



PRISON BLUES

News & Views Journal for CPSU members employed at Correctional Services [Prisons]

MAXIMUM WEEKLY HOURS

19 January 2010

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. 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.

Hours of Work

The NES sets out the maximum weekly hours for employees and also the circumstances in which an employee may refuse a request or requirement to work additional hours if the hours are unreasonable. An employer must not request or require an employee to work more than the following hours of work in a week, unless the additional hours are reasonable:

- for a full-time employee – 38 hours; or
- for an employee other than a full-time employee – the lesser of 38 hours and the employee's ordinary hours of work in a week.

When calculating the number of hours an employee has worked per week, any authorised leave, such as personal leave, should be included.

Transitional Arrangements

The Fair Work Act provides transitional arrangements about how the NES applies to industrial instruments made before the new national IR system came into operation e.g. our Victorian Public Service Agreement 2006.

A 'no detriment' rule applies.

This means if any provision of a transitional instrument which is detrimental to the employee when compared to the NES will have no effect.

Reasonable Additional Hours

An employee may refuse to work additional hours, if they are unreasonable. For additional hours to be 'reasonable', all relevant factors must be considered. These factors include:

- any risk to the employee's health and safety
- the employee's personal circumstances, including family responsibilities
- the needs of the workplace or enterprise
- whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration, that reflects an expectation of, working additional hours
- any notice given by the employer to work the additional hours
- any notice given by the employee that they intend to refuse to work the additional hours
- the usual patterns of work in the industry
- the nature of the employee's role, and the employee's level of responsibility
- whether the additional hours are in accordance with agreed averaging arrangements
- any other relevant matter.

CPSU is currently reviewing whether the 40 hour working week arrangement in Corrections is in breach of the hours of work NES.

In particular, whether the additional hours are adequately compensated to be regarded as 'reasonable'.

If there is a dispute about the application of the NES to an existing agreement, Fair Work Australia (FWA) can make a determination about the matter.

Such claims cannot be backdated as the NES entitlement only applies from 1 January 2010.

KAREN BATT
CPSU Victorian Branch Secretary

CPSU, State Public Services Federation Group, Victorian Branch

POSTAL ADDRESS: PO Box 4355, Richmond East, 3121 or c/- Rosella Complex, 6 Palmer Parade, Richmond East VIC 3121

T: (03) 9639 1822 or toll free on 1800 810 153 F: (03) 9662 4591 E: enquiry@cpsuvic.org

W: <http://www.cpsuvic.org>