.au

W. www.employmentrelations.catholic.org.au

(Note: Employers in NSW and the ACT can obtain similar advice and assistance via membership of the Catholic Commission for Employment Relations. Australian Catholic Bishops Conference agencies in these states are assisted by the Office for Employment Relations.)