

PAY AND CONDITIONS GUIDE

Legal Services Award 2010 [MA000116] ('modern award')
replacing terms and conditions in or derived from

Graduate-At-Law (State) Award [AN120237] ('pre-modern award')

(NSW)

Effective from 01 July 2013.

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Background

This guide was developed by the Fair Work Ombudsman to assist employers and employees covered by this modern award, pre-modern award and pay scales derived from this pre-modern award to identify minimum wages, penalties, loadings and allowances.

Transitional arrangements

Modern awards commenced operation on 01 January 2010. However, minimum wage, loading and penalty entitlements commence from 01 July 2010. Almost all modern awards include provisions to 'transition' employers and employees from their pre-modern award to the modern award system.

This modern award includes transitional provisions that provide for the 'phasing in' of increases or decreases in minimum wages, penalties and loadings in the modern award in 5 increments over 4 years from 01 July 2010. All other terms and conditions in this modern award apply in full from 01 January 2010.

The rates in this guide are current from the first pay period on or after 01 July 2013. The rates set out in this guide will change from the first full period on or after 01 July each year to take account of Fair Work Australia's annual wage review and transitional arrangements. The rates may also change as a result of a Fair Work Australia decision to vary the modern award or pay and condition entitlements of the modern award from time to time.

Transitional arrangements for Division 2B State awards

Division 2B State awards (other than Division 2B enterprise awards) terminate at the end of 31 December 2010 and, from 1 January 2011, employers and employees are covered by the relevant modern award. However, most modern awards provide that all the terms of Division 2B State awards continue to apply until the end of the full pay period which started before 1 February 2011.

The employers affected include sole traders, partnerships, other unincorporated entities and non-trading corporations in New South Wales, Queensland, South Australia and Tasmania who are covered by a Division 2B State award.

From the first full pay period starting on or after 1 February 2011, an employer who was covered by a Division 2B State award, must comply with all of the terms and conditions contained in their relevant modern award, and any transitional arrangements that apply. Transitional arrangements in most modern awards for Division 2B State award employers provide that from the first full pay period starting on or after 1 February 2011, they must pay at least the same minimum wage rates, penalties and loadings as national system employers who are transitioning from the equivalent NAPSA. There are some exceptions and special transitional arrangements that apply in certain situations. If you require help determining whether these exceptions or special transitional arrangements apply to you, please contact the Fair Work Infoline on 13 13 94.

Note: Modern awards are not intended to reduce an employee's take-home pay. An employee or his/her union can apply to Fair Work Australia for a take-home pay order to remedy any reduction in his/her overall take-home pay.

Who should use the guide?

Employees and employers who were entitled to terms and conditions in or derived from this pre-modern award and who are now covered by this modern award.

A guide that has an AP (Pre-reform award) code typically applies to employees employed by a constitutional corporation. Usually these are companies that engage in trading or financial activities. Private companies are often identified by the 'Pty Ltd' in their name. It applies to employers in those categories who were bound by the award immediately prior to 01 January 2010.

A guide that has an AN (Notional agreement preserving State awards) code also typically applies to employees employed by a constitutional corporation. However, unlike pre-reform awards these are notional federal agreements that were created on 27 March 2006. Generally, they preserved the terms and conditions of employment (not including wage rates) in state awards and/or state legislation that applied immediately before 27 March 2006 to employees of constitutional corporations in NSW, QLD, SA, WA and TAS where State award/laws applied to those employers prior to 27 March 2006.

A guide that has an AT code typically applies to employees employed by non-constitutional corporations immediately before 27 March 2007 where the employer was bound by a Federal award. These will be sole traders, partnerships, other unincorporated entities or non-trading/financial corporations.

The guide contains information from this modern award about:

- who the modern award covers;
- wage rates, including rates for casual employees, junior employees, trainees and apprentices;
- penalty rates for working at particular times or under particular arrangements;
- allowances; and
- other conditions of employment.

What if an agreement applies to employees covered by the modern award?

Minimum wage entitlements in a modern award override lesser wage entitlements in an agreement or contract of employment at all times, including agreements and contracts that were made before the commencement of the *Fair Work Act 2009*. All employees covered by the modern award must not be paid less than the rate of pay in the modern award.

However, the penalty rates and allowances in the modern award do not apply to agreement-covered employees, unless the agreement is read in conjunction with the

modern award (e.g. a pre-reform certified agreement (a type of collective agreement made before 27 March 2006)).

If you require assistance with any provisions of this guide please contact the **Fair Work Infoline** on **13 13 94**.

Coverage

This award covers employers throughout Australia in the legal services industry and their employees in the classifications listed in the award to the exclusion of any other modern award. The award does not cover employers in the following industries:

- (a) community legal centres
- (b) aboriginal legal services or
- (c) an employer whose primary activity is not within the legal services industry.

