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Part 3 : Employing People in Australia (Part 1: Employment standards)

In Australia, the National Employment Standards (NES) provide the minimum standards of employment conditions and underpin modern employment 'awards', enterprise agreements and employment contracts. A modern



award, enterprise agreement or employment contract may contain ancillary terms or provide extra entitlements, but they cannot remove or reduce an employee's NES entitlements.

If employers understand the employment standards in Australia properly, they can comply with the legal requirements when employing (or terminating the employment of) people.

Here we briefly explain the employment standards in Australia.

For more information on employment standards, see [fairwork.gov.au](http://www.fairwork.gov.au):

<http://www.fairwork.gov.au/Employee-entitlements/national-employment-standards>

1. National Employment Standards (NES)

1) Maximum weekly hours of work (Full time employees)

38 hours per week, plus reasonable additional hours

2) Requests for flexible working arrangements

Examples of flexible working arrangements include changes to:

- hours of work (eg. changes to start and finish times)
- patterns of work (eg. split shifts or job sharing)
- locations of work (eg. working from home).

Employees who have worked with the same employer for at least 12 months can request flexible working arrangements if they:

- are the parent, or have responsibility for the care, of a child who is school aged or younger
- are a carer (under the Carer Recognition Act 2010)
- have a disability
- are 55 or older
- are experiencing family or domestic violence, or
- provide care or support to a member of their household or immediate family who requires care and support because of family or domestic violence.

3) Parental leave and related entitlements

Employees are able to take (unpaid) parental leave up to a maximum of 12 months and further claim an extension of 12 months if they have worked for their employer for at least 12 months. It is necessary to apply for the parental leave no later than four weeks before parental leave begins.

The checklist of parental leave available to use can be found on

<http://www.fairwork.gov.au/Leave/maternity-and-parental-leave>.

If employees wish to take a “paid” parental leave, they can discuss some arrangements such as use of annual leave and long-service leave in consultation with their company. It may also be possible to apply for financial assistance to the Government social security agency, Centrelink, if the period of absence from employment satisfies the requirements for assistance from Centrelink.

4) Annual leave

All employees (except for casual employees) get a minimum of 20 days’ paid annual leave per year. Full-time and part-time employees get 20 days of annual leave, apportioned based on their ordinary hours of work. Shift workers may get up to 25 days of annual leave per year.

5) Personal / carer's leave and compassionate leave

All employees (except for casual employees) get 10 days' paid personal/carer's leave per year, two days' unpaid carer's leave as required, and two days' compassionate leave (unpaid for casuals) as required.

6) Community service leave

Employees get 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.

7) Long service leave (LSL)

An employee gets long service leave after a long period of working for the same employer. Most employees' entitlement to long service leave comes from long service leave laws in each State or Territory and an entitlement for employees who had certain long service leave entitlements accrued before 1/1/10 pending the development of a uniform national long service leave system.

If a period of long service leave not taken at the time of resignation, it is common that the number of days of unused long service leaves is converted into wages and paid to the employee.

8) Public holidays

Employees can take a paid day off on a public holiday, except where reasonably requested to work.

9) Notice of termination of employment and redundancy pay

Up to 5 weeks' notice of termination of employment and a number of weeks' redundancy pay, based on age and/or length of service.

- Not more than 1 year – 1 week
- More than 1 year, but not more than 3 years – 2 weeks
- More than 3 years, but not more than 5 years – 3 weeks
- More than 5 years – 4 weeks

If the employee is over 45 years old and has completed at least 2 years' continuous service with the employer they are entitled to an extra week of notice.

When an employee's job is made redundant, their employer has to give them redundancy pay which is equivalent to the salary of 4-16 weeks, depending on years of continuous service with their employer. (However, if the employer can't afford to pay the amount of money that is required, the employer may lodge an application with the Fair Work Commission for a reduction of redundancy pay)

Some small businesses which employ fewer than 15 employees don't have to pay redundancy pay when making an employee redundant. However, a new "Small Business Fair Dismissal Code" has been introduced since July 2009. Care is needed to comply with dismissal requirements.

10) Fair Work Information Statement

Employers must provide this statement to all new employees. The Fair Work Information Statement can be downloaded from the Fair Work Ombudsman's website.

2. Modern Awards

Modern awards are legal documents that set minimum employment entitlements for specific industries or occupations. They apply on top of the National Employment Standards.

There are 122 modern awards that cover most jobs and employees in Australia. Each modern award applies to everyone who works in the industry or occupation it covers. The exception is some managers and employees who earn more than \$133,300 (a threshold reviewed every year in July) a year. Modern awards don't apply to employers who are bound by an agreement.

Employers need to find out which award or agreement will apply to all their employees. For more information, see [fairwork.gov.au](http://www.fairwork.gov.au):

<http://www.fairwork.gov.au/awards-and-agreements/awards#2299-2301-136-0>

All employers and employees are responsible for keeping up-to-date with the modern awards, any associated transitional arrangements, and future changes, for example, the annual minimum wage. For more information, see fairwork.gov.au: <https://www.fairwork.gov.au/resources/fact-sheets/conditions-of-employment/pages/modern-awards-fact-sheet.aspx#what-do-I-need-to-do-in-the-future>

The standard modern award for the office work is "Clerk-Private Sector Award 2010".

3. Enterprise Agreements

Employers and employees can create an enterprise agreement that will cover the wages and conditions which apply to their business. An enterprise agreement can offer benefits to a business because it is tailored to that workplace's needs. An employment contract will be underpinned by an applicable enterprise agreement. An employment contract may provide extra entitlements but it cannot remove or reduce an employee's enterprise agreement entitlements.

4. Employment Contracts

An employment contract may be in writing, oral or inferred from the conduct of the employer and the employee. It is a good idea to record the terms and conditions of the employee's engagement in writing. This can be done in a letter of engagement or through a more formal contract.

An employment contract can provide more generous conditions than the NES and the applicable modern award / enterprise agreement (for example performance bonuses or provision of a car) but cannot undercut an employee's minimum entitlements.

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