

## National Employment Standards

Ten National Employment Standards will apply to *all* employees, covering:

- Hours of Work
- Parental Leave
- Flexible Work for Parents
- Annual Leave
- Personal, Carers and Compassionate Leave
- Community Service Leave
- Public Holidays
- Information in the Workplace
- Notice of Termination and Redundancy
- Long Service Leave

The key features of the NES are as follows:

**Hours of work:** The NES maintains the current position that employees must not be expected to work more than 38 hours per week plus reasonable additional hours. In determining what is reasonable, the NES expressly allow consideration to be given to an employee's role, level of responsibility and remuneration. These changes recognise that many employees are in positions or are paid such a salary that a "standard" week of 38 hours is simply not realistic.

**Requests for flexible work arrangements:** Employees with more than 12 months service who are parents, or who have a responsibility for the care, of a child under school age may request flexible work arrangements. These may include changes to hours of work, patterns of work or to locations of work. An employer may only refuse a request on "reasonable business grounds". The term "reasonable business grounds" is not defined although it is expected that Fair Work Australia will provide information and issue guidelines to help employers apply the test.

**Parental leave:** The basic entitlement to 12 months unpaid parental leave remains under the NES. However, the entitlement has been extended so that both parents may take separate (but continuous) periods of 12 months parental leave. Alternatively, one parent who has already taken 12 months parental leave may request up to a further 12 months parental leave. Such a request may only be refused on "reasonable business grounds" (see discussion of this term above). The parental leave entitlement has been extended to same-sex couples.

The NES introduces a new entitlement for an employee on parental leave to be consulted if the employer makes a decision that will have a significant effect on the status, pay or location of the employee's pre-parental leave position.

**Annual leave:** The basic entitlement of four weeks leave in each year (five weeks for shift workers) remains unchanged. An employer will not be able to unreasonably refuse an employee's request to take leave. There is nothing that allows employers to compel an employee to take leave. Payment for annual leave is to be made at the employee's "base rate of pay" (excluding, for example, bonuses, loadings, allowances and overtime).

There is no provision in the NES for the cashing out of annual leave. Rather, the NES state that such provisions may be included in a modern award. One practical consequence of this approach is that employees earning more than \$100,000 per annum will be unable to cash out annual leave, as they will be excluded from award coverage.

**Personal/carer's leave:** The entitlements relating to personal leave, compassionate leave and unpaid carer's leave are largely unchanged from the existing provisions in the current *Workplace Relations Act* (the Act). No

provision has been made in the NES for cashing out personal leave but, again, such provisions may be included in a modern award.

**Community service leave:** The NES introduces community service leave, which is designed to cover absences for jury service or to carry out a voluntary emergency management activity. Other forms of community service may be prescribed by regulation.

Community service leave is unpaid leave except for jury service. In that case, the employer must pay the employee for up to the first 10 days of the absence at the employee's base rate of pay, less any jury service fees paid or payable to the employee. Where an employee fails to take all necessary steps to recover the jury service pay to which he or she is entitled, the employee is not entitled to any payment by the employer.

**Long service leave:** The NES largely preserves an employee's existing entitlements to long service leave pending the harmonisation of the various state provisions into a single national standard. Until then, long service leave will remain a state-based entitlement.

**Public holidays:** An employee is entitled to be absent from work on a public holiday and to be paid for that day at his or her "base rate of pay". Employers may request that employees work on a public holiday, if the request is reasonable. The NES include a number of factors that must be considered when determining reasonableness.

**Notice of termination and redundancy pay:** The existing notice provisions of the Act are now largely incorporated into the NES. However, under the NES, that notice must be provided in writing and any payment in lieu of notice is paid at an employee's "full rate of pay" (including all bonuses, loadings, allowances and overtime).

The NES will introduce a statutory entitlement to redundancy pay for employees whose employment is terminated because the employer no longer requires the job done by the employee to be done by anyone. The amount of redundancy pay will depend on the employee's period of "continuous service", starting at four weeks for an employee with at least one year's service to 16 weeks for employees with between nine and 10 years service. Employees with more than 10 years service receive 12 weeks redundancy pay, recognising that they will often receive a payment in lieu of long service leave.

Employers do not have to make redundancy payments to employees who have been employed less than 12 months or if the employer has fewer than 15 employees. An employer who obtains other acceptable employment for an employee whose position is redundant or who cannot pay the redundancy pay may make an application to Fair Work Australia for the amount to be reduced.

In transfer of business situations, an "old" employer does not have to make redundancy payments if:

- the "new" employer employs the employees and recognises their service with the old employer for the purposes of calculating various entitlements or
- an employee refuses an offer of employment with the new employer, which is an offer on terms and conditions substantially similar to and no less favourable than the terms and conditions with the old employer.

**Fair Work information statement:** The Fair Work Information Statement will be published in the *Gazette* by Fair Work Australia and will contain information about the NES, modern awards, agreement making, the right to freedom of association and the role of Fair Work Australia. A Fair Work Information Statement must be given to each new employee before, or as soon as practicable after, they commence employment.