

FACT SHEET 2

TYPES OF INDUSTRIAL INSTRUMENTS

Where do your rights at work come from?

Worker's rights are derived from:

- Legislation made by State and Federal parliaments relating to employment (eg Fair Work Act 2009), anti-discrimination, occupational health and safety, worker's compensation, superannuation laws etc
- Common Law which is made by the courts and judges, where judgements made have created precedents that will be applied in future cases
- Common Law contract is the contract that exists between an employer and employee that is enforceable by law. It will contain the terms and conditions that an employee agrees to work under. A letter of offer is an example of a common law contract. Common law contracts after 1 January 2010 must provide the National Employment Standards (see Fact Sheet 3) as minimum conditions of employment. Even if the contract is silent on an NES provision, the employee will still have the corresponding NES provision as a legislated minimum entitlement.

Workers may also be covered by collective industrial instruments such as an Award or Enterprise Agreement or they may be covered by an individual agreement (AWA or ITEA). Your letter of offer will specify which industrial instrument applies to you.

Awards

An award is a legally binding document prescribing the minimum terms and conditions of employment for those employees covered by the application clause of the award.

Awards may relate to employees in an entire industry (eg Banking and Finance Industry Award) or a particular enterprise (eg Westpac Employees Award).

As part of the requirements of the Fair Work Act, all existing industry awards must go through a modernisation and consolidation process. The new modern awards will commence on 1st January 2010 and may contain 10 conditions relating to wage rates, types of employment, hours of work, overtime and penalty rates, annualised wages, allowances, leave, superannuation and procedures for consultation, representation and dispute resolution.

Enterprise awards will continue to operate but must be modernised by the end of 2013 and no new enterprise awards will be made.

An enterprise award can be terminated by application to Fair Work Australia between 1st January 2010 and 31st December 2013.

A modern award will not apply to an employee who is covered by an enterprise award or an enterprise agreement.

Enterprise Agreements

An enterprise agreement is a collective employment agreement that sets out wages and working conditions for a particular group of employees (eg NAB Enterprise Agreement 2006) and is also enforceable by law.

An enterprise agreement will build upon the basic conditions that are contained in the National Employment Standards and the relevant modern award.

All new enterprise agreements from 1st January 2010 must pass the Better Off Overall Test (BOOT), which means that employees must be better off under the enterprise agreement than they would have been under the relevant modern award.

Australian Workplace Agreement (AWA)

An AWA is a written individual agreement between an employer and an employee that sets out terms and conditions of employment. New AWAs could not be made after 28 March 2008, however AWAs made before 28 March 2008 continue to operate until terminated or replaced.

Once an AWA began to operate, it replaced any award or workplace agreement that would otherwise apply to the employee.

AWAs had to contain the 5 minimum conditions in the Australian Fair Pay and Conditions Standard.

For further details visit www.fairwork.gov.au

Individual Transitional Employment Agreement (ITEA)

Like an AWA, an ITEA is a written individual agreement between an employer and an employee that sets out terms and conditions of employment and is subject to a No Disadvantage Test (NDT). The NDT compares a proposed ITEA to an applicable collective agreement or award to ensure employees are not disadvantaged by the terms and conditions of the proposed ITEA.

ITEAs are transitional agreements and all must have a nominal expiry date of 31 December 2009, or earlier. Once the nominal expiry date has passed, the ITEA may be terminated.

