

WORKERS' RIGHTS AWARDS AGREEMENTS AND EMPLOYMENT STANDARDS



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Awards, Agreements and Employment Standards

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The ten minimum standards in the NES cover:

- **Maximum weekly hours of work** – 38 hours per week, plus reasonable additional hours.
- **Requests for flexible working arrangements** – parents or carers of a child under school age or of a child under 18 with a disability have the right to request a change in working arrangements to assist with the child's care. Your employer may refuse such a request on 'reasonable business grounds'.
- **Parental leave and related entitlements** – up to 12 months' unpaid leave, plus a right to request an additional 12 months' unpaid leave.
- **Annual leave** – four weeks' paid leave per year (pro-rata for part-time employees), plus an additional week for certain shift workers.
- **Personal/carer's leave and compassionate leave** – 10 days' paid personal/carer's leave (for permanent full-time employees, pro-rata for part-time employees, casuals are not eligible), two days' unpaid carer's leave as required (including casuals), and two days' paid compassionate leave (unpaid for casuals) as required.

- **Community service leave** – unpaid leave for certain voluntary emergency activities and up to 10 days' paid leave for jury service.
- **Long service leave** – for most employees in South Australia, 13 weeks after 10 years of service (pro-rata after seven years).
- **Public holidays** – a paid day off on a public holiday for permanent employees who would normally work on that day. Your employer may make a reasonable request for you to work on a public holiday, but you may reasonably refuse such a request.
- **Notice of termination and redundancy pay** – the notice period will depend on length of service. If you are over 45 with more than two years service, you are entitled to an additional weeks' notice. Redundancy pay will also depend on your length of service with an employer, and there are additional transitional arrangements in place that will affect how redundancy pay is calculated.
- **Provision of a Fair Work Information Statement** – employers must provide this statement to all new employees. It contains information about the National Employment Standards, 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. To download a copy of the Fair Work Information Statement visit www.fairwork.gov.au.

A certain amount of flexibility is also allowed in the operation of the NES. For example, awards and agreements may specify terms that are flexible in relation to:

- averaging an employee's ordinary hours of work
- the cashing out and taking of paid annual leave
- the cashing out of paid personal/carer's leave
- the substitution of public holidays
- situations in which redundancy pay entitlements do not apply.

For more information about the NES see the factsheets on *Leave, When your job ends and What are the different ways of working*.

Modern Awards

The modern award that applies to your industry or occupation will apply to you unless the award has been replaced by an enterprise agreement. If you are a manager or a high income employee (those employees who are not covered by an enterprise agreement and who earn more than \$113,800 per year as at 1 July 2010) the modern award may not apply to you, but the NES will.

A modern award covers things such as:

- Penalty rates
- Types of employment
- Flexible working arrangements
- Superannuation
- Hours of work
- Rest breaks
- Classifications
- Allowances
- Leave and leave loadings
- Procedures for consultation, representation and dispute settlement
- Redundancy entitlements

Enterprise Agreements

Your wages and employment conditions may be set in an enterprise agreement that applies at your workplace. An enterprise agreement replaces the modern award, but not the NES, which continues to apply. An enterprise agreement must be genuinely agreed to by the majority of employees at the workplace, and must leave employees better off overall than they would be if the award applied.

Unions can be parties to enterprise agreements, or the agreement can be with the employees directly. Employees are entitled to have union representation during the bargaining process if they wish. Once approved by Fair Work Australia, your enterprise agreement is enforceable and may provide for changes in your terms and conditions of employment.

What about employment contracts?

Your contract of employment should be based on the award or enterprise agreement that applies to you. While your employer may provide better conditions than what is provided for under the award, you cannot "contract out of" any minimum entitlements. You may however use an Individual Flexibility Agreement to vary certain modern award entitlements.

Individual Flexibility Arrangements

Your modern award or enterprise agreement must include a flexibility term. This term allows you and your employer to agree to an Individual Flexibility Arrangement (IFA), which varies the effect of certain terms of the modern award or enterprise agreement. The IFA must leave you better off overall than you would be if you remained covered by the modern award or agreement without variation.

You cannot be forced to sign an IFA. If you change your mind you can cancel the agreement by giving four weeks notice, in which case your employment returns to award conditions.

Where can I get more help?

