



## INDUSTRIAL RELATIONS NEWSLETTER NEWSLETTER — 12-01-10/1

**From 1 January 2010 the system of awards changed**

- **Modern Awards**
- **Transitional Provisions**
- **National Employment Standards**
- **NSW Private Sector Employers**
- **Our website: go here for the awards**

DON'T FORGET – THE FAIR WORK INFORMATION STATEMENT MUST BE GIVEN TO EVERY NEW EMPLOYEE COMMENCING FROM 1 JANUARY 2010. KEEP A WRITTEN RECORD AS EVIDENCE THAT THE EMPLOYEE WAS GIVEN THE STATEMENT.

A copy of that statement is in the December 2009 newsletter [www.johntamplinconsulting.com.au](http://www.johntamplinconsulting.com.au)

### **Modern Awards**

On 1 January 2010 the system of industrial awards changed and there are now 122 Federal industrial awards covering the work of employees throughout the entire workforce.

From 1 January 2010 the system of having State awards and Federal awards both applicable to an incorporated company (Pty Ltd) comes to an end.

This means the new awards are more industry type awards and not sections of work as they were previously.

This means that awards such as the Graphic Arts General Award 2000, Country Printing and Publishing Award, the Regional Daily Newspapers or the Non-Daily Newspapers and the State Awards applicable to Printing have been replaced by the Graphic Arts, Printing and Publishing Award 2010.

The Hospitality Industry – Accommodation, Resorts and Gaming Award 1998 has been replaced by the Hospitality Industry General Award 2010.

The Clerical awards both State and Federal have been replaced with the Clerks – Private Sector Award 2010.

The Journalists awards both State and Federal have been replaced by the Journalists Published Media Award 2010.

The Commercial Travellers and Advertising Sales Representatives have been replaced by Commercial Sales Award 2010.

The new awards will not apply to employees that do not perform the work of the classifications set out in the particular award or to employees that have guaranteed earnings of more than \$108,300 per year (pro-rata for part-time employees).

Guaranteed earnings include wages, employee superannuation contributions and non-monetary benefits that have an agreed value whilst commissions, bonuses and compulsory employer superannuation contributions are not included. These “award-free” employees will still be covered by the National Employment Standards however.

#### Transitional Provisions

Despite the modern awards coming into operation from 1 January 2010, inconsistent award rates or penalties in the new system as against the previous applicable award will continue to exist until 31 December 2014.

Such rates include casual loadings for example in NSW, the former Clerical and Administrative Employees (State) Award (NAPSA) specifies a **20% casual loading** whereas the new Clerical Employees Private Sector Award 2010 specifies a **25% casual loading**.

That additional 25% will be phased in at 20% of the difference between the two loadings over the next 5 years so that the full 25% loading would operate for those employers from 1 January 2015.

That is the casual loading will increase by 1% each year.

Some employers may even have to contend with applying pre-1 January 2010 provisions that their respective modern award makes reference to. For example in South Australia, hotels have retained the provisions for their part-time employees and overriding what is in the modern award until 1 January 2015.

If you have queries concerning what provisions of the relevant modern award may or may not apply to your workplace, contact us as soon as possible.

The transitional provisions are set out below.

#### National Employment Standards

We refer you to previous newsletters. If you have misplaced your copy contact us or go to our website and the November newsletter. [www.johntamplinconsulting.com.au](http://www.johntamplinconsulting.com.au).

#### NSW Private Sector Employers

All NSW private sector employers will become “national system employers” and be governed by the Fair Work Act 2009 from 1 January 2010.

Previously, only constitutional corporations such as PTY LTD companies were bound by the federal industrial relations system.

However as of 1 January 2010 all private sector employers, including those who are currently operating as sole traders or partnerships, will come under the federal system.

This means that certain legislation will not be relied upon by these employers including the NSW Industrial Relations Act 1996 and the Annual Holidays Act 1994 (NSW). However State legislation such as those relating to occupational health and safety, workers compensation, long service and anti-discrimination will still apply the NSW private sector employers.

#### Which Industrial Instruments Will Apply?

NSW employers who are constitutional corporations and commenced operating **after 27 March 2006** under either a Federal Award or a Notional Agreement Preserving State Award (NAPSA) or a relevant agreement will have to comply with the new awards and the **transitional provisions will not apply**.