The award does not cover an employee excluded from award coverage by the Act.

The award does not cover employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)), or employers in relation to those employees.

The award does not cover employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)), or employers in relation to those employees.

This award covers any employer which supplies labour on an on-hire basis in the industry in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This provision operates subject to the exclusions from coverage in this award.

This award covers employers which provide group training or related temporary employment services for trainees engaged in the industry and/or parts of industry and those trainees engaged by a group training or related temporary employment service hosted by a company to perform work at a location where the activities described herein are being performed. This provision operates subject to the exclusions from coverage in this award.

Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

Wages

This modern award includes transitional arrangements that apply to minimum wage entitlements from the first pay period on or after 01 July 2010 until the first pay period on or after 01 July 2014 (when modern award wages commence in full).

The following wage tables set out base rates of pay for classifications under the modern award.

It also sets out how the modern award classification matches up with pre-modern award classification. If there is no classification match the employee may be covered by another pre-modern award, or another modern award, such as a modern award that covers the employee's occupation rather than the industry.

The base rates of pay in this guide include any applicable industry allowance. The base rates of pay also include any increase from Fair Work Australia's annual wage review. For more information about transitional arrangements for minimum wage entitlements, please visit www.fairwork.gov.au

Casual employees

The rates for casual employees set in the table below are minimum rates for **ordinary hours** only.

Please visit www.fairwork.gov.au for information about penalty entitlements for casual employees.

*Post 26 March 2006 employer

Wage rates for casual employees of employers that became part of the national system after 26 March 2006 do not include annual leave loading because those employees did not have a pre-modern award entitlement to annual leave loading.

Adult

The rates in this guide are current from the first pay period on or after 01 July 2013 until the final pay period before 01 July 2014 only.

Full & Part Time

Modern award classification	Pre-modern award classification	Base rate of pay (hourly)
Level 5 - Law graduate	Graduate at Law	\$21.08

Casual

Modern award classification	Pre-modern award classification	Base rate of pay (hourly)
Level 5 - Law graduate	Not applicable	\$26.01 (24%)

NOTE: Although an employee's occupation type or classification may be covered by both the modern award and the pre-modern award, in some circumstances casual employees are covered by the modern award only. Where the table above states 'Not applicable', the pre-modern award did not provide a casual employment category for that classification. Where this is the case, wage rates for these employees will phase from the Federal Minimum Wage (\$14.31 per hour) and the default casual loading (20%) as at 01 January 2010.

Junior

The rates in this guide are current from the first pay period on or after 01 July 2013 until the final pay period before 01 July 2014 only.

Full & Part Time Level 5 - Law graduate

Modern award classification	Pre-modern award classification	Base rate of pay (hourly)
Under 16 years	Graduate at Law	\$11.12
16 years	Graduate at Law	\$12.03
17 years	Graduate at Law	\$13.84
18 years	Graduate at Law	\$15.65
19 years	Graduate at Law	\$17.46
20 years	Graduate at Law	\$19.27

Apprentice

Apprentice employees are not covered by this guide for the modern award and pre-modern award.

Trainee

This modern award incorporates trainee rates derived from the National Training Wage Schedule (NTW Sch.), as adjusted from time to time.

This Modern Award incorporates trainee rates derived from the National Training Wage Schedule (NTW Sch.).

Supported Wage

Please refer to clause 17 of the modern award.

For detail of the supported wage provisions see the full version of the modern award.

Penalties and Loadings (other than casual or part-time loadings for ordinary hours)

Where an employee had an entitlement to a loading/penalty rate before 01 January 2010 that is exactly the same as the modern award loading/penalty entitlement the modern award loading/penalty applies in full from 01 January 2010.

Transitional arrangements

This modern award includes transitional arrangements that apply to loading/penalty entitlements where there is a difference in modern award and pre-modern award loading/penalty entitlements. Transitional arrangements apply from the first pay period on or after 01 July 2010 until the first pay period on or after 01 July 2014 (when modern award loadings/penalties apply in full).

Different arrangements apply depending on whether the entitlements are "equivalent" or not.

- A pre-modern award loading/penalty will be "equivalent" to a modern award entitlement where the loading/penalty applies:
 - for the same purpose (e.g. Saturday penalty);
 - for the same time periods; and
 - in the same way#.
 - #A pre-modern award and modern award loading/penalty applies in the same way if the entitlements are both:
 - paid at the same frequency, such as per hour or per shift; and

- paid as a percentage of the same amount (e.g. both penalties are paid as a percentage of the employee's classification rate, rather than as a percentage of a different amount or paid as a flat dollar amount).

