

March 2010

Modern awards

The modernisation of awards operating in the Commonwealth workplace relations system is one of the key changes to occur under the new Fair Work System.

Most existing awards have been consolidated into industry or occupation-based categories by the Australian Industrial Relations Commission (AIRC), these new awards have been termed Modern Awards. The consolidation was carried out to streamline the awards system thereby reducing confusion regarding minimum employee entitlements. The complete list of Modern Awards can be found at www.airc.gov.au

From 1 January 2010 onwards, most industries are subject to a Modern Award, however there are some exceptions.

They will apply to employers and employees who perform work covered by the award, however some high income employees may not be covered.

Since the Modern Awards commenced minimum entitlements for employees operating under existing awards may have changed.

The AIRC has allowed for transitional arrangements over a five-year period to assist affected employers and employees move to the new system.

If a Modern Award contains transitional arrangements, any increases or decreases in wages, loadings and penalty rates may be phased in from 1 July 2010.

This includes:

- minimum wages
- casual and part-time loadings
- Saturday, Sunday and public holiday penalty rates
- evening and other penalty rates
- shift allowances

The transitional period between 1 January 2010 and 1 July 2010 provides affected parties time to make the required changes. During this transition period the pre-Modern Award pay-related entitlements remain in effect.

Some Modern Awards however do not contain the transitional arrangements and a list of these 'Non-phased' Modern Awards can be found at www.fairwork.gov.au

There are special transitional rules for NSW employers who are Sole traders, Partnerships, other unincorporated entities or non-trading corporations. These employers will continue to operate under the State awards that covered them before 1 January 2010. These awards are known as Division 2B State

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awards. These awards automatically terminate at 31 December 2010 and these employers and employees will then be covered by a Modern Award.

Whilst the Division 2B awards continue until the end of 31 December 2010 it is important to note that they operate alongside the National Employment Standards (NES) which provides an employee with a safety net of minimum terms and conditions of employment. A complete copy of the NES can be accessed at www.fairwork.gov.au

A Modern Award will not apply if the employer has an enterprise agreement that covers an employee that would otherwise be covered by a Modern Award. However, the base rate of pay in the enterprise agreement cannot be less than the Modern Award or the national minimum wage and the agreement must result in the employee being better off overall.

If you require further information, you can contact the Fair Work Info line on 131394, visit www.fairwork.gov.au or contact JMA Legal.

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For further information on this issue, please see the contacts below.

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