

# NES - National Employment Standards

From 1 January 2010, employers and employees in the national workplace system are covered by the new National Employment Standards (NES).

Under the NES, employees have certain minimum conditions.

Together with pay rates in modern awards (which also generally take effect from 1 January 2010) and minimum wage orders, the NES makes up the safety net that cannot be altered to the disadvantage of the employee.

In addition to the NES, generally an employee's terms and conditions of employment come from a modern award, agreement, award and agreement based transitional instruments, minimum wage orders, transitional minimum wage instruments, state or federal laws.

## What are the 10 NES entitlements?

The NES are set out in the *Fair Work Act 2009* and comprise 10 minimum standards of employment.

In summary, the NES involve the following minimum entitlements:

**Maximum weekly hours of work** – 38 hours per week, plus reasonable additional hours.

**Requests for flexible working arrangements** – allows parents or carers of a child under school age or of a child under 18 with a disability, to request a change in working arrangements to assist with the child's care.

**Parental leave and related entitlements** – up to 12 months unpaid leave for every employee, plus a right to request an additional 12 months unpaid leave, plus other forms of maternity, paternity and adoption related leave.

**Annual leave** – 4 weeks paid leave per year, plus an additional week for certain shift workers.

**Personal / carer's leave and compassionate leave** – 10 days paid personal / carer's leave, two days unpaid carer's leave as required, and two days compassionate leave (unpaid for casuals) as required.

**Community service leave** – unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service.

**Long service leave** – a transitional entitlement for certain employees who had certain LSL entitlements before 1/1/10 pending the development of a uniform national long service leave standard.

**Public holidays** – a paid day off on a public holiday, except where reasonably requested to work.

**Notice of termination and redundancy pay** – up to 4 weeks notice of termination (5 weeks if the employee is over 45 and has at least 2 years of continuous service) and up to 16 weeks redundancy pay, both based on length of service.

**Provision of a Fair Work Information Statement** – employers must provide this statement to all new employees.

It 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.

## Modern Awards

The Australian Industrial Relations Commission (AIRC) was charged with responsibility for making Modern Awards by January 2010. Modern awards are part of the new national safety net underpinning bargaining. The AIRC convened meetings during 2009 of stakeholders to determine what modern awards needed to be made. CPSU and LHMU, the 2 main unions with coverage of private correctional facilities argued that corrections were a separate industry from general security services. The current three private employers – GEO, G4S, and Serco – also put similar arguments.

The AIRC accepted this view and has now made a **Corrections and Detention (Private Sector) Award 2010**. This award will apply from 1 January 2010 to the industry, except where there is an enterprise award i.e. an award for a single employer. The process for modernising enterprise awards will commence next year. Please note the modern award process is **NOT** about improving actual terms and conditions of employment. They are the safety net. Bargaining and agreements are the vehicle for improvements.

## How does this affect agreements?

If employment is covered by an industrial agreement (e.g. collective agreements, certified agreements) that came into operation before 1 January 2010, modern awards do not affect an employee's rights & entitlements.

However, if an employee is paid less than the minimum wage under a modern award that covers them, the pay rate must be raised at least to the modern award amount.

Where no relevant modern award exists, pay rates need to be, at minimum, in line with the Federal minimum wage (or national minimum wage after 1 July 2010).

CPSU

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