Casual loadings and penalties also need to interact with each other in the same way in the pre-modern award and modern award to be equivalent (e.g. the loading and penalty rate are calculated on the base hourly rate in both instruments).

Equivalent entitlements

If the pre-modern award loading/penalty rate is "equivalent" to the modern award loading/penalty rate the penalty rate is calculated as follows:

1. The difference between the two loading/penalty rates is referred to as a "transitional percentage". The transitional percentage stays the same every year.
2. A proportion of the transitional percentage is calculated each year as follows:

First full pay period on or after	Proportion of transitional percentage
01 July 2010	80%
01 July 2011	60%
01 July 2012	40%
01 July 2013	20%
01 July 2014	0%

3. Where the modern award loading/penalty is higher, the penalty rate is obtained by subtracting the proportion of the transitional percentage.

Example:

The table below shows the percentage penalty rates that apply from the first full pay period on or after 01 July 2010 until the last full pay period before 01 July 2011 for common penalty rates.

Please note the below table is a guide **only** and can only be used when the entitlements are equivalent and the modern award penalty is higher.

1/01/2010 Pre-modern award penalty	1/07/2014 Modern award penalty	1/07/2010 Penalty rate (phased)
25%	50%	30%
50%	75%	55%
50%	100%	60%
75%	100%	80%

4. Where the modern award loading/penalty is lower, the penalty rate is obtained by adding the proportion of the transitional percentage.

Example:

The table below shows the percentage penalty rates that apply from the first full pay period on or after 01 July 2010 until the last full pay period before 01 July 2011 for common penalty rates.

Please note the below table is a guide **only** and can only be used when the entitlements are equivalent and the modern award penalty is lower.

1/01/2010	1/07/2014	1/07/2010
Pre-modern award penalty	Modern award penalty	Penalty rate (phased)
50%	25%	45%
75%	50%	70%
100%	50%	90%
100%	75%	95%

Entitlements that are not equivalent

If pre-modern award and modern award penalty rates are not "equivalent", the following approach applies:

1. Loadings/penalty rates from a modern award are phased in from zero in five instalments of 20% by multiplying the penalty rate by the following percentage:

First full pay period on or after	Percent of modern award loading/penalty
01 July 2010	20%
01 July 2011	40%
01 July 2012	60%
01 July 2013	80%
01 July 2014	100%

2. Pre-modern award loadings/penalty rates are phased out to zero in five instalments of 20% by multiplying the penalty rate by the following percentage:

First full pay period on or after	Percent of pre-modern award loading/penalty
01 July 2010	80%
01 July 2011	60%
01 July 2012	40%
01 July 2013	20%
01 July 2014	0%

Please note that a pre-modern award penalty rate can be 'phased out' at the same time that a modern award penalty is 'phasing in' (i.e. where different entitlements apply in the same time period). This means that two different rates may apply for the same time period.

Example:

The table below shows the percentage penalty rates that apply from the first full pay period on or after 01 July 2010 until the last full pay period before 01 July 2011 for common penalty rates.

Please note the below table is a guide **only** and can only be used when the entitlements are not equivalent.

1/01/2014	1/07/2010
Modern award penalty	Penalty rate (phased)
	(20.00%)
10.00%	2.00%
20.00%	4.00%
25.00%	5.00%
50.00%	10.00%
75.00%	15.00%

1/01/2010	1/07/2010
Pre-modern award penalty	Penalty rate (phased)
	(80.00%)
10.00%	8.00%
20.00%	16.00%
25.00%	20.00%
50.00%	40.00%
75.00%	60.00%

1/01/2014	1/07/2010
Modern award penalty	Penalty rate (phased)
	(20.00%)
100.00%	20.00%
120.00%	24.00%
125.00%	25.00%
130.00%	26.00%
150.00%	30.00%

1/01/2010	1/07/2010
Pre-modern award penalty	Penalty rate (phased)
	(80.00%)
100.00%	80.00%
120.00%	96.00%
125.00%	100.00%
130.00%	104.00%
150.00%	120.00%

New entitlements

Where an employee did not have a particular loading/penalty entitlement before 01 January 2010, the modern award loading/penalty is phased in from zero as a new entitlement from the first pay period on or after 01 July 2010 by multiplying the penalty rate by the following percentage:

First full pay period on or after	Percent of modern award loading/penalty
01 July 2010	20%
01 July 2011	40%
01 July 2012	60%
01 July 2013	80%
01 July 2014	100%

Example:

The table below shows the percentage penalty rates that apply from the first full pay period on or after 01 July 2010 until the last full pay period before 01 July 2011 for common penalty rates.

Please note the below table is a guide **only** and can only be used when the entitlements in the modern award are new.

