



Fact Sheet 4

National Employment Standards and Modern Awards

The new workplace relations system means that all employees will have access to minimum protections that “cannot be stripped away”.

The new safety net will apply to all employees in the federal system from 1 January 2010. It will be made up of two parts:

- National Employment Standards
- New Modern Awards

The National Employment Standards

The National Employment Standards cover minimum standards and conditions for all Australian employees. They will apply regardless of what position the employee is employed in. This includes the CEO, Facility Managers and employees covered by enterprise agreements and modern awards.

The National Employment Standards cover:

1. Maximum weekly hours of work
2. The right to request flexible working arrangements
3. Parental leave and related entitlements
4. Annual leave
5. Personal/carer’s leave and compassionate leave
6. Community service leave
7. Long service leave
8. Public holidays
9. Notice of termination and redundancy pay
10. Provision of a Fair Work Information Statement, which details the rights and entitlements of employees under the new system, and how to seek advice and assistance.

Modern Awards

The second part of the safety net are the modern awards created by the Australian Industrial Relations Commission. Modern awards will be industry or occupation-based and will simplify thousands of awards, including the awards in the aged care industry. The modern awards for the aged care industry are the Nurses Award 2010, Aged Care Award 2010 and possibly the Home and Community Care Award. The Home and Community Care Award is being considered by the Australian Industrial Relations Commission in stage 4 of the Award Modernisation process.

Modern awards build on the National Employment Standards and may include an additional 10 minimum conditions of employment, tailored to the needs of the particular industry or occupation. They include minimum wages, types of employment, arrangements for when work is performed, overtime and penalty rates, annualised wage or salary arrangements, allowances, leave related matters, superannuation and procedures for consultation, representation and dispute settlement.

The Commission will include a flexibility clause in each modern award which will enable employers and employees to negotiate arrangements to meet their individual needs. Protections will make sure that an employee is better off overall under the flexibility arrangement.

Case Study

Mary works in a small community care organisation. Her daughter's school has asked her to coach a school softball team each Wednesday afternoon. This means that Mary would have to leave work two hours earlier than usual every Wednesday. Mary writes to her employer asking if she can increase her hours of work on Monday and Tuesday so that she can have Wednesday afternoons off. Her employer agrees to try this arrangement for three months. The plan is put in writing, as both the employer and Mary feel that Mary is better off overall because of the change.

Who will be covered by modern awards?

The Commission will create modern awards to cover all employees who perform work that has been regulated by awards in the past. Modern awards will not cover employees who, because of the nature or seniority of their role, have not been covered by awards in the past.

Modern awards will not cover employees with guaranteed annual earnings of more than \$100,000 (pro rata for part-time employees). The high income threshold will be indexed annually from 27 August 2007. It will be adjusted in July each year, in line with annual growth in average weekly ordinary time earnings for full-time adult employees. The amount of annual earnings that will apply on commencement is \$108,300. This figure will be adjusted and indexed on 1 July 2010.

These employees and their employers will be free to agree on terms to supplement the National Employment Standards without reference to an award. This exemption applies to employers who provide a written undertaking to pay an employee annual earnings at or above the high income threshold over a period of 12 months or more.

A guarantee for a shorter period may apply in the case of a short-term, fixed-term contract or a particular type of work on a short-term basis.

The employer and employee must reach agreement about the undertaking before it starts. A guarantee can be entered into before employment commences.

How often will modern awards be reviewed?

Fair Work Australia will review modern awards four times a year, to maintain a fair minimum safety net, and to make sure it meets the needs of the community. The first review is set to take place in 2014, four years after modern awards commence on 1 January 2010.

An interim review of modern awards will take place in 2012. It will examine whether modern awards are achieving their objectives and are operating effectively without anomalies or technical problems.

Awards may also be varied in other limited circumstances (for example, where the variation is necessary to achieve the modern awards' objective of a fair and relevant safety net).

Fair Work Australia will undertake annual reviews of minimum wages. In limited circumstances, it will also be able to vary award wages outside these reviews, if Fair Work Australia is satisfied that:

- there are work value reasons that justify the variation, where the variation is occurring as part of a four yearly review of a modern award, or
- the variation is outside the four yearly review and annual wage review processes but there are work value reasons that justify the variation, and it is necessary in order to achieve the modern awards' objective of a fair and relevant safety net.

Fair Work Australia will take into account public interest, social and economic factors when considering whether and how to vary the content of modern awards.

What about people who are not covered by awards?

The 10 National Employment Standards will apply to all employees—whether they are covered by an award or not.

There will be a national minimum wage order for all employees not covered by a modern award.

Default rules for employees not covered by awards or enterprise agreements

To ensure that the National Employment Standards operate effectively, 'default rules' will apply consistently to all employees not covered by an award or enterprise agreement.

The default rules will set out how the National Employment Standards will apply to such employees, by:

- defining which shift workers are entitled to an extra week of annual leave under the Standards
- providing a mechanism to set the employee's 'ordinary hours of work' to underpin the calculation of leave accrual and payment under the Standards, if these are not agreed between the employer and employee
- allowing the averaging of working hours, by written agreement, over a maximum period of 26 weeks
- allowing the cashing out of annual leave by agreement subject to protections, including a requirement that the employee retains at least four weeks leave after the cash out
- allowing agreement between an employer and employee about when and how paid annual leave may be taken
- allowing employers to give reasonable directions about the taking of paid annual leave by an employee, and
- allowing the substitution of public holidays by agreement.

Next steps

The Modern Awards and National Employment Standards will commence on 1 January 2010. The Nurses Award is an occupational award that covers nurses in all locations; the Aged Care Award will cover personal carers and others in residential facilities, while it is still unclear whether workers who provide care to older people in their own homes will be covered by a separate award or come under the Aged Care Award.

While the Modern Awards start from 1 January, the Commission has the ability to make transitional arrangements to give industry up to 5 years to accommodate the changes. No decision has been made yet regarding transition.

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