

> Industrial Relations Fair Work Information Sheet National Employment Standards Summary

This document provides information regarding the Fair Work Act 2009 and is relevant to all employers in Queensland.

What is the significance of the National Employment Standards?

The ten National Employment Standards (NES) provide a safety net of minimum employment conditions that are guaranteed for all employees. The NES provides the minimum conditions on which all Modern Awards and Enterprise Agreements will be based, although such instruments may provide for more generous provisions than the NES. An employee and employer cannot agree to reduce an employee's entitlement under an NES in any way.

What are the National Employment Standards?

The ten national employment standards provide for minimum employee entitlements relating to:

- Maximum weekly working hours
- Request for flexible working arrangements
- Parental leave and related entitlements
- Annual leave
- Personal/carer's leave and compassionate leave
- Community service leave
- Long service leave
- Public holidays
- Notice of termination and redundancy pay
- Fair Work information statement

A brief summary of each of the NES follows.

It is prudent to remember that the NES only forms the minimum entitlement owing to an employee, and employers remain bound by any more generous provisions of an award, agreement or common law contract.

Maximum Weekly Hours

An employer must not require an employee to work in excess of 38 hours per week or such other maximum hours that are expressed in that employee's award unless the additional hours are deemed to be reasonable. An employee has the right to refuse a request made by the employer to work unreasonable additional hours.

In order to determine whether hours are reasonable, the employer must take into account;

- Health and safety risks of employees working long hours
- Personal circumstances of the employee which includes family responsibilities

- The actual needs of the workplace
- If the employee is entitled to overtime or other compensations for the additional hours
- The amount of notice given by the employer for a request to work additional hours
- The amount of notice given by the employee to refuse the additional hours
- The usual work patterns in the industry
- The nature of the employees role
- Any other relevant issues

A modern award or enterprise agreement may allow for an averaging of the maximum weekly hours over a specified period. Award/agreement free employees may agree to average maximum weekly hours in writing over a period not exceeding 26 weeks.

Flexible Working Arrangements

Under the Fair Work Act 2009, an employee may request a change to their working arrangements in order to accommodate certain caring responsibilities.

Eligibility

To be eligible to request flexible work arrangements an employee must be a parent or a person responsible for the care of a child under school age or a child under 18 years who has a disability. Such a request for flexible work arrangements may be in relation to a change in work hours, work patterns and work location.

An employee, including a casual employee, is only entitled to make this request if they have been working for the employer for at least 12 months before making the request.

Request

In order to make the request, the employee must put the proposed change to working arrangements in writing and outline the reasons for the request. An employer must respond to the employee in writing within 21 days of the request giving reason for the approval or refusal.

An employer may refuse the request on the basis of reasonable business grounds, such as financial impact, inability to organise work around the requested arrangements and issues surrounding the inability to find or afford replacement staff.

Parental Leave and Related Entitlements

The term 'parental leave' includes maternity leave (for the birthing parent), paternity leave (for the non-birthing parent) and adoptive leave (for adoptive parents).

Eligibility

In order to be eligible to take parental leave an employee must have at least 12 months continuous service with the employer prior to the start date of the parental leave. Long term casuals who meet this criteria may also apply for parental leave.

Entitlement

The parents may take separate periods of consecutive leave for the purpose of being the primary caregiver of the child for a period of up to 12 months from the date of birth.

An employee can make application to extend this leave for a further 12 months for a total of 24 months. An employer is able to refuse this request only on reasonable business grounds, such as financial impact, inability to organise work and issues surrounding replacement staff.

The Act makes further provisions for varying the period of leave, taking special maternity leave, transfer to safe work and replacement employees.

Annual Leave

For each year of service an employee (other than a casual employee) is entitled to accrue 4 weeks annual leave or 5 weeks in the case of a shift worker. Part-time employees accrue annual leave on a pro-rata basis.

Accrual

An employee's entitlement will accrue progressively during the year based on ordinary hours worked and is cumulative (i.e. it will 'roll over' from year to year).

Taking Annual Leave

Annual leave may be taken at any time by agreement but the employer must not unreasonably refuse a request from the employee to take annual leave. An employer can direct an employee to take annual leave only if it is reasonable giving consideration to:

- needs of both parties
- agreed arrangement
- custom and practice
- timing of the direction to take leave
- reasonable period of notice given

Payment rate

Annual leave is to be paid at the employee's base rate of pay for the ordinary hours of work that would have occurred in the leave period. Unless the award states otherwise, employees will not receive allowances, penalty rates or other additional payments whilst on annual leave.

Cashing out

Employees covered by an award or enterprise agreement can only cash out annual leave if a term of their award or agreement allows for it. If an employee is able to cash out annual leave then they must ensure that they do not cash out more than would reduce their accrual to below 4 weeks accrued annual leave. The request for the cashed out leave must be in writing for each occasion.

Non-award employees may cash out annual leave at any time by written request so long as the cashing out does not result in less than 4 weeks annual leave remaining in their accrual.

Personal/Carer's leave and Compassionate leave

The 'personal/carers leave' standard applies to employees other than casual employees and contains provisions for sick leave, carer's leave and compassionate leave.

Accrual

An employee accrues 10 days of paid personal/carers leave for each year of service. An employee's entitlement will accrue progressively during the year based on ordinary hours worked and is cumulative (i.e. it will 'roll over' from year to year).