An accounting firm operating as a partnership will come under the Federal System from 1 January 2010 and unless they are currently operating under an enterprise bargaining agreement, the modern award, Clerical – Private Sector Award 2010 will apply to their clerical staff as opposed to the current Clerical and Administrative Employees Award NSW (a NAPSA).

#### Summary of Transitional Arrangements

- Modern Awards commenced on 1st January 2010
- The following provisions of the Modern Awards can generally be phased in over a period up to five (5) years.
  - i) this includes minimum wages, including wages for junior employees, employees to whom training arrangements apply and employees with a disability, industry allowances
  - ii) casual (and part-time) loadings
  - iii) Saturday, Sunday, public holiday, evening and other penalties
  - iv) shift allowances
- Other Award conditions will take effect from 1st January 2010 such as the spread of hours, overtime rates, allowances etc.

## Increases that are applicable to employees under a Modern Award can be absorbed into existing over-award payments.

### Phasing In Details

- The phase-in will commence from **1 July 2010** and continue in annual increments of 20% of the amount of the different rate until 1 July 2014.
- The phasing-in will take place in up to five increments so that cost **increases and pay reductions** all occur in increments e.g. a \$10 per week wage increase from current award/Pay Scale rates will occur in \$2.00 instalments over the five year period.
- If the old rate is lower, the applicable rate for both existing and new employees will remain at the old rate until 1 July 2010, and then will increase by 20% of the difference of the old rate and the new rate (the transitional amount) each year, and
- If the pre 1 January 2010 rate is **higher** than the Modern Award Rate, the applicable rate for **existing employees at 1 January 2010** will remain at that old rate until the new rate catches up through award increases. (The AIRC decision makes provision for the no reduction in take-home pay principle);
- If the pre 1 January 2010 rate is higher, the applicable rate for **employees employed after 1 January 2010 but before 1 July 2010**, will remain at that rate until the new rate catches up through award increases (The AIRC decision makes provision for the no reduction in take-home pay principle);
- If the pre 1 January 2010 rate is **higher** for **employees employed after 1 July 2010** the applicable rate is the adjusted rate as per the Transitional Provisions prescribed in the Award.
- If the pre 1 January 2010 rate is **lower**, the applicable rate **for both existing and new employees** will remain at that old rate until 1 July 2010, and then will increase by 20% of the transitional amount each year as prescribed in the Transitional Provisions of the Award.

### Issues To Be Considered

#### **Does an employer have to comply with the transitional arrangements, or can the employer just apply the modern award rates?**

An employer does not have to follow the transitional provisions.

The employer can adopt the modern award conditions as of 1 January 2010, however, if the modern award is less beneficial than the current award, employees may apply for no reduction in take home pay orders from the Tribunal.

#### **How does future annual wage increases made by the Tribunal affect the new Modern Awards?**

The employer must apply any minimum wage increase in the Modern Awards resulting from an annual wage review. The revised Modern Award rate would be subject to the above phasing in process.

#### **What if I pay over award payments to my employees?**

The AIRC has made it clear that the monetary obligations imposed on employers by increases in Modern Awards may be absorbed into overaward payments.

Nothing in the Modern Awards requires employers to maintain or increase any overaward payment.

#### **What if the take home pay is changed as a result of these changes?**

Separate from the transitional provisions, employees can also apply to Fair Work Australia for Take Home Pay Orders if the move to a modern award means they suffer a reduction in their take home pay.

This applies to ordinary rates of pay.

There is no equivalent right for employers to apply to Fair Work Australia.

#### **How does this affect workplace agreements?**

If a business is covered by a workplace agreement then the modern awards changes will not affect an employee's rights and entitlements.

The pay rate must be raised at least to the modern award amount if an employee is paid less than the minimum wage under the corresponding modern award, where no relevant modern award exists, pay rates need to be, at minimum, consistent with the Federal minimum wage.

#### **EXAMPLES OF TRANSITIONAL PROVISIONS AND THEIR APPLICATION**

- **Weekly Salary Transition (existing Salary lower than Modern Award)**

Where the pre-modern Award rate of pay for an employee is \$X and is less than the Modern Award rate of pay of \$Y. The difference between \$Y-\$X is the "transitional amount".

