



THE 10 NATIONAL EMPLOYMENT STANDARDS
EFFECTIVE 1 JANUARY 2010
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As part of its new workplace relations system, the Federal Government has finalised ten minimum standards that will apply to employees of incorporated companies. These Standards will come into effect on 1 January 2010 and will be incorporated into awards.

The 10 National Employment Standards are:

- 1) Maximum weekly hours of work;
- 2) Requests for 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 dismissal and redundancy severance payments;
- 10) Fair Work Information Statement.

Below is a summary of the main points relating to each Standard and we have attempted to highlight the main aspects of each of the 10 Standards that employers need to be aware of.

**IF YOU REQUIRE ANY CLARIFICATION THEN PLEASE CALL
JOHN TAMPLIN ON 0417 552 801 OR MARIA LOUSOPOULOS ON 0416 047 943.**

1. MAXIMUM ORDINARY HOURS OF WORK PER WEEK

- The ordinary hours of work for an award covered employee must not exceed 38 hours per week;
- An employer may require an employee to work “reasonable additional hours” which is “overtime” and when determining what is “reasonable” or “unreasonable” the issues to be considered are:
 - any risk to employee health and safety;
 - the employee’s personal circumstances including family responsibilities;
 - the needs of the workplace or enterprise;
 - whether the employee receives overtime payment or their pay includes compensation to work additional hours and therefore reflects the expectation that they will be working additional hours;
 - the period of notice given by the employer;
 - the notice given by the employee in refusing to work;
 - the usual patterns of work in the industry or the part of an industry in which the employee works;
 - the nature of employee’s role, and their level of responsibility;
 - whether the additional hours are in accordance with averaging provisions of a modernised award;
 - any other relevant matter.

Our View:

This provision is consistent with existing legislation and awards.

2. REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS

- An employee responsible for the care of a child under school age or under 18 and with a disability may request a change in working arrangements to assist in the care of the child and the request must be in writing;
- Changes requested can be to hours of work, work patterns or the location of work;
- “School age” refers to the age of a child who is legally required to start attending school;
- Employees eligible must have at least 12 months continuous service with the employer and for casuals they need to be engaged on a regular and systematic basis for at least 12 months;
- An employer has 21 days to respond to the request and must do so in writing;
- The employer may refuse the request only on reasonable business grounds and must specify those grounds in writing.

Our View:

This provision raises the issue of what are “reasonable business grounds” and that is a potential area of conflict and it will also facilitate the potential analysis of an employers operations and business if they reject a request and the employee takes the matter to a Tribunal or Court.

3. PARENTAL LEAVE AND RELATED ENTITLEMENTS

- Eligible employees must have at least 12 months continuous service with the employer and eligible casuals need to be engaged on a regular and systematic basis for at least 12 months immediately before the date or expected date of birth of the child or, in the case of adoption leave, before the date or expected day of placement of the child;
- Employee couples in which each employee is the spouse or de facto of the other who both intend to take unpaid leave can do so either separately or at the same time;
- There is a provision for a spouse or de-facto partner to take 3 weeks of unpaid leave at the time of the birth of the child concurrently when the partner is on maternity leave;
- Eligible pregnant employees may continue to work 6 weeks before the expected date of birth. The employer may ask for a medical certificate stating the employee is fit to work and detailing if inadvisable to continue working in their present position for a certain period due to illness or risk arising out of the pregnancy or hazards connected with the work. Failure to produce a requested medical certificate may result in unpaid parental leave having to be taken;
- Written notice must be provided to the employer of the intention to take unpaid parental leave, where practical, at least 10 weeks before the intended start of maternity leave;
- An employee may extend the period of unpaid leave by giving written notice to the employer no later than 4 weeks before the end of the original leave applied for (the first extension). Subsequent extensions can only be made with the employer’s agreement and cannot be longer than the statutory period available to the employee ie if the employee initially applied for 9 months parental leave, subsequent extensions cannot be longer than another 3 months.
- An employee who takes unpaid parental leave may request in writing for an additional period of 12 months of unpaid parental leave and the employer must agree to the request unless the employer has “reasonable business grounds” for refusing and must specify those grounds in writing;
- An employee can take other paid leave whilst on unpaid parental leave such as long service leave or

annual leave but cannot take paid personal/carer's leave or compassionate leave.

Our View:

There are 2 issues that are different to existing legislation and the first is that the "short paternity leave" has been extended to 3 weeks and the employee can request the extension of maternity leave for up to an additional 12 months and can only be refused on "reasonable business grounds" which is again unclear.

This is a potential area of conflict and it will also facilitate the potential analysis of an employers operations and business if they reject a request and the employee takes the matter to a Tribunal or Court.

4. ANNUAL LEAVE

- 4 weeks annual leave per year after 12 months continuous service;
- Excludes casual employees;
- Accrues progressively during the year;
- Taken at an agreed time and the employer cannot unreasonably refuse the employee taking the leave;
- Calculated on "base rate of pay" and does not include incentive-based payments and bonuses, loadings, allowances, overtime, penalty, etc;

Our View:

The provision appears consistent with existing legislation.

5. PERSONAL/CARER'S LEAVE AND COMPASSIONATE LEAVE

- 10 days paid personal/carer's leave per year;
- Excludes casual employees;
- Personal/carers leave accrues progressively during the year;
- If public holiday(s) coincides with a period of personal/carer's leave, the employee is not taken to be on personal/carer's leave on those day(s);
- Personal/carers leave is calculated on the "base rate of pay" of the employee and does not include incentive-based payments and bonuses, loadings, allowances, overtime, penalty, etc;
- An employee is entitled to 2 days unpaid carer's leave per occasion when an immediate family member is ill or injured or in an unexpected emergency;
- An employee can only access unpaid carer's leave when all paid personal/carer's leave has been exhausted;
- 2 days paid compassionate leave per occasion for immediate family who have an illness or injury that poses a threat to their life or who dies;
- Casuals still excluded from payment but entitled to unpaid leave;

- Notice and documentation requirements required (as is currently).

