

## Awards and Enterprise Agreements

A guide to the legal documents that set out employee work conditions in the NSW industrial relations system



The NSW industrial relations system covers most unincorporated businesses in NSW (eg sole traders and partnerships) as well as some incorporated businesses operating in NSW (for example, some charities and not-for-profit organisations). Businesses may need to seek legal advice to determine whether NSW industrial relations laws apply to them.

### What is an award?

An award sets out the rights and obligations of employers and employees engaged in particular types of work. There are many different types of awards covering different industries and occupations.

Awards cover conditions of employment including:

- hours of work
- pay rates, penalty rates, overtime and other loadings, such as annual leave loading
- allowances, for example for tools or a uniform
- leave entitlements
- employment protection provisions, for example redundancy payments
- part-time or casual work.

### How are NSW awards made?

The NSW Industrial Relations Commission makes NSW awards upon application by an employer organisation or employee organisation (union) to create a new or revised award for a particular industry. Awards can also be made to settle industrial disputes.

### Who is covered by a NSW award?

A NSW award covers all unincorporated businesses and their employees in the industry or occupation to which it relates, whether or not they were involved in creating

the award. Every award has a section that explains the industry or occupation covered by the award.

Award pay rates often increase after each State Wage Case following an application to the Commission by parties to the award. The Commission also updates and reviews awards every three years.

### What about federal awards?

Employees of constitutional corporations (incorporated companies) will be covered by federal awards and agreements. For more information, telephone the Fair Work Infoline on 13 13 94.

For more information to check on whether you are covered by state or federal industrial laws please see the OIR factsheet *Employing Staff in NSW*.

### What is an enterprise agreement?

An enterprise agreement, like an award, sets out the rights and obligations of employers and employees engaged in particular types of work in a business.

It may be negotiated between an employer and the employees or with a union on behalf of those employees.

When the enterprise agreement covers the same employment conditions as the award, the enterprise agreement overrides the award.

An enterprise agreement may cover one or more conditions of employment. If any employment conditions are not covered in the enterprise agreement then the award conditions apply.

However, an enterprise agreement must comply with all NSW laws regarding employment rights and obligations, such as minimum entitlements to parental, annual and long service leave.

Every enterprise agreement must be in writing and signed by or on behalf of the parties. The parties to the agreement must be named and the agreement must state the employees who will be covered by the agreement.

Generally, all enterprise agreements must be for a fixed term of between one and three years. However, an enterprise agreement continues in force beyond that term until it is cancelled.

## How do you get approval for an enterprise agreement?

An application to approve an enterprise agreement can be made to the Industrial Registrar of the NSW Industrial Relations Commission. An enterprise agreement is not enforceable unless it has been approved by the Commission.

## What is required?

The Commission will approve an enterprise agreement if:

- the agreement complies with all relevant Act requirements
- the agreement does not, on balance, provide a disadvantage to the employees when compared with the award
- the parties understand the effect of the agreement
- the parties are entering into the agreement of their free will
- the agreement does not unfairly exclude some employees.

## Must an employee accept an enterprise agreement?

No one can be forced to sign an enterprise agreement. However, where an enterprise agreement has been approved in a secret ballot of the employees, an employee who did not vote for the agreement is still covered by it once the agreement has been approved by the Commission.

Any new employee to a workplace is covered by the existing enterprise agreement, if it applies to the work that the employee will be doing.

However, employers are required to notify new employees of the existence of the agreement and must provide a summary of the agreement to the employee.

## All NSW awards and enterprise agreements be displayed

Every employer must by law display a copy of all NSW awards and enterprise agreements that apply in their workplace, in a place easily accessible to all employees.

Employers can display awards on their computer system or intranet if all staff have access, know how to access the award and are notified that the award is there. If employers have employees who do not have access to the computer system or are infrequent users then a paper copy must be available to them as well.

Displaying the award means that all employees working under the award can be aware of their rights and obligations.

**Check your award by using the NSW Awards Online service at the website**  
[www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au)

## Further information

- Office of Industrial Relations  
Ph: 131 628 (local call charge in NSW)  
TTY: 1800 555 677  
[www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au)
- your employer association or union
- Fair Work Online (federal)  
Federal wages and work conditions  
Ph: 13 13 94  
[www.fairwork.gov.au](http://www.fairwork.gov.au)

## Free online services from the OIR

- **NSW Awards Online** - provides easy access to award information, including pay rates and leave entitlements.
- **Pay Rate Updates** - subscribe online and receive email alerts on changes to NSW pay rates and award conditions that affect your workplace.
- **Check Your Pay** - helps you to calculate wages and other entitlements, such as annual leave and long service leave.
- Online **sample pay slips** help employers create their own employee pay slips.
- **Your Workplace Online** - subscribe to this quarterly e-newsletter to keep you up-to-date with workplace issues.