Taking

An employee may take personal/carers leave if they are unable to attend work due to an illness or injury ('personal leave') or if the employee needs to provide care or support for a member of the employee's immediate family or household in the event of an unexpected emergency or illness of that family member ('carer's leave').

An employee must give the employer notice of taking the leave (and its expected duration) within a practical timeframe. An employer can require reasonable evidence that the leave is taken for a specified reason or permissible occasion. Payment is at the employee's base rate.

Cash Out

Unless there is a provision in the industrial instrument an employee may not cash out personal/carers leave. If an employee is able to cash out their personal/carers leave under their industrial instrument then they must retain at least 15 days in their accrual balance. The request for the cashed out leave must be in writing for each occasion.

Unpaid leave

An employee is eligible to take 2 days of unpaid personal/carers leave once their paid entitlement has been exhausted on each occasion that it is necessary.

Compassionate Leave

An employee is entitled to two days paid compassionate leave for each occasion when a member of the employee's immediate family or household contracts or develops a personal illness which is life threatening or sustains an injury that poses serious threat to their life or dies.

Compassionate leave is paid at the employee's base rate and is not debited from the employee's personal/carers leave accrual (it is paid out of the employer's pocket). Casual employees receive the two days compassionate leave as unpaid leave.

Community Service Leave

An employee is entitled to be absent for time spent on, travelling to and from, and resting after, an eligible community services activity so long as it is reasonable in all circumstances.

Eligible community services activity includes jury service, voluntary emergency management (dealing with emergency or natural disasters through a recognised emergency management body) and others as prescribed by the regulations.

An employee is regarded to be engaged in a voluntary emergency management activity if;

- the activity involves dealing with an emergency or natural disaster,
- the employee is engaged on a voluntary basis, and
- the employee is a member of or has a member-like association with a recognised emergency group

To take community service leave the employee must provide the employer with practicable notice including the expected duration of the leave and if requested provide reasonable evidence. There is no payment for community service leave other than jury service.

Jury Service Leave

An employee other than a casual employee is entitled to up to 10 days paid jury service leave, paid at the base rate of pay less any monies received from the government for such jury service. The employer can request that the employee provide evidence of any monies paid to them by the government, and unless such evidence is provided, does not need to pay the employee for the jury service leave.

Long Service Leave

Long service leave will continue to be governed by the applicable State legislation, which in Queensland is the Industrial Relations Act 1999 until such time as the proposed National Long Service Leave standard comes into effect..

Public Holidays

Employees have the right to be absent from work on a public holiday and be paid at their base rate for any work they would have normally performed on that day. An employer can request the employee to work on a public holiday, but the employee can refuse to work if they have reasonable grounds, which may be based on:

- The nature of the employer's business
- Personal circumstances, such as family commitments
- Whether the employee would reasonably be expected to work on a public holiday
- Whether the employee will receive additional payment to work on a public holiday
- The amount of notice given by the employer
- The type of employment engagement

Notice of Termination and Redundancy Pay

Notice of Termination

An employer must not terminate an employee unless the employer has provided that employee with the minimum period of notice stipulated in the Act (except in the case of a casual employee or dismissal for serious misconduct). The employer may elect to pay the employee in lieu of them working for the duration of the notice period at the employee's full rate of pay.



Notice of termination has to be in writing and can be given in person, by leaving it at the employee's last known address or by pre-paid post to the employee's last known address.

The amount of notice owed is as per the following scale (with the addition of one extra week notice if the employee is over 45 and has had 2 years continuous service):

Continuous Service	Notice Period
Not more than 1 year	1 week
More than 1 but not more than 3 years	2 weeks
More than 3 but not more than 5 years	3 weeks
More than 5 years	4 weeks

Redundancy

A redundancy is a situation where an employer no longer requires the position to be done by anyone. This could be due to lack of work, insolvency or bankruptcy of the employer. An employee is eligible to receive redundancy (severance) pay unless the employer is a small business (less than 15 employees), or unless the employee is a casual employee, a fixed term employee, is terminated for serious misconduct, is an apprentice or has less than 1 year service. The redundancy pay scale is:

Continuous Service	Redundancy
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks

Upon application to Fair Work Australia, the redundancy (severance) pay may be varied or set aside if the employee is found suitable alternative duties or if the employer cannot afford to pay.

Please note that Redundancy Pay under the Act is a new provision. For employees who have no previous redundancy provision in an award or agreement the Redundancy Pay provisions in the Act will apply. For continuity of service purposes, 1 January 2010 is the beginning of service for employees covered under the Act. For example, an employee began employment in February 2006 and had no redundancy provisions in an award, agreement or contract. From 1 January 2010 they have the entitlement to redundancy pay, however their previous service from 2006 to 31 December 2009 does not count for calculating continuous service for redundancy pay and the first time they can access redundancy pay is on 1 January 2011.

Fair Work Information Statement

An employer must give all new employees engaged after 1 January 2010 a copy of the Fair Work Information Statement. There is no requirement to give the statement to existing employees.

For further information contact the Chamber of Commerce and Industry Queensland's Employer Assistance Line on 1300 135 822 or lodge a query at our Online Portal found on the CCIQ website under Employer Assistance Line.

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