1/07/2014	1/07/2010
Modern award penalty	Penalty rate (phased)
25%	5%
50%	10%
75%	15%
100%	20%

For more information about transitional arrangements for loading/penalty entitlements please visit www.fairwork.gov.au and/or contact the **Fair Work Infoline** on **13 13 94** for advice and assistance.

Allowances

Allowances in modern awards apply in full from 01 January 2010 (although the rates may change from time to time).

All states covered by this instrument Full Time, Part Time, Casual

Clause	Allowance Type	Description	Effective Date	Rate
19.1(a)	Meal allowance	The employer must provide the allowance where they are unable to supply an employee with a meal and the employee works not less than one hour of overtime (Monday to Friday inclusive) and the overtime finishes one and a half hours after the normal finishing time or five hours after the preceding meal break, whichever first occurs, or in the case of a shiftworker when the overtime work on any shift exceeds one hour. See note 1	1/07/2013	\$14.0800 per occasion
19.1(a)	Meal allowance	The employer must provide the further allowance where they are unable to supply an employee with an adequate meal and overtime work (Monday to Friday inclusive) exceeds four hours. See note 1	1/07/2013	\$11.2200 per occasion
19.1(b)	Meal allowance	The employer must provide the allowance where they are unable to supply an employee with an adequate meal and the employee works more than five hours overtime on a Saturday or a Sunday, or in the case of a shiftworker more than five hours on their rostered day off. This will not apply where an employee could reasonably return home for a meal within the period allowed. See note 1	1/07/2013	\$14.0800 per occasion

Clause	Allowance Type	Description	Effective Date	Rate
19.1(b)	Meal allowance	The employer must provide the further allowance where they are unable to supply an employee with an adequate meal and the employee works more than nine hours on a Saturday or a Sunday, or in the case of a shiftworker more than nine hours on their rostered day off. This will not apply where an employee could reasonably return home for a meal within the period allowed. See note 1	1/07/2013	\$11.2200 per occasion
19.2	Uniform allowance	Where employees are required to wear any special uniform or clothing, they must be paid the allowance unless it is supplied and laundered by the employer.	1/01/2010	\$3.6500 per week
19.3	Vehicle allowance	Where employees are required to use their own motorcycle in their duties they must be paid the allowance. See note 2	1/01/2010	\$0.2500 per kilometre
19.3	Vehicle allowance	Where employees are required to use their own motor car in their duties they must be paid the allowance. See note 2	1/07/2013	\$0.7600 per kilometre

Note 1

On request, meal money must be paid on the same day as overtime is worked.

Note 2

Where employee are required to use their motor vehicle in their duties, all expenses, including registration, running and maintenance of the vehicle must be paid by the employer.

Other Conditions

The following conditions in the modern award apply in full from 1 January 2010. Please note that the below table is a summary of commonly applicable entitlements in the modern award, there may be other entitlements in the modern award that are relevant to particular employers or employees. Please refer to the modern award for full details.

Note: The National Employment Standards (**NES**) operate together with modern awards to provide minimum conditions of employment for employers and employees in the national system. The NES sets out ten minimum statutory entitlements that apply to all employees, including leave and termination of employment entitlements.

For more information about the NES, please visit www.fairwork.gov.au

All states covered by this instrument

Clause	Conditions Type	Description
7	Award flexibility (Instrument)	<p>An employer and an individual employee may agree to vary the following terms of this award to meet the genuine needs of the employer and the individual employee with respect to:</p> <ul style="list-style-type: none">- arrangements for when work is performed- overtime rates- penalty rates- allowances- leave loading. <p>Other conditions concerning award flexibility are contained within the Fair Work Act 2009.</p>
8	Consultation (Instrument)	<p>The award contains information on the employer's responsibility to consult regarding major workplace change including the:</p> <ul style="list-style-type: none">- duty to notify, and- duty to discuss change.
10.4	Part-time conditions (Instrument)	<p>A part-time employee is:</p> <ul style="list-style-type: none">- engaged to perform less than 38 hours per week on a reasonably predictable basis.- paid for ordinary hours at the rate of 1/38th of the weekly rate for the class of work performed.

