

FACT SHEET 3

THE SAFETY NET: NES AND MODERN AWARDS

With the introduction of the Fair Work Act 2009, a new safety net will come into effect on 1 January 2010. It will consist of ten legislated “safety net” entitlements called National Employment Standards (NES) and modern awards.

The NES will apply to all national system employees.

The National Employment Standards are:

1. A standard 38 hour working week for full time employees and the right to refuse unreasonable overtime
2. Up to 24 months unpaid parental leave
3. A right for parents to request flexible working arrangements
4. 4 weeks paid annual leave each year, plus an additional week for shift workers
5. 10 days paid personal / carer’s leave each year, 2 days paid compassionate leave and 2 days unpaid emergency leave
6. Unpaid community service leave and up to 10 days paid jury duty leave
7. All national and state public holidays
8. Long service leave
9. Notice of termination and, if employed in a business with 15 or more employees, redundancy pay
10. A requirement that all employers provide new employees with information about their rights (a Fair Work Information Statement)

The NES is a minimum standard. Awards and enterprise agreements cannot contain terms that go below the NES, but can contain terms that go above NES.

Modern Awards

The second part of the safety net is modern industry or occupational awards. The Australian Industrial Relations Commission has modernised and consolidated all awards. The new modern awards commenced on 1st January 2010.

Modern awards build on the NES and may contain an additional 10 conditions, such as wage rates, types of employment, hours of work, overtime and penalty rates, allowances, annualised wages, leave, superannuation and procedures for consultation, representation and dispute resolution.

All modern awards must contain

- terms on ordinary hours of work
- a flexibility clause – allowing agreement on an individual arrangement that varies the effect of the award in relation to the employee. Agreement must be in writing and can be terminated with 4 weeks notice
- dispute settlement procedure

Modern awards must be reviewed at least every four years to ensure that they are kept relevant and up to date.

Who is covered by a modern award?

Employees are covered by an award if they fall within the scope of a modern award.

Employees will not be covered by a modern award if:

- they are covered by an enterprise award or enterprise agreement
- they are a high income employee*

Enterprise awards 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.

*Who is a high income employee?

High income employees must have a written guarantee from their employer that their annual earnings will exceed the high income threshold (indexed annually and is currently \$113 800, as at July 2010). The employee must be told the consequences of the guarantee (that the award will not apply) and must agree to it. An employee who has an enterprise agreement applying to them cannot sign a high income guarantee.