Your union

SA Unions
Ph: (08) 8279 2222
www.saunions.org.au

Working Women's Centre

Ph: 1800 652 697
www.wwc.org.au

1st Floor, Station Arcade
52 Hindley Street
Adelaide, SA, 5000

Legal Services Commission

Ph: 1300 366 424
www.lsc.sa.gov.au

82-98 Wakefield Street
Adelaide SA 5000

Young Workers Legal Service

Ph: (08) 8279 2233
www.ywls.org.au

Fair Work Australia (FWA)

Ph: 1300 799 675
www.fwa.gov.au

Level 6, Riverside Centre,
Nth Terrace, Adelaide, 5000

PO Box 8072
Station Arcade, Adelaide, 5000

Telephone: (08) 8308 9863
Facsimile: (08) 8308 9864
Out of hours emergency: 0419 563 601
Email: adelaide@fwa.gov.au

Fair Work Ombudsman (FWO)

Ph: 13 13 94
www.fairwork.gov.au

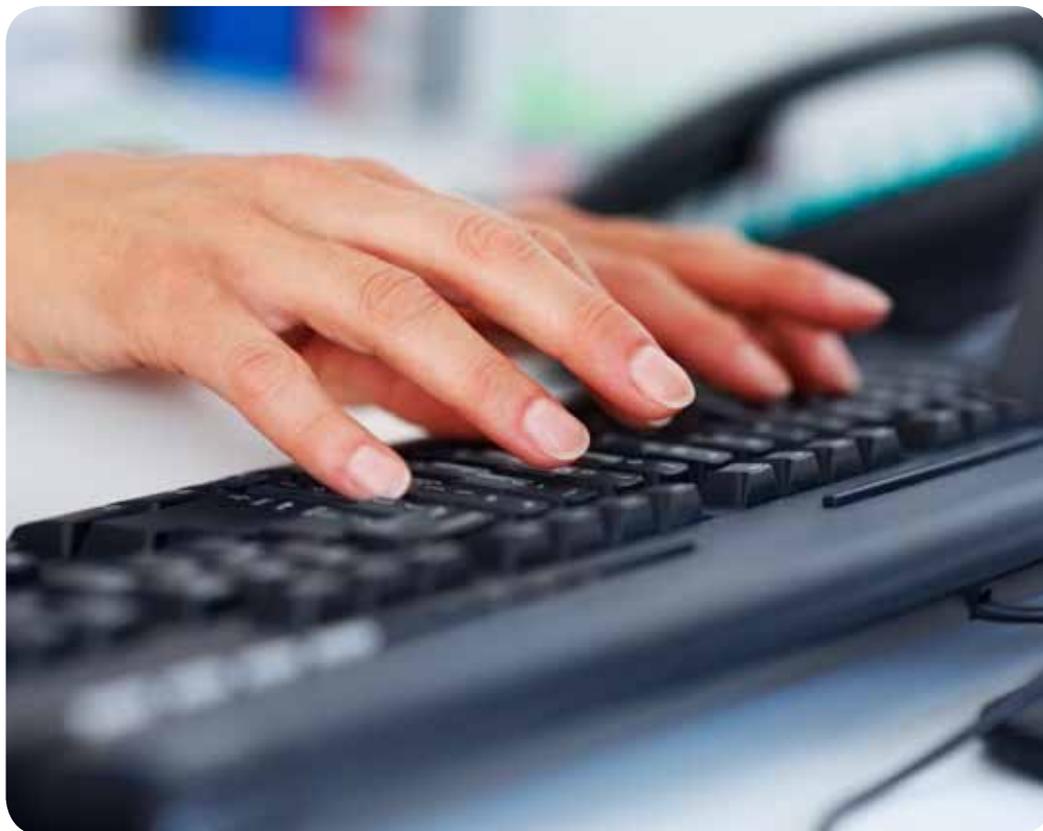
Level 2, 148 Frome St.
Adelaide SA, 5000

Fair Work Ombudsman Complaints Assessment Team

GPO Box 2567, Adelaide, SA, 5001

Telephone Interpreter Service

Ph: 13 14 50



Legal disclaimer: The Fair Work Ombudsman (FWO) is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws. The information contained in this publication within the FWO's jurisdiction is: general in nature and may not deal with all aspects of the law that are relevant to your specific situation; and not legal advice. Therefore, you may wish to seek independent professional advice to ensure all the factors relevant to your circumstances have been properly considered. This information was published on 10 June 2011. The FWO does not accept legal liability arising from or connected to the accuracy, reliability, currency or completeness of this information. This material has been funded by the Australian Government through a Fair Work Ombudsman initiative to produce educative materials on the Fair Work Act.