Introduction to the National Employment Standards (NES)

From 1 January 2010, the national employment standards (NES), along with modern awards, form a minimum safety net of entitlements for all employees covered by the national workplace relations system. Some of the conditions of the NES also apply to employees who are not covered under the national workplace relations system.

In addition to the NES, generally an employee’s terms and conditions of employment will come from an award or an agreement.

What are the 10 NES entitlements?

The NES are set out in the Fair Work Act 2009 and are made up of 10 minimum standards.

Here is a summary of all 10 NES entitlements – however there are individual fact sheets available on each standard which give more details.

- **Maximum weekly hours of work** – 38 hours per week, plus reasonable additional hours.

- **Requests for flexible working arrangements** – an entitlement allowing 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 care of the child.

- **Parental leave and related entitlements** – up to 12 months unpaid leave per employee, plus a right to request an additional 12 month’s unpaid leave, plus other forms of maternity, paternity and adoption related leave.

- **Annual leave** – four weeks paid leave per year, plus an additional week for certain shift workers.

- **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.

- **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.

- **Long service leave** – a transitional entitlement for employees as outlined in an applicable pre modernised award, pending the development of a uniform national long service leave standard.

- **Public holidays** – a paid day off on a public holiday, except where reasonably requested to work.

- **Notice of termination and redundancy pay** – up to five weeks notice of termination and up to 16 weeks severance pay on redundancy, both based on length of service.

- **Provision of a Fair Work Information Statement** – must be provided by employers to all new employees, and contains information about the NES, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, union rights of entry, transfer of business, and the respective roles of the Fair Work Commission and the Fair Work Ombudsman.
Who does the NES apply to?
The NES applies to all employees covered by the national workplace relations system (however, only certain entitlements apply to casual employees).

There are two NES entitlements that apply to all full-time and part-time employees, whether they are covered by the national workplace relations system or not.

These are:
- Parental leave and related entitlements. This also applies to casual employees who have worked for the employer on a regular and systematic basis for at least 12 months, and with an expectation of ongoing work.
- Notice of termination.

However, only certain NES entitlements apply to casual employees, which are:
- Two days unpaid carer’s leave and two days compassionate leave per occasion
- Maximum weekly hours
- Community service leave (except jury service)
- To reasonably seek a day off on a public holiday
- Provision of the Fair Work Information Statement.

In addition, casual employees who have been employed for at least 12 months by an employer on a regular and systematic basis and with an expectation of ongoing employment are able to apply for:
- Make requests for flexible working hours
- Parental leave

How does the NES apply?
The NES apply to all employees covered by the national workplace relations system regardless of the applicable industrial instrument (such as a modern award or a registered agreement) or their contract of employment.

Terms in awards, agreements, and employment contacts cannot exclude or provide an entitlement less than the NES, and will have no effect if they do.

However, awards and agreements are specifically allowed to affect the operation of the NES in certain ways.

For example, an award or agreement may specify terms that deal with:
- Averaging an employee’s ordinary hours of work
- The cashing out and taking of paid annual leave
- The cashing out of paid personal/carer’s leave
- The substitution of public holidays

An award or an agreement may also specify some entitlements which are more favourable than the NES.

Where can I get more information?
For more information on all our services and publications go to the Indigenous People area of the NSW IR website at http://www.industrialrelations.nsw.gov.au/Indigenous_people.page

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