Clause	Conditions Type	Description
		<p>- entitled on a pro rata basis to equivalent pay and conditions to those of full-time employees.</p> <p>Before commencing employment, the employer and the employee must agree in writing to:</p> <ul style="list-style-type: none"> - a regular pattern of work, specifying at least the numbers of hours worked each day, the days of the week upon which the employee will work and the commencing and finishing times - the classification applying to the work to be performed. <p>The terms of this agreement may be varied by consent. Any variation must be in writing and retained by the employer. A copy of the agreement and any variation must be provided to the employee.</p> <p>The minimum period of engagement for part-time employees is three hours.</p> <p>A part-time employee required to work in excess of the hours agreed must be paid overtime.</p>
10.5	Casual conditions (Instrument)	<p>A casual employee is paid per hour at the rate of 1/38th of the weekly rate for the class of work performed, plus 25%. This loading is paid instead of entitlements to leave and other matters from which casuals are excluded by the terms of this award and the NES.</p> <p>A casual employee must be paid for a minimum of four hours for each day they are engaged.</p>
11.2	Termination of employment - notice of termination by an employee (Instrument)	<p>The notice of termination required to be given by an employee is the same as an employer except there is no requirement to give additional notice based on age. If an employee fails to give the required notice the employer may withhold from any monies due on termination, the difference between the amount of notice required and the amount of notice actually given.</p>
11.3	Termination of employment - job search entitlement (Instrument)	<p>Where an employer has given notice of termination to an employee, an employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.</p>
12.2	Redundancy - transfer to lower paid duties (Instrument)	<p>Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated. Alternatively, the employer may choose to pay the employee the difference between the former ordinary time rate of pay and the new ordinary time rate of pay for the number of weeks of notice still owing.</p>

Clause	Conditions Type	Description
12.3	Redundancy - employee leaving during notice period (Instrument)	An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.
12.4	Redundancy - job search entitlement (Instrument)	An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment. If the employee has been allowed paid leave for more than one day, the employee must, by request, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
12.5	Redundancy - transitional provisions (Instrument)	An employee is entitled to redundancy pay in accordance with the NAPSA that would have applied immediately prior to 1 January 2010 and that would have entitled the employee to redundancy pay in excess of the employee's entitlement under the NES. This includes employees engaged after 1 January 2010. The entitlement to redundancy pay under the NAPSA is limited to the amount which exceeds the entitlement under the NES. This clause does not reduce an employee's entitlement to redundancy pay under any other instrument and ceases to operate on 31 December 2014.
16	Higher duties (Instrument)	When required to perform any of the duties in Levels 2–5, which they do not normally perform, or when required to perform these duties on a temporary basis, an employee must be paid at least the rate which would be applicable if they performed these duties on a permanent basis. This will not apply when the time period is less than one day.
19.4	Transport of employees (Instrument)	When an employee works overtime which ends when reasonable transport to their home is not available, the employer will reimburse the employee for the cost of transport, unless the employer provides suitable transport.
19.5	Away from home/usual place of employment (Instrument)	An employee required to work temporarily away from their usual place of employment, and required to sleep away from their usual place of residence, is entitled to:

Clause	Conditions Type	Description
		<p>(i) an allowance to cover all fares to and from the place at which they are required to work (ii) an allowance to cover all reasonable expenses incurred for board and lodging.</p> <p>These allowances will not be paid where the fares and the board and lodging are provided by the employer.</p>
19.5(c)	Travelling time (Instrument)	<p>An employee required to work temporarily away from their usual place of employment, and required to sleep away from their usual place of residence, must receive payment at ordinary rates for all time travelling between their usual place of employment and the temporary location.</p> <p>This paid time is not to exceed eight hours in 24 hours.</p>
19.6	Protective clothing, footwear and covering allowance (Instrument)	<p>The employer will reimburse employees engaged in work damaging to clothing for the cost of uniforms and/or protective clothing, except where uniforms and/or protective clothing are provided free of charge by the employer.</p>
20	District allowance (Instrument)	<p>An employee in the Northern Territory or Western Australia is entitled to payment of a district allowance in accordance with the provisions of an award or NAPSA under the Workplace Relations Act 1996 that would have applied to the employee immediately prior to 1 January 2010, providing that employee was not bound by an agreement under that Act.</p> <p>This clause ceases to operate on 31 December 2014.</p>
21	Accident pay (Instrument)	<p>An employee is entitled to accident pay in accordance with the terms of:</p> <ul style="list-style-type: none"> - a NAPSA that would have applied to the employee immediately prior to 1 January 2010 or an award made under the Workplace Relations Act 1996 (Cth) that would have applied to the employee immediately prior to 27 March 2006, if the employee had at that time been in their current circumstances of employment and no agreement made under the Workplace Relations Act 1996 (Cth) had applied to the employee, and - that would have entitled the employee to accident pay in excess of the employee's entitlement to accident pay, if any, under any other instrument.

