

NATIONAL EMPLOYMENT STANDARDS (NES)

From 1st January 2010, employers and employees in the national workplace system are covered by the 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 1st 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 can come from a modern award, agreement and 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:

1. **Maximum Weekly Hours of Work** - 38 hours per week, plus reasonable additional hours.
2. **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.
3. **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, and other forms of maternity, paternity and adoption related leave.
4. **Annual Leave** - 4 weeks paid leave per year, plus an additional week for certain shift workers.
5. **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.
6. **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.
7. **Long Service Leave** - a transitional entitlement for employees who had certain LSL entitlements before 1/1/10 pending the development of a uniform national long service leave standard.
8. **Public Holidays** - a paid day off on a public holiday, except where reasonably requested to work.

9. **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.
10. **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, right of entry, transfer of business, and the respective roles of Fair Work Australia and the Fair Work Ombudsman.

HOW THE NES WORK

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 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.

Terms in awards, agreements and employment contracts cannot exclude, or provide for an entitlement less than the NES.

THE NES ARE GUARANTEED MINIMUM STANDARDS

An employer cannot provide an employee with 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.

For further information on National Employment Standards or any Industrial Relations matter please contact the QTA's Employment Relations Manager, Travis Degen on phone 07 3394 4388 or email travis@qta.com.au.