



Introduction to the National Employment Standards

From 1 January 2010, most Australian workplaces are governed by a new system created by the Fair Work Act 2009.

As of 1 January 2010, the National Employment Standards (NES), together with modern awards, make up a new safety net for employees covered by the national workplace relations system. In addition to the NES, an employee's terms and conditions of employment generally come from an award or agreement.

The 10 NES entitlements

The NES are detailed in the Fair Work Act 2009 and are made up of 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** – an entitlement allowing parents or carers of a child school age or younger, has a disability, is a carer, is over 55, is experiencing violence at home, or cares for someone who is experiencing violence, to request a change in working arrangements to assist with the care of the child.
- **Parental leave and related entitlements** – up to 12 months unpaid leave per employee, plus a right to request an additional 12 months unpaid leave, plus other forms of maternity, paternity and adoption related leave.
- **Annual leave** – four 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) for each occasion.
- **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**
- **Public holidays** – a paid day off on a public holiday, except where reasonably requested to work.
- **Notice of termination and redundancy pay** – minimum amounts of notice for termination and severance pay on redundancy, both based on length of service of the employee.
- **Provision of a Fair Work Information Statement** – must be provided by employers to all new employees, and contains information about the NES, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, union rights of entry, transfer of business, and the respective roles of Fair Work.

Who do the NES apply to?

Permanent Employees

The NES apply to all employees covered by the national workplace relations system (however only certain entitlements apply to casual employees).

Casual Employees

If an employee is a casual employee, only some of the NES entitlements apply.

How do the NES apply?

The NES apply to all employees covered by the national workplace relations system. Any terms in an award, agreement, or employment contracts that attempts to exclude or provide for an entitlement less than the NES, will have no effect, unless it relates to the following:

- averaging an employee's ordinary hours of work
- the cashing out and taking of paid annual leave

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- the cashing out of paid personal/carer's leave
- the substitution of public holidays
- situations in which redundancy pay entitlements do not apply

Employment contracts have effect only to the extent that they provide entitlements that are similar or more favourable to the employee.

An employer must not contravene a provision of the NES. A contravention of a provision of the NES may result in large penalties both for individuals and corporations.

What now?

Employers need to review their current individual and collective agreements, employment contracts, and employment policies, to make sure they comply with the NES.

If an employer is unsure, they should seek help from a professional who is proficient in the area of employment law.

Watkins Tapsell has a dedicated team of employment and workplace law practitioners able to assist you to ensure you are compliant with the new Fair Work Act.

For further information please contact Tiana Daly or a member of our Workplace Law Team on (02) 9521 6000, or visit www.watkinsapsell.com.au



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