

National Employment Standards at a Glance

- What are the 10 NES entitlements?
- Who is affected?
- How it works
- Up to and including 31 December 2009

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.

Who is affected?

The NES applies to all employees covered by the national workplace relations system, however only certain entitlements apply to casual employees.

Who is in the national workplace system?

Employees covered by the national workplace relations system include those:

- employed by a constitutional corporation (these are corporations that are trading or financial, usually Pty Ltd or Ltd companies)
- employed in Victoria, the Northern Territory or the ACT
- employed by the Commonwealth or a Commonwealth authority
- a waterside employee, maritime employee or flight crew officer employed in connection with interstate or overseas trade or commerce.

From 1 January 2010, sole traders, partnerships, other unincorporated entities and non-trading corporations in New South Wales, Queensland, South Australia and Tasmania join the above types of employers in the national system, rather than their own specific state system.

I'm not in the national workplace system. How am I affected?

There are two NES entitlements that apply to all full-time and part-time employees, whether they are covered by the national workplace relations system or not.

These are:

- parental leave and related entitlements (this also applies to casual employees who have been employed for at least 12 months by an employer on a regular and systematic basis and with an expectation of ongoing employment)
- notice of termination.

I'm a casual employee. What am I entitled to?

Only certain NES entitlements apply to casual employees.

These are:

- two days unpaid carer's leave and two days unpaid compassionate leave per occasion
- maximum weekly hours
- community service leave (except paid jury service)
- to have a day off on a public holiday, unless reasonably requested to work by the employer
- provision of the Fair Work Information Statement.

In addition, casual employees who have been employed for at least 12 months by an employer on a regular and systematic basis and with an expectation of ongoing employment are entitled to:

- make requests for flexible working arrangements
- parental leave

How it works

What kinds of awards and agreements does the NES apply to?

The NES applies to all employees covered by the national workplace relations system regardless of the award, agreement or contract of employment that applies to an employee.

Employees covered by awards and agreements

Awards, agreements and award and agreement based transitional instruments may supplement the NES by providing entitlements that do not disadvantage employees in comparison with the NES.

A certain amount of flexibility is also allowed in the operation of the NES. For example, awards and agreements may specify terms that are flexible in relation to:

- averaging an employee's ordinary hours of work
- the cashing out of and taking paid annual leave
- the cashing out of paid personal/carer's leave
- the substitution of public holidays
- situations in which redundancy pay entitlements do not apply.

Important! terms in awards, agreements, transitional awards and agreements and employment contracts cannot exclude, or provide for an entitlement less than the NES.

Employees not covered by awards and agreements

Employers and employees who are not covered by an award agreement, or a transitional award or agreement (award/agreement free employees) may also make agreements that vary the operation of the NES in certain ways.

They may make agreements about the following:

- averaging of hours of work, subject to conditions such as a maximum of 26 weeks
- the cashing out of or taking paid annual leave
- the substitution of public holidays
- extra annual leave in exchange for foregoing an equivalent amount of pay
- extra personal / carer's leave in exchange for foregoing an equivalent amount of pay.

In all other cases, employment contracts can only provide entitlements that are similar to, or more favourable to the employee.

The NES are guaranteed minimum standards

An employer and an employee cannot make an agreement with entitlements that are less than the NES.

Employers who contravene provisions of the NES may face penalties of up to \$6,600 for an individual and \$33,000 for a corporation.

Find more information at - www.fairwork.gov.au/Pay-leave-and-conditions/Conditions-of-employment/Pages/National-Employment-Standards.aspx