

Workplace Law Fact Sheet

Ten rules that cannot be ignored – the National Employment Standards

As of 1 January 2010, a set of 10 new National Employment Standards ('NES') became operational. The NES provide minimum conditions which will apply to all Australian workers, and cannot be altered or contracted out of by the operation of an Award or a pre-existing Collective or Enterprise Agreement.

The 10 NES are:

- Maximum Weekly Hours;
- Flexible Working Arrangements;
- Parental Leave;
- Annual Leave;
- Personal/Carer's Leave;
- Community Service Leave;
- Long Service Leave;
- Public Holidays;
- Notice of Termination and Redundancy Pay; and
- Provision of a Fair Work Information Statement.

Flexibility

Flexibility relates to the employee's right to request work flexible hours until their child reaches school age or if their child is under 18 and has a disability. The employer can only refuse the request if they can show in writing that 'reasonable business grounds' prevent the employee from being able to work their requested hours.

Leave

Employees are now entitled to a range of leave entitlements depending on whether they are permanent, part-time or casual workers. These leave entitlements include annual leave; maternity and paternity leave; personal/carer's leave, both paid and unpaid; compassionate leave and community service leave.

Fair Work Information Statement

All new employees must receive a Fair Work Information Statement. The statement contains information about the NES, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, rights of entry, transfer of business, and the respective roles of Fair Work Australia and the Fair Work Ombudsman.

Breach of the NES

Any employer who is deemed by the Fair Work Ombudsman to have breached the NES will be liable to pay \$6,600 in penalties for an individual and \$33,000 for a corporation who is deemed to have breached the NES and employers must ensure that the provisions of the NES are encompassed in company policies and

induction material.

10 Simple steps towards complying with the NES and Modern Awards

- Determine which Modern Award/s apply to your organisation (there may be more than one).
- Determine which employees are covered by each Modern Award.
- Compare the activities of your employees to the classifications provided in the Modern Awards to determine how your employees should be categorised.
- Advise each employee in writing which Modern Award applies to them, and in which category they fall.
- Ensure that all your managers and supervisors are aware of the requirements of the Modern Award and the rights and obligations of employees.
- Develop, review, amend and re-negotiate as required, all job descriptions to ensure consistency with the relevant Modern Award.
- Review and amend any existing policies to ensure compliance and consistency with the NES. Organisations need to consider whether they should develop or retain their existing policies whether they should refer to and apply the terms in the Fair Work Act.
- Review or develop additional policies or arrangements to assist the organisation on better meeting employee demands or requests under the NES and applicable Modern Awards (for example Flexible Working Arrangements and Community Service Leave).
- Review, amend and re-negotiate as required, all employment contracts and agreements to ensure compliance with the NES and Modern Award provisions. Review, amend and re-negotiate as required pay scales or individual pay arrangements.
- Ensure that a copy of the Modern Award and NES are available to all employees.

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