
SUMMARY OF FAIR WORK AUSTRALIA AND WORKPLACE LEGISLATION CHANGES

Prepared by: Network of Alcohol and other Drugs Agencies
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Summary:

From the 1 January 2010 there are several important changes in workplace legislation that effect all employees and employers in the national workplace relations system. These changes are brought about by the Fair Work Act 2009 and its accompanying regulation.

All businesses in NSW will need to review their current employment policies and remuneration to ensure compliance with the new legislation.

There are a number of State and Federal Awards and Agreements under which the majority of employees in the drug and alcohol sector are employed. The replacement of these awards by the new National Modern Awards will not be easily achieved by any organisation. A Modern Award called the Social Community Home Care and Disabilities Services Award 2010 has been released although variations are still currently being made. The Australian Services Union is currently involved in Equal Pay Case under the new Fair Work Australia legislation. This pay case also has the potential to cause further variation(s) to the Social Community Home Care and Disabilities Services Award 2010.

Determining obligations and changes need to comply with the new legislation will be different for every organisation. An understanding of what award(s) or agreement(s) an organisation is currently paying in conjunction with the new National Employment Standards (NES), the appropriate Modern Award(s) and transitional arrangements are all required.

Boards or Management Committees should be made aware of this development and sufficient resources employed to ensure that organisations meet their obligations to employees.

Overview of Employer Obligations:

From the 1 January 2010 requirements brought about under the new legislation include, but are not limited to:

- The obligation to apply the new 'National Employment Standard' (*see below*)
- The obligation to meet the national requirements for 'Minimum pay and conditions' (*see the Fair Work Website*)
- Adopt or transition to the new national 'Modern Awards' before the end of 31 December 2010. (*new businesses must apply the Modern Awards on start-up*)

Other rules relating to employment matters governed by the Fair Work Act 2009 include, but are not limited to:

- Termination of employment
- Enterprise bargaining
- Industrial action
- Right on entry
- General protections
- Recordkeeping requirements

Some state workplace relations laws will continue to apply including those related to:

- Anti-discrimination legislation
- Long service leave
- Workers compensation
- Superannuation
- Leave for victims of crime
- Training arrangements
- Declaration, prescription or substitution of public holidays
- Attendance for service of a jury or a for emergency service duties
- Business trading hours
- Occupational Health and Safety
- Workplace surveillance
- Child labour

National Employment Standards (NES):

There are 10 new National Employment Standards (NES) which came into effect on 1 January 2010. All NSW businesses must apply these new standards for all their employees. The NES establishes a safety net of employee entitlements which prevail over any instrument. This means that **if an employee is covered by an award, agreement, former state award or state agreement or contract of employment it cannot provide less than the NES entitlements.**

The 10 NES standards are:

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

New National Modern Awards:

From 1 January, modern awards replace most existing awards in most industries. **Modern awards are industry or occupation-based enforceable minimum employment standards which apply in addition to the NES.**

Modern awards may not apply to some managers or higher income employees (annual income greater than \$108,300) even if a modern award covers the industry they work in.

Modern awards contain terms and conditions about, but are not limited to:

- Minimum wages
- Overtime and penalty rates
- Types of employment
- Work arrangements (e.g. Rosters, variation to hours)
- Hours of work
- Rest breaks
- Classifications
- Allowances
- Leave and leave loading
- Superannuation
- Procedures for Consultation, representation and dispute settlement

NSW Transition arrangements for awards and agreements are:

- **NSW awards** that covered employers and employees before 1 January 2010 continue to apply and are known as Division 2B State awards. They automatically **terminate at the end of 31 December 2010** (except for State enterprise awards). These employers and employees are then covered by a relevant modern award.
- Any entitlement in a Division 2B State award which is less beneficial to an employee when compared to the NES will not apply.
- **State employment agreements that covered these employers and employees continue to operate until terminated or replaced** and are known as Division 2B State employment agreements.
- An employee employed under a Division 2B State employment agreement is entitled to a rate of pay which is at least equal to the relevant Division 2B State award, or if none such exists, a relevant modern award.
- If the employee is not covered by a Division 2B State award or a relevant modern award then the employees rate of pay must be equal to the national minimum wage order.