Our View:

This provision is consistent with existing legislation and awards.

6. COMMUNITY SERVICE LEAVE

- "Eligible community service activity" includes jury service (including jury selection), voluntary emergency management activities;
- Definition of "voluntary emergency management activity" is limited to the following:
 - activity that involves dealing with an emergency or natural disaster; and
 - is carried out on a voluntary basis; and
 - the employee is a member of has a member-like association with a recognised emergency management body; and
 - was requested by the body to carry out the activity or would be reasonable to expect that it is likely that such request would have been made.
- Notice and (if required) evidence of such absences must be given to the employer;
- "Base rate of pay" is paid to employee on jury service (except casuals). Evidence and any jury service payment details are to be given to employer upon request;
- Where jury service is more than 10 days – the employer is only required to pay for the first 10 days absence.

Our View:

There is a change in this provision which reduces the jury service to 10 days which is less than most awards and given that the awards are more beneficial it would be reasonable to assume that the existing award provisions will be applied when the AIRC is modernising the awards.

7. LONG SERVICE LEAVE

Entitlement to Long Service Leave remains.

Our View:

There is no change to Long Service Leave entitlement and this varies from award to award and from State to State.

8. PUBLIC HOLIDAYS

- The following are public holidays:
 - 1 January (New Year's Days),
 - 26 January (Australia Day),
 - Good Friday,
 - Easter Monday,
 - 25 April (Anzac Day),
 - Queen's Birthday,
 - 25 December (Christmas Day),
 - 26 December (Boxing Day),
 - Any other day, or part day declared by or under law of a State or Territory.
- Employer may request employee to work on a public holiday if the request is reasonable;
- Employee may refuse if the "request is not reasonable" or the refusal is "reasonable";

What is "reasonable" to refuse or request should be considered in terms or factors including:

- the nature of the employer's workplace (including its operational requirements) and the nature of the work performed by the employee,
 - employee's personal circumstances,
 - employee's reasonable expectation that the employer might request them to work on the public holiday,
 - whether employee's pay includes compensation to work on a public holiday (and therefore reflects the expectation that they will be working on a public holiday),
 - type of employment (e.g. full-time, casual, etc),
 - notice given by the employer,
 - notice given by the employee in refusing.
- A weekly employee that has a public holiday coincide with a day that they would have worked will be paid the "base rate of pay" for that day.
- Casual and part-time employees who are not rostered to work on a day that is a public holiday will not be entitled to payment for that day.

Our View:

This provision is consistent with current legislation.

9. NOTICE OF TERMINATION AND REDUNDANCY PAY

While there are some exceptions listed, in most instances, an employer must give an employer written notice of the day of the ending of their employment;

Written notice can be provided by personal delivery, pre-paid post or leaving it at the employee's last known address;

Payment in lieu of notice may be made to the employee;

Notice is based on continuous service with the employer with an additional week for employees over 45 years of age and at least 2 years employment;

Period of continuous service	Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 week
More than 3 years but not more than 5 years	3 week
More than 5 years	4 week

- Transmission of business - unless termination notice requirements have been met with the old employer, a transferring employee's period of continuous service will include service with an old employer;
- Redundancy pay to be paid where a position is made redundant and redundancy occurs at the employer's initiative because the employer no longer requires the job the employee performs to be done by anyone anymore or because of insolvency or bankruptcy of the employer;
- At the time of transfer of a business, if the new employer recognises service with an old owner, there is no requirement for redundancy pay to be made. An employee who rejects an offer of employment with a new employer during a transmission of business and the offer is on terms and conditions similar to and no less favourable than the old owner's terms and conditions, there is no requirement for redundancy pay to be made. An employee however can apply to Fair Work Australia if the offer operates unfairly for them ie the old employer may be liable to pay a certain amount of redundancy pay as Fair Work Australia determines;
- Redundancy pay is based on an employee's continuous service with the employer and calculated on the employee's base rate of pay as follows:

Redundancy Pay Period	
Employee's period of continuous service	Redundancy pay period
At least 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

- Where the employer obtains other acceptable employment for the employee or cannot pay the redundancy amount, they can make application to Fair Work Australia to determine the amount of redundancy pay;
- Employees whose continuous service has been less than 12 months with the employer are excluded from redundancy pay;
- Employees who immediately before the termination worked for an employer employing fewer than 15 employees are excluded from redundancy pay. (Casuals with less than 12 months service are not included in the calculation determining number of employees);
- Other classes of employees excluded from redundancy provisions include:
 - employees on fixed-term contracts or project-based contracts,
 - employees serving probationary periods,
 - employees terminated for reasons of serious misconduct,
 - casual employees,
 - seasonal employees,
 - employees on traineeships and apprenticeships.

Our View:

The written notice of dismissal is a new provision and there are some exceptions such as casuals and probationary employees otherwise the terms appear consistent with existing federal award provisions.

10. FAIR WORK INFORMATION STATEMENT

- Fair Work Australia is to publish a Fair Work Information Statement containing information on matters including:
 - National Employment Standards,
 - Modern awards,
 - Agreement-making under the Act,
 - Right to freedom of association,
 - Role of Fair Work Australia.
- Employers must give the Information Statement to each employee as soon as practicable after the commencement of their employment.

If you have any questions in relation to the National Employment Standards or wish to discuss any employment issue then please contact:

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