

## **National Employment Standards Explained**

### **1. Maximum Weekly Hours**

This standard provides for a maximum number of ordinary hours per week over which an employee must not be required or requested by an employer to work unless the additional hours are reasonable. The maximum is:

- 38 hours per week for a full-time employee;
- For an employee who is not full-time, the lesser of 38 hours per week and the employee's ordinary hours of work in a week;
- A modern award or agreement provide for the averaging of hours over a specified period; and
- An award/agreement free employee may agree in writing to average their hours over a period not exceeding 26 weeks.

When determining what are reasonable additional hours a non-exhaustive list has been suggested:

- Any risk to employee health and safety;
- The employee's personal circumstances, including family responsibilities;
- The needs of the workplace or enterprise in which the employee is employed;
- Notice given by the employer of any request or requirement to work the additional hours;
- Whether the employee is entitled to receive overtime payments, penalty rates or other compensation for working additional hours;
- Patterns of work in the industry; and
- The nature of the employee's role and level of responsibility.

### **2. Requests for Flexible Working Arrangements**

This standard gives the right for employees to request a change of working arrangements if they have 12 months continuous service and are parents of, or have responsibility for the care of, a child under school age, or a disabled child under 18.

Employees must have completed 12 months of continuous service with the employer immediately before making a request for flexible working arrangements. If an employee is a casual, the employee must have been engaged by the employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months and have a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

The request must be in writing and detail the change sought and reasons for the change. A written response must be given by the employer within 21 days and state whether the employer grants or

refuses the request (on reasonable business grounds). The NES does not provide assistance concerning what constitutes reasonable business grounds but may include:

- the effect on the workplace and the employer's business of approving the request, including the financial impact of doing so and the impact on efficiency productivity and customer service;
- The inability to organise work amongst existing staff; and
- The inability to recruit a replacement employee or the practicality or otherwise of the arrangements that may need to be put in place to accommodate the employee's request.

### **3. Parental Leave**

This standard provides for the ability of an employee who is a parent, or has responsibility for the care, of a child to request a change in working arrangements to assist in the care of the child. Examples of changes in working arrangements include changes in the hours of work, changes in patterns of work and changes in location of work.

The request is not an absolute right and must be considered reasonably in the same manner to NES Standard no. 2 and may be accepted or refused on reasonable business grounds.

The employee must have completed 12 months of continuous service with the employer immediately before the date of birth or expected date of birth, or the day of placement or expected date of placement of the child. If an employee is a casual, the employee must have been engaged by the employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months and have a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

The entitlement to take parental leave consists of 12 months of unpaid parental leave for each instance of the birth of a child by the employee or the employee's spouse or de facto or the placement of an adopted child with the employee and the employee has or will have responsibility for the care of the child.

An employee must give at least 10 weeks written notice if taking unpaid parental leave.

Both parents/adoptive parents may take leave simultaneously for a maximum period of three weeks from the day of the birth or placement of the child.

If a pregnant employee is entitled to unpaid parental leave and continues to work during the 6-week period before the expected date of birth of the child, the employer may ask the employee for a medical certificate stating that they are fit for work.

Unpaid Parental Leave may be extended by agreement for a further period of 12 months where the request is in writing at least 4 weeks before the end of the original parental leave period. No further period of unpaid parental leave is available after 24 months post the date of birth or placement of the child.

#### **4. Annual Leave**

This standard provides for 4 weeks paid leave per year of service. A shift worker (as defined by a Modern Award or enterprise agreement or, in the case of an award/agreement free employee, the *Fair Work Act 2009*), is entitled to 5 weeks annual leave.

Modern Awards and enterprise agreements may include provisions dealing with the cashing out of annual leave. Employers and award/agreement free employees may also agree to cash out annual leave. The Agreement must be made in writing and the payment must be for the full amount that the employee would have been paid if the employee had taken the leave. The employee must retain a balance of four weeks leave.

Award and agreements can also include provisions about taking or directing the taking of annual leave.

#### **5. Personal/Carer's Leave and Compassionate Leave**

This standard provides for an entitlement to take 10 days paid personal/carer's leave. 2 days unpaid carer's leave per occasion is available to casual and other employees who have exhausted their paid leave entitlement.

Employees are entitled to 2 days paid compassionate leave per occasion. For casuals this is an unpaid entitlement.