SACS NSW from 1 January 2010:

- **NSW SACS AWARD**

From 1 January employees covered by the NSW Social and Community Services Award (**NSW SACS Award**) will continue to be covered by the NSW SACS Award in addition to the entitlements provided in the National Employment Standards (NES). Where a provision in the NES is superior to the NSW SACS Award entitlement then the NES will prevail; and, where a provision in the NSW SACS Award is superior to the NES entitlement then the NSW SACS Award will prevail.

- **NSW SACS NAPSA**

From 1 January employees covered by the NSW Social and Community Services Notional Agreement Preserving a State Award (**NSW SACS NAPSA**) will continue to be covered by the provisions of the NSW SACS NAPSA which will prevail over the Modern Award. From 1 January until 1 July the loadings of the SACS NSW NAPSA will continue to apply and prevail over the Modern Award. From 1 January all other conditions will be set out in the Modern Award called the Social Community Home Care and Disabilities Services Award 2010. The SACS NSW NAPSA must be read in conjunction with the NES and to the extent that the NES provides a better entitlement it will prevail over the NSW SACS NAPSA. If the NSW SACS NAPSA provides for a better condition than the NES then the NSW SACS NAPSA prevails.

Enterprise Agreements from 1 January 2010:

- **NSW State Enterprise Agreements and Federal Enterprise Agreements**

From 1 January existing Enterprise Agreements will continue in conjunction with the NES. Where a provision in the NES is superior to the existing Enterprise Agreement then the NES will prevail; and, where a provision in the Enterprise Agreement is superior to the NES entitlement then the Enterprise Agreement will prevail. The agreement will continue until a new Enterprise Agreement is made or until Fair Work Australia sets it aside.

The Australian Services Union (ASU) Equal Pay Case:

The Australian Services Union (ASU) has lodged a national test case for equal pay under the new Fair Work Australia (FWA) laws. The case aims to address the inequity between community service wages and conditions to those of comparable sectors. The case will argue that the majority of community workers in Australia are women and that wages in the community sector should be brought into line with the rates of pay in similar male dominated industries. This case has the potential to change the parts relating to pay of the new Social Community Home Care and Disabilities Services Award 2010.

The ASU has commenced a campaign to secure full funding from government to support the outcomes of the test case. Without government fully funding the outcomes from the case, a reduction in the provision of community services will result, to the detriment of the community as a whole.

RESOURCES:

NSW INDUSTRIAL RELATIONS:

NSW specific information can be found on the NSW Industrial relation website:

www.industrialrelations.nsw.gov.au

NSW Industrial Relations (NSW IR) is offering a range of free and paid practical workshops to assist all NSW employers in the move to the new Fair Work Australia System.

NSW IR and Human Resource Workshops:

www.industrialrelations.nsw.gov.au/Workshops.html

FAIR WORK AUSTRALIA

The federal government has setup the Fair Work Online website as a resource to assist with information and advice on the new legislation.

The Fair Work Online website can be found at:

www.fairwork.gov.au/

The Fair Work Info Line number is:

Ph: 131394

An introduction to the National Employment Standards (NES) can be found at:

www.fairwork.gov.au/Fact-sheets-tools/Documents/Introduction-to-the-NES.pdf

Fact Sheets covering key topics for employers and employees rights and obligations under the new legislation can be found at:

www.fairwork.gov.au/Fact-sheets-tools/Pages/Fact-sheets.aspx?role=employees

Fair Work Australia is an independent body with the power to carry out a range of functions relating to the safety net of minimum wages and employment conditions, enterprise bargaining, industrial action, dispute resolution, termination of employment, and other workplace matters.

The Fair Work Australia website can be found at:

www.fwa.gov.au/

The National Fair Work Information Statement can be found at:

www.fairwork.gov.au/Pay-leave-and-conditions/Conditions-of-employment/Pages/Fair-Work-Information-Statement.aspx?role=employees

The Fair Work Act 2009 can be found at:

www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200941262?OpenDocument

The Fair Work Regulation 2009 can be found at:

www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200942714?OpenDocument

AUSTRALIAN SERVICES UNION:

The ASU website can be found at:

www.asumembers.org.au/

If you would like to discuss the Fair Work legislation with NADA, please contact Victor Dudman, Business Manager, on (02) 8113 1305 or victor@nada.org.au