

# Employment Update

April 2009

## National Employment Standards

by Rachel Drew

From 1 January 2010, employees covered by federal law will have minimum entitlements prescribed by the National Employment Standards (NES). These entitlements cannot be modified or excluded.

The NES are minimum standards that apply to all Australian employees covered by Federal law regardless of their industry or occupation and will operate in addition to award provisions.

The NES can only be modified in certain limited circumstances, such as through modern awards, which may include supplementary or incidental provisions to clarify or expand the entitlements under the NES.

The key changes are:

- Maximum weekly hours of work – the maximum weekly hours of work will continue as 38 hours per week, plus reasonable additional hours. Unlike the Australian Fair Pay & Conditions Standard, the NES do not allow an employer and employee to agree on an applicable averaging period (although an averaging period may be specified in an award).
- Flexible working arrangements for parents – after 12 months' continuous service, employees caring for children under school age may request flexible working arrangements. Employers may refuse only on reasonable business grounds and must set out those grounds in a written response to the employee.

- Parental leave – after 12 months' continuous service, employees will continue to be entitled to 12 months' unpaid parental leave and can request an extension of up to another 12 months' leave. The employer may refuse this request only on reasonable business grounds.
- Cashing out leave – the ability to cash out leave is a matter that can be dealt with in modern awards only.
- Community service leave – employees engaging in community service activities, including jury service and voluntary emergency management activities, can take reasonable leave for the period of those activities, plus reasonable travel and rest time.
- Notice of termination and redundancy pay – the NES will introduce severance pay (to a maximum of 16 weeks' pay) for employees made redundant, except in small businesses (fewer than 15 full-time equivalent employees) or for probationary or casual employees.
- Fair Work Information Statement – employers will be required to give employees a statement (to be published by Fair Work Australia) either before, or as soon as practicable after, commencement of employment.

The NES also provide protection for annual leave, long service leave and personal/carer's leave.

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