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## FAIR WORK ACT 2009 - FACT SHEET 2 Modern Awards

**JUNE 2010**

Awards have long been a feature of the Federal workplace relations system. As a consequence of legislation which amended the key Federal workplace relations legislation, the *Workplace Relations Act 1996* (WRA), in March 2008, an award modernisation process was commenced in March 2008 and was completed in December 2009.



The award modernisation process was undertaken by a Full Bench of the Australian Industrial Relations Commission (AIRC) and involved review of all federal awards and Notional Agreements Preserving State Awards (NAPSA's).

Modern awards took effect on **1 January 2010** and can be accessed at Fair Work Online - [www.fairwork.gov.au](http://www.fairwork.gov.au)

Modern awards contain 10 key matters only, plus incidental and ancillary items:

1. **Minimum wages**, skill based classifications and career structures and incentive based payments, piece rates and bonuses.
2. **Type of employment**—full time, part time or casual, shift work—and the **facilitation of flexible working arrangements**, particularly for employees with family responsibilities.
3. Arrangements for **when work is performed**, including hours of work, rostering, notice periods, rest breaks and variations to working hours.
4. **Overtime rates**.
5. **Penalty rates**, including those for employees working unsocial, irregular or unpredictable hours and for employees working on weekends or public holidays and for shift workers.
6. **Annualised wage or salary** arrangements that:
  - have regard to the patterns of work in an occupation, industry or enterprise; and
  - provide an alternative to the separate payment of wages, or salaries or other monetary entitlements; and
  - include appropriate safeguards to ensure that individual employees are not disadvantaged.

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7. **Allowances**, including for the following:
  - expenses incurred in the course of employment;
  - responsibilities or skills that are not taken into account in rates of pay;
  - disabilities associated with the performance of particular tasks or work in particular conditions or locations.
8. **Leave, leave loadings and arrangements for taking leave.**
9. **Superannuation**; and
10. Procedures for **consultation, representation and dispute settlement**

Modern Awards include a flexibility clause which, subject to procedural and substantive requirements, will enable employers and their employees to agree on adaption of many Award provisions to their specific circumstances.

Modern awards work together with National Employment Standards (NES) to provide a **minimum safety net** of terms and conditions of employment to employees the subject of the Federal industrial system. However, while the NES will have application to all employees, modern awards will only have application to those specifically covered by them.

Subject to compliance with certain provisions of the *Fair Work Act 2009*, **Modern awards will ordinarily *not* apply to employees who earn more than the high income threshold** (currently \$108,300 and indexed each July).

**Awards will be reviewed every 4 years.** Within this period there will be limited opportunity to propose and make changes.

## ***Transitional provisions — wage and other monetary rates***

Many Modern Awards include transitional provisions in relation to wages and other monetary rates. This applies to:

- **minimum wages** (including junior wages, employees the subject of training arrangements and employees with a disability);
- **casual and part-time loadings;**
- **Saturday, Sunday, public holiday, evening and other penalties and shift allowances.**

All other provisions in a Modern Award with transitional provisions took effect on **1 January 2010**.

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- Where the wages and related clauses in the Modern Award would result in either an increase or decrease in payments made to employees, the model phasing provision will be inserted into the priority/Stage 2 Modern Award. This will provide for: the increase/decrease in payments to an employee to be phased in over four years in **five equal instalments**. The first instalment will take effect on **1 July 2010** and the last on 1 July 2014.
- The instalment arrangement will only apply to the difference between the minimum wage provision in the Modern Award. Fair Work Australia will review the minimum wage for each Modern Award each July, with its first decision due on 1 July 2010. In the event of a higher wage or other rate being determined by Fair Work Australia, the difference for the purposes of ensuring compliance with the phasing in arrangement will be between any new minimum wage/other rate determined by Fair Work Australia and what is being paid by the employer *not* the difference between the rate being paid prior to 1 January 2010 and the original rate(s) in the Modern Award.
- As a consequence of the phasing in provision, the payment rate applicable prior to the Modern Award taking effect on 1 January 2010 will continue to apply until **1 July 2010**.
- The model transitional provisions will apply to employers who are involved in an industry covered by a Modern Award both prior to and following 1 January 2010; meaning that employers who started up on or after 1 January 2010 do not have an advantage over employers already established in a given industry.
- Employers impacted by the phasing in provision may choose to simply apply the wage and other rates provided for in the Modern Award on and from 1 July 2010 in order to avoid the detailed calculations that compliance will involve.

All employers need to identify whether or not the phasing in clause will apply to any or all of the Modern Awards which have application to their employees. If it does apply, employers will need to: (1) inform staff of the delay in application of the rates included in the Modern Award to 1 July 2009 and explain the phasing in process over four years; and (2) ensure that Payroll staff keep a close eye on wage increases each July, while closely calculating the required increase/decrease in rates to be made each July to ensure compliance with the phasing in clause.

## DO YOU HAVE ANY QUESTIONS OR WOULD LIKE TO KNOW MORE?

Getting the answers you need is as easy as giving us a call or sending us an email. We look forward to hearing from you.

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