From the following dates the employer must pay no less than the minimum wage for the classification in the Modern Award minus the specified proportion of the transitional amount:

First full pay period on or after

- 1 July 2010 - 80%
- 1 July 2011 - 60%
- 1 July 2012 - 40%
- 1 July 2013 - 20%

If an employer was paying \$10 per hour under your current NAPSA/State Award and the Modern Award provided for \$15 hour

$\$10 - \$15 = \$5$

Transitional Amount = \$5

\$11 per hour is the new rate for the first year

\$12 for the second year etc.

- **Weekly Salary Transition (existing Salary greater than Modern Award)**

Where the pre-modern Award rate of pay for an employee is \$X and **is greater than** the Modern Award rate of pay \$Y. The difference \$X-\$Y is referred to as the "transitional amount".

From the following dates the employer must pay no less than the minimum wage for the classification in the Modern Award plus the specified proportion of the transitional amount:

First full pay period on or after

1 July 2010 - 80%

1 July 2011 - 60%

1 July 2012 - 40%

1 July 2013 - 20%

If an employer was paying \$15 per hour under a current NAPSA/State Award and the Modern Award provided for \$10 per hour.

$\$15 - \$10 = \$5$

Transitional Amount = \$5

\$14 per hour is the new rate for the first year and incremental from then on.

The Employee can make an application for a "Take Home Pay" order to address the reduction provided that in all the circumstances it was not insignificant

- **Casual Loading Transition**

Where the pre-modern Award Casual loading for an employee is 20% and is less than the Modern Award loading of 25%. The difference is referred to as the "transitional amount".

From the following dates the employer must pay no less than the minimum wage for the classification in the Modern Award minus the specified proportion of the transitional amount:

First full pay period on or after

1 July 2010 - 80%

1 July 2011 - 60%

1 July 2012 - 40%

1 July 2013 - 20%

If an employer was paying 20% casual loading under your current NAPSA/State Award and the Modern Award provided for 25% casual loading

$25\% - 20\% = 5\%$

Transitional Amount = 5%

21% is the new casual loading for the first year.

- **Penalty Rate Transition (other than Overtime)**

Where the pre-modern Award penalty rates (weekend, shift, and public holidays) for an employee is X% and is less than the Modern Award penalty of Y%.

The difference between Y%-X% is the "transitional amount".

From the following dates the employer must pay no less than the penalty for the classification in the Modern Award minus the specified proportion of the transitional amount:

First full pay period on or after

1 July 2010 - 80%

1 July 2011 - 60%

1 July 2012 - 40%

1 July 2013 - 20%

If an employer was paying 200% (double time) under their NAPSA/State Award and the Modern Award provided for 250% penalty (double time and one half)

$250\% - 200\% = 50\%$

Transitional Amount = 50%

210% is the new penalty for the first year

- **Vehicle Allowance (our advice from the Ombudsman)**

Some awards such as the Commercial Travellers Awards and Advertising Sales Representatives Awards provide for vehicle allowances for employees who use their own vehicles when performing work for the employer.

The previous award could have had a "standing charge" of \$200.00 per week and a rate of \$0.20 per kilometre.

The Modern Award for Commercial Sales has a "kilometre rate" and no provision for a "standing charge".

The applicable "standing charge" will be reduced by 20% per year as follows:

First full pay period on or after

1 July 2010 - 80%

1 July 2011 - 60%

1 July 2012 - 40%

1 July 2013 - 20%

The applicable "kilometre charge" will be increased by 20% per year as follows:

First full pay period on or after

1 July 2010 - 80%

1 July 2011 - 60%

1 July 2012 - 40%

1 July 2013 - 20%

There are a wide range of other changes in the new awards including the application of awards to Professional Employees and the provision for casual employees to be made weekly permanent employees.

---

If you wish to discuss any of these matters then contact please contact:

**John Tamplin**

0417 552 801

johntamplin@iprimus.com.au

**Maria Loutsopoulos**

0416 047 943

tamplin2@gmail.com

If you have been forwarded this email and wish to subscribe, then click [here](#).