Clause	Conditions Type	Description
		<p>The employee's entitlement to accident pay under the NAPSA or award is limited to the amount of accident pay which exceeds the employee's entitlement to accident pay, if any, under any other instrument.</p> <p>This clause does not reduce an employee's entitlement to accident pay under any other instrument and ceases to operate on 31 December 2014.</p>
22.2	Method of payment (Instrument)	Wages must either be paid by cash, cheque or electronic funds transfer into the bank or financial institution account nominated by the employee.
23	Superannuation (Instrument)	<p>The award contains information on:</p> <ul style="list-style-type: none"> - the employers responsibility to make superannuation contributions to a superannuation fund - the ability for an employee to authorise their employer to pay on their behalf contributions to a superannuation fund - the employers responsibility to make superannuation contributions to another superannuation fund that is chosen by the employee.
24.1	Hours of work (Instrument)	<p>Day workers</p> <p>The ordinary hours of work for day workers are to be an average of 38 per week but not more than 152 hours in 28 days.</p> <p>The ordinary hours of work may be worked on any day or all of the days of the week, Monday to Friday.</p> <p>The ordinary hours of work are to be worked continuously, except for meal breaks, at the employer's discretion between 7.00 am to 6.30 pm, Monday to Friday. The spread of hours may be altered by up to one hour at either end of the spread, by agreement between the employer and the majority of employees concerned.</p> <p>Work performed outside the spread of hours is to be paid for at overtime rates. However any work performed by an employee prior to the spread of hours which is continuous with ordinary hours for the purpose, for example, of getting the workplace in a state of readiness for other employees to start work is to be regarded as part of the 38 ordinary hours of work.</p>
24.1(e)	Rostered days off	Day workers

Clause	Conditions Type	Description
	(Instrument)	Arrangements for rostered days off may be made between an employee and an employer. These arrangements will outline the method of accruing time towards a rostered day off as well as an agreed method of accumulating and taking rostered days off.
25	Hours of work (Instrument)	<p>Continuous shiftworkers</p> <p>Continuous shiftwork is work carried on with consecutive shifts of employees throughout the 24 hours of each of at least six consecutive days without interruption except for breakdowns or meal breaks.</p> <p>The ordinary hours of continuous shiftworkers are, at the discretion of the employer, to average 38 hours per week inclusive of meal breaks and must not exceed 152 hours in 28 consecutive days.</p> <p>Except at the regular changeover of shifts, an employee must not be required to work more than one shift in each 24 hours.</p>
25.2	Breaks - meal (Instrument)	<p>Continuous shiftworkers</p> <p>Continuous shiftworkers are entitled to a 12 minute meal break on each shift which will be counted as time worked.</p>
25.3	Rostering (Instrument)	<p>Continuous shiftworkers</p> <p>By agreement between an employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period which exceeds 28 consecutive days but does not exceed 12 months.</p>
27	Hours of work (Instrument)	<p>The arrangement of ordinary working hours is to be by agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned. This is subject to the employer's right to fix the daily hours of work for day workers from time to time within the spread of hours and the employer's right to fix the commencing and finishing time of shifts from time to time.</p> <p>This does not preclude an employer reaching agreement with individual employees about how their working hours are to be arranged.</p>

Clause	Conditions Type	Description
28	Daylight saving (Instrument)	<p>Where summer time is prescribed as being in advance of the standard time in a State, the length of any shift:</p> <p>(a) starting before the time prescribed for the commencement of a summer time period (b) starting on or before the time prescribed for the end of a summer time period</p> <p>will be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time recorded at the end of the shift. The time of the clock in each case is to be set to the time fixed in the relevant State.</p>
29	Make-up time (Instrument)	<p>Day work</p> <p>An employee may, with the employer's consent, work make-up time where they take time off during ordinary hours, and work those hours at a later time, during the spread of ordinary hours.</p> <p>Shiftwork</p> <p>An employee on shiftwork may, with the employer's consent, work make-up time where they take time off during ordinary hours and work those hours at a later time, at the shiftwork rate which would have been applicable to the hours taken off.</p>
30	Annualised salary arrangements (Instrument)	<p>An employer may pay an employee an annual salary in satisfaction of any or all of the following entitlements:</p> <p>(i) minimum wages (ii) allowances (iii) overtime and penalty rates (iv) annual leave loading.</p> <p>Where an annual salary is paid the employer must advise the employee in writing of the annual salary that is payable and which of the provisions will be satisfied by payment of the annual salary.</p> <p>The annual salary must be no less than the amount the employee would have received over the year for which the salary is paid (or if the employment ceases earlier over the lesser period worked).</p>