Carer's leave and compassionate leave entitlements may be taken in relation to a member of the employee's household or 'immediate family' (extended or blended families, de facto partners, step-relationships and adoptive relationships).

When taking leave under this standard, employees must provide notice to their employer as soon as is reasonably practicable (this may be after taking leave has occurred). The notice must state the period or expected period of absence if required by the employer and provide evidence that would satisfy a reasonable person of their entitlement to take the relevant kind of leave. Modern awards and enterprise agreements may include further rules relating to evidence requirements such as the provision of medical certificates.

Modern awards and enterprise agreements may allow for the cashing out of personal leave, provided that the employee retains a balance of 15 days paid leave after the cashing out. An award/agreement free employee is not able to cash out personal/carer's leave.

#### **6. Community Service Leave**

This standard provides a paid entitlement for employees to attend jury service and unpaid leave for those who engage in voluntary emergency management activity.

An employee is entitled to be paid by their employer for a period of up to 10 days while they are absent from work during a period of jury service. An employer may require the employee to obtain payments to which they are eligible from the applicable State/Territory or Commonwealth body; the payments will reduce the amount payable to the employee.

## **7. Long Service Leave**

This standard envisages a national system of long service leave and indications are that a new national system is a priority to be developed.

In NSW, the *Long Service Leave Act 1955* regulates the operation of long service leave.

The Act generally affords 8.67 weeks of long service leave for every ten years of continuous service. After each additional 5 years' service, a further one month's (4.33 weeks) leave is to be granted.

An employee may get a pro rata amount of leave paid out on termination after 5 years' continuous service provided that the employee does not resign for a reason other than pressing or domestic necessity.

Long service leave is also generally available to permanent part-time and casual employees on a pro rata basis after 10 years of continuous service.

## **8. Public Holidays**

This standard allows employees to be absent from work on specified public holidays and to be paid for the hours they would normally work.

The following days are public holidays for the purposes of the NES:

- 1 January (New Year's Day)
- 26 January (Australia Day)
- Good Friday
- Easter Monday
- 25 April (ANZAC Day)
- Queen's Birthday Holiday
- 25 December (Christmas Day)
- 26 December (Boxing Day)

Public Holidays may be substituted by agreement between an employer and an award/agreement free employee or if permitted under the terms of a modern award/enterprise agreement.

An employer may request an employee work on a public holiday if the request is reasonable. The request may be refused if it is unreasonable or the employee's refusal is reasonable.

## 9. Notice of Termination and Redundancy Pay

This standard ensures an employer must provide an employee with written notice of the day of termination of employment.

An employer must provide notice of termination or payment in lieu of that notice according to the following table:

<b>Period of continuous service with the employer at the end of the date the notice is given</b>	<b>Period*</b>
<b>Not more than 1 year</b>	1 week
<b>More than 1 year but not more than 3 years</b>	2 weeks
<b>More than 3 years but not more than 5 years</b>	3 weeks
<b>More than 5 years</b>	4 weeks

\*The period of notice is increased by 1 week if the employee is over 45 years old and has completed at least 2 years of continuous service.

Additionally this standard guarantees pay for an employee whose position is made redundant is entitled to a payment based on years of continuous service with an employer. Businesses with fewer than 15 employees are exempt from the redundancy pay standard.

Other exclusions to the redundancy pay guarantee:

An employee employed for a specified period of time, for a specified task, or for the duration of a specified (harvest) season

An employee whose employment is terminated because of serious misconduct

A casual employee

An employee (other than an apprentice) to whom a training arrangement applies and whose employment is for a specified period of time or is for any reason limited to the duration of the training arrangement.

## 10. Fair Work Information Statement

This standard ensures that all new employees be given by their employers a copy of the Fair Work Information Statement containing information on key elements of the new system, either before they commence employment or as soon as is reasonably practicable after their first day of work.. Key elements include the roles of Fair Work Australia and the Fair Work Ombudsman, the National Employment Standards, modern awards, agreement making and freedom of association.

**The Fair Work Information Statement can be accessed from the NSW Farmers' (Industrial) Association website [www.iressentials.com.au](http://www.iressentials.com.au).**

**The NSW Farmers' Association has a specialist industrial relations team and is able to provide assistance to IR Essentials Members in relation to the National Employment Standards. For assistance please contact an Industrial Relations Officer via the Member Services Centre on 1300 794 000.**