



Employment Issues from the Employer's perspective

Some of the most commonly asked questions about Employment Issues are discussed on this page.

1. I'm an employer what do I need to be concerned about?

Employers have many factors to consider in the new workplace relations environment including:

- Compliance with the National Employment Standards (NES)
- Compliance with Modern Awards
- Employment Contracts

2. What are National Employment Standards (NES)?

The NES are 10 minimum standards of employment that apply to all employees covered by the national workplace relations system. The NES are comprised of the following which apply to full time workers and on a pro rata basis to part time workers:-

- Maximum weekly hours of work** – An employer must not request that a full time employee work more than 38 hours a week unless additional hours are reasonable. Factors to be taken into account in whether additional hours are reasonable include any risks to employee health, whether the employee is entitled to overtime, any notice given in respect of the additional hours and the usual patterns of work in the industry.
- Requests for flexible working hours** – An employee who is a parent or has responsibility for the care of a child may request a change in working arrangements to assist in the care of the child.
- Parental leave and related entitlements** – An employee is entitled to 12 months unpaid parenting leave if they or their spouse or partner are giving birth a child or they are adopting a child under 16 years of age. There are also provisions for unpaid special maternity leave which relates to when an employee has a pregnancy related illness or the employee has been pregnant and the pregnancy ends within 28 weeks of the expected birth date but not in the birth of a child. Any unpaid special maternity leave taken counts against the employee's 12 month unpaid parenting leave entitlement.
- Annual leave** – For each year of service an employee is entitled to 4 weeks paid leave per year. This entitlement extends to 5 weeks per year for qualifying shift workers.
- Personal leave** - For each year of service an employee is entitled to 10 days of paid personal/carer's leave. Employees are entitled to 2 days unpaid carer's leave as required. Employees are entitled to 2 days compassionate leave as required relating to serious injury, illness or death of an immediate family member or member of the employee's household.



- (f) **Community service leave** – An employee is entitled to be absent from their employment if they are engaging in an eligible community service program including jury duty or a voluntary emergency management activity.
- (g) **Long service leave** – If the employee is covered by an applicable award that provides for long service leave then they are to receive long service leave entitlements. This a transitional entitlement preserving the status quo until the development of a national long service leave standard.
- (h) **Public holidays** – An employee is entitled to expect to be absent from their work on a day that is a public holiday unless a reasonable request to work is made.
- (i) **Notice of termination and redundancy pay** – An employer is required to give a minimum period of notice of termination up a maximum of 5 weeks depending on the age of employee and years of service. Payment equalling the wages equal to this period may be given in lieu of notice. Employers must also pay redundancy pay up to a maximum of 16 weeks if an employee is made redundant.
- (j) **Fair Work Information Statement** – An employer must give each new employee a copy of this document to all new employees before or as soon as practicable after they start.

3. What kinds of awards and agreements do the NES apply to?

The NES apply to all employees covered by the national workplace relations system regardless of the award, agreement or contract of employment that applies to an employee.

4. Can I contract out of the NES?

An employer cannot provide an employee with an agreement with entitlements that are less than the NES. Employers who contravene provisions of the NES may face stiff penalties.

5. How do I ensure I comply with the NES?

If you have any concerns you should seek legal advice to ensure you comply with all requirements of the NES.

6. What are modern awards?

Modern awards are standards of employment setting out standards such as base rate of pay, types of employment, overtime and penalty rates, work arrangements, allowances, superannuation and procedures for settling disputes relating to the award.

7. How are agreements affected by modern awards?

Generally if an employer has a registered agreement that covers their employees, modern awards do not apply to that employer while they have an agreement registered with an appropriate authority. Base rates of pay in a modern award will override lesser entitlements in an agreement or contract in most cases. Some agreements are exceptions to this rule though and you should seek legal advice to ensure any agreements you have are valid.

8. What happens if the new pay rate is higher?

If pay rates under the modern award are higher than the rates of pay that you previously provided then you need to phase in the new rates of pay by installments of 20% over four years. You should seek legal advice to ensure these transitional arrangements apply to your business.



9. What happens if the new pay rate is lower?

If pay rates under the modern award are lower than the rates of pay that were applicable under the previous award then you may phase in the new rates of pay by installments of 20% over four years.

10. What happens if there is a new loading or penalty?

Where there was no loading or penalty under the previous award employees are entitled to phase in payment of that loading or penalty by installments of 20% over four years. You should seek legal advice to ensure these transitional arrangements apply to your business.

11. What if I'm paying more than the award?

Modern awards deal with minimum obligations only. They do not require employers to increase or maintain over-award payments already being made. In some cases over award payments can be used to offset other monetary obligations in a modern award.

12. What if I get something wrong?

Under the *Fair Work Act 2009* penalties may apply to a breach of a term of a modern award. You should seek legal advice to ensure you comply with all your obligations.

If you would like further information, or require assistance, please contact us on (02) 4731 5899 or send us an email by clicking on the 'Contact Us' page on our website.