Clause	Conditions Type	Description
		<p>The annual salary must be reviewed at least annually to ensure that the compensation is appropriate.</p> <p>For the purposes of the NES, the base rate of pay of an employee receiving an annual salary comprises the portion of the annual salary equivalent to the relevant rate of pay and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.</p>
31	Shiftwork (Instrument)	<p><u>Rostered shift</u> means any shift where the employee has had at least 48 hours' notice.</p> <p><u>Afternoon shift</u> means any shift finishing after 6.00 pm and at or before midnight.</p> <p><u>Night shift</u> means any shift finishing subsequent to midnight and at or before 8.00 am.</p> <p><u>Early morning shift</u> applies to an employee whose ordinary hours on a regular shift start between 5.00 am and 6.00 am, except where the shift is part of a shift system and preceding an afternoon shift finishing at 11.00 pm.</p> <p><u>Seven day shiftworker</u> means an employee who is rostered to work regularly on Sundays and public holidays.</p> <p>By agreement between an employer and the majority of employees concerned, or in appropriate cases an individual employee, the span of hours over which shifts may be worked may be altered by up to one hour at either end of the span.</p>
31.4	Shiftwork (Instrument)	<p>Rate for working on Sunday and public holiday shifts</p> <p>Where shifts starts between 11.00 pm and midnight on a Sunday or public holiday, the time worked before midnight does not entitle the employee to the Sunday or public holiday rate for the shift. However, the time worked on a shift starting before midnight on the day preceding a Sunday or public holiday and extending into the Sunday or public holiday will be regarded as time worked on the Sunday or public holiday.</p> <p>Where shifts fall partly on a public holiday, the shift which has the major portion falling on the public holiday will be regarded as the public holiday shift.</p>

Clause	Conditions Type	Description
		By agreement between an employer and the majority of employees concerned, the shift which has the minor portion falling on the public holiday may be regarded as the public holiday shift instead.
31.5(d)	Shiftwork (Instrument)	<p>Shiftwork on a rostered day off</p> <p>A shiftworker whose rostered day off coincides with a public holiday must be paid a day's pay additional to their weekly wage, or have a day added to their annual leave.</p>
32	Roster (Instrument)	<p>Rosters, where they apply, will be set for each fortnightly period. The roster may alter the times on which an employee works their ordinary hours.</p> <p>An employer will give 14 days' notice of each fortnightly roster. However, in order to meet specific operational requirements, an employer may change rosters after consulting with the employee(s) concerned and giving them as much notice as possible.</p>
33.1	Breaks - meal (Instrument)	<p>A meal break of not less than 30 minutes and not more than 60 minutes must be allowed to each employee. The meal break must be taken not later than five hours after commencing work and after the resumption of work from a previous meal break.</p> <p>This provision does not apply outside an employee's ordinary working hours. Meal breaks during overtime are prescribed in the overtime provisions of the award.</p>
33.2	Breaks - rest (Instrument)	<p>All employees will be allowed two rest intervals on each day as follows:</p> <p>(i) the first of 10 minutes to be allowed between the time of starting work and the usual meal interval</p> <p>(ii) the second of 10 minutes to be allowed between the usual meal interval and the time of ending work for the day.</p> <p>These intervals are to be counted as part of time worked.</p>
33.2	Breaks - rest (Instrument)	<p>All employees who work more than four hours on a Saturday before 12 noon must be allowed a rest period of 10 minutes between the times of commencing work and finishing work.</p> <p>This interval is to be counted as part of time worked.</p>

Clause	Conditions Type	Description
34.1(c)	Method of calculation of overtime rate (Instrument)	<p>The hourly rate for overtime is determined by dividing the appropriate weekly rate by 38, even when an employee works more than 38 ordinary hours in a week. Any portion of one hour less than 30 minutes will be reckoned as 30 minutes and any portion of one hour more than 30 minutes will be reckoned as one hour.</p> <p>Each day stands alone when calculating overtime.</p>
34.4	Breaks - rest (Instrument)	<p>An employee working overtime must be allowed a rest break of 20 minutes without deduction of pay after each four hours of overtime if they are to continue work after the rest break.</p> <p>Where an employee is required to work overtime on a Saturday, Sunday or public holiday or on a rostered day off, the first rest break will be paid at the employee's ordinary rate of pay.</p> <p>Where overtime is to be worked immediately after the completion of ordinary work on a day or shift and the period of overtime is to be more than one and a half hours, an employee, before starting the overtime, is entitled to a rest break of 20 minutes paid at the their ordinary rate of pay.</p> <p>An employer and employee may agree to any variation of these provisions to meet the circumstances of the work. The employer is not required to make any payment more or less than what would otherwise be required under these provisions.</p>
34.5	Overtime – time off in lieu (Instrument)	<p>An employee may, with the employer's consent, take time off instead of payment for overtime at a time agreed within 12 months.</p> <p>Overtime taken as time off during ordinary time hours will be taken at the ordinary time rate.</p> <p>If the leave is not taken payment for time accrued at overtime rates will be made at the end of the 12 month period or on termination.</p> <p>The employer must keep accurate records of time accrued as time off instead of payment for overtime.</p>
34.6	Rest period after overtime duty	Day workers

Clause	Conditions Type	Description
	(Instrument)	<p>Overtime must, wherever reasonably practicable, be arranged so that employees have at least 10 consecutive hours off duty between successive days.</p> <p>An employee, other than a casual employee, who works so much overtime between the end of their ordinary work on one day and the start of their ordinary work on the next day that they have not had at least 10 consecutive hours off duty, must be released after completion of the overtime until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.</p> <p>By agreement between an employer and individual employee, the 10 hour break may be reduced to a period no less than eight hours.</p> <p>Shiftworkers</p> <p>This provision for a 10 hour rest period applies in the case of shiftworkers as if eight hours were substituted for 10 hours when overtime is worked:</p> <ul style="list-style-type: none"> - for the purpose of changing shift rosters - where a day worker or a shiftworker is required to replace a shiftworker who does not report for duty - where a shift is worked by arrangement between the employees themselves.
34.7	Call-back (Instrument)	<p>Where an employee is required to regularly hold themselves in readiness for a call-back they will be paid for a minimum of three hours' work at the appropriate overtime rate. This is subject the standing by provision.</p> <p>If the employee is recalled more than once between the end of their ordinary work on one day and the start of their ordinary work on the next day, they will be entitled to the three or four hour minimum overtime payment for each call-back. It is only the time actually worked during the previous call or calls which is to be taken into account when determining the overtime rate for subsequent calls.</p> <p>Except in unforeseen circumstances, an employee will not be required to work the full three or four hours if the job they were recalled to perform is completed within a shorter period.</p> <p>This provision does not apply where it is customary for an employee to return to the workplace to perform a specific job outside their ordinary hours or where the overtime is continuous with the starting or ending of ordinary working time.</p>

Clause	Conditions Type	Description
		Overtime worked in these circumstances is not regarded as overtime for the purposes of provisions relating to rest periods after overtime when the actual time worked is less than three hours on the call-back or on each call-back.
34.8	Standing by (Instrument)	Subject to any custom in the workplace, where an employee is required regularly to hold themselves in readiness to work after ordinary hours, they are to be paid standing by time at the employee's ordinary rate of pay for the time they are standing by.
35.3	Annual leave loading (Instrument)	<p>During a period of annual leave an employee must receive a loading calculated on the minimum wage prescribed for their classification in the award. The annual leave loading payment is payable on leave accrued.</p> <p>The loading must be as follows:</p> <ul style="list-style-type: none"> - Employees who would have worked on day work only had they not been on leave - 17.5% - Employees who would have worked on shiftwork had they not been on leave -17.5% or the shift loading (including relevant weekend penalty rates) whichever is greater but not both.
35.4	Annual leave - paid leave in advance of accrued entitlement (Instrument)	<p>An employer may allow an employee to take annual leave either wholly or partly in advance before the leave has accrued.</p> <p>If leave is taken in advance and the employment terminates before the entitlement accrues the employer may make a corresponding deduction from any money due to the employee on termination.</p>
35.5	Annual leave - payment (Instrument)	An employee prior to commencing a period of annual leave must be paid the wages they would have received for of the ordinary time they would have worked had they not been on leave.
39	Study leave (Instrument)	<p>A law graduate is entitled to leave of absence with pay:</p> <p>(a) for study and attendance at examinations, not exceeding four days for each subject for which they present themselves for examination which is necessary to enable them to qualify for admission</p>

Clause	Conditions Type	Description
		(b) to attend lectures and organised classes at a university or other course which is required to enable the employee to qualify for admission.

Frequency of Payment

An employee will be paid fortnightly unless the employer and the employee otherwise agree.

IMPORTANT NOTE: Disclaimer

The Fair Work Ombudsman (FWO) is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws. The Pay and Conditions Guides are provided for that purpose.

There are factors that may affect the information contained in these Guides. These include:

- changes to pay rates, allowances, penalties or modern award provisions; eg after FWA's annual wage review which takes effect on 1 July each year
- changes to the Fair Work Act or other relevant legislation
- decisions of courts or Fair Work Australia, in particular regarding the effect of provisions in modern awards and pre-modern awards where those differ from the approach taken by the FWO.

The FWO will consider these matters and where appropriate update the Guides.

It is your responsibility to comply with workplace laws and industrial instruments that apply to you.

The information contained in these Pay and Conditions Guides is:

- general in nature and may not deal with all aspects of the law that are relevant to your specific situation; and
- not legal advice.

Therefore you may wish to seek your own independent professional advice to ensure all the factors relevant to your circumstances are properly considered.