



Australian Government

# Fair Work

## OMBUDSMAN

### PAY AND CONDITIONS GUIDE

**Fitness Industry Award 2010 [MA000094]** ('modern award')  
replacing terms and conditions in or derived from

**Health, Fitness and Indoor Sports Centres (State) Award  
[AN120240]** ('pre-modern award')

**(NSW)**

Effective from 01 January 2014.

Published 09 January 2014 

#### **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 January 2014. 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 industry award covers employers throughout Australia engaged in the fitness industry and their employees in the classifications in this award to the exclusion of any other modern award.

This award does not cover employers or employees covered by the following awards:

- the Amusement, Events and Recreation Award 2010
- the Children's Services Award 2010
- the Cleaning Services Award 2010
- the Hospitality Industry (General) Award 2010
- the Registered and Licensed Clubs Award 2010
- the Security Services Industry Award 2010.

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

This award does not cover an employee who is employed by the employer to provide administrative and other operational support outside of a fitness centre.

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 fitness 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 subclause 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 fitness industry and/or parts of such 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 subclause 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 normally 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](http://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](http://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 January 2014 until the final pay period before 01 July 2014 only.

## **Full & Part Time**

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>
Level 1	Level 1	\$16.37
Level 2	Level 2	\$16.85
Level 3	Level 3A	\$17.98
Level 3A (new classification)		\$18.74
Level 4	Level 3A	\$19.42
Level 4	Level 3B, Weight loss counsellor	\$19.50
Level 4A (new classification)		\$20.49
Level 5	Level 4	\$21.05

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>
Level 6	Level 5	\$21.16
Level 7	Level 6	\$22.10

Casual employees under this pre-modern award were engaged either on an 'ordinary' or 'all-up' basis. 'Ordinary' casuals were entitled to receive a casual loading of 15 per cent, except when Saturday, Sunday, public holiday or night work penalties were payable under the pre-modern award. Those penalty rates were in substitution for the casual loading for those hours. 'All-up' casuals were entitled to a loading of 30 per cent for each hour worked (and were not entitled to those penalties under the pre-modern award).

### **Casual ('Ordinary' Casual)**

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>	<b>Post 26 March 2006 employer*</b>
Level 1	Level 1	\$20.41 (24.67%)	\$20.14 (23%)
Level 2	Level 2	\$21.00 (24.67%)	\$20.72 (23%)
Level 3	Level 3A	\$22.42 (24.67%)	\$22.12 (23%)
Level 3A (new classification)		\$23.37 (24.67%)	\$23.05 (23%)
Level 4	Level 3A	\$24.21 (24.67%)	\$23.88 (23%)
Level 4	Level 3B, Weight loss counsellor	\$24.31 (24.67%)	\$23.99 (23%)
Level 4A (new classification)		\$25.54 (24.67%)	\$25.20 (23%)
Level 5	Level 4	\$26.24 (24.67%)	\$25.89 (23%)
Level 6	Level 5	\$26.37 (24.67%)	\$26.02 (23%)
Level 7	Level 6	\$27.55 (24.67%)	\$27.18 (23%)

### **Casual ('All up' Casual)**

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>
Level 1	Level 1	\$20.63 (26.00%)
Level 2	Level 2	\$21.23 (26.00%)
Level 3	Level 3A	\$22.66 (26.00%)
Level 3A (new classification)		\$23.62 (26.00%)
Level 4	Level 3A	\$24.47 (26.00%)
Level 4	Level 3B, Weight loss counsellor	\$24.58 (26.00%)
Level 4A (new classification)		\$25.81 (26.00%)
Level 5	Level 4	\$26.52 (26.00%)
Level 6	Level 5	\$26.66 (26.00%)
Level 7	Level 6	\$27.84 (26.00%)

### **Casual ('All up' Casual – working Ordinary hours on a Saturday, Sunday or public holiday)**

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>
Level 1	Level 1	\$21.28 (30.00%)
Level 2	Level 2	\$21.90 (30.00%)
Level 3	Level 3A	\$23.38 (30.00%)
Level 3A (new classification)		\$24.36 (30.00%)
Level 4	Level 3A	\$25.24 (30.00%)
Level 4	Level 3B, Weight loss counsellor	\$25.36 (30.00%)
Level 4A (new classification)		\$26.63 (30.00%)
Level 5	Level 4	\$27.36 (30.00%)
Level 6	Level 5	\$27.50 (30.00%)
Level 7	Level 6	\$28.73 (30.00%)

Level 3A and Level 4A are new classifications inserted into the modern award with effect from 16 November 2012. As these classifications were not present in the award at 1 January 2010, the modern award rates apply in full. Penalties and loadings, including casual loadings, apply in accordance with the model transitional provisions.

### **Junior**

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

#### **Full & Part Time**

##### **Level 1**

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>
16 years of age and under	Level 1, 16 years and under	\$9.01
17 years of age	Level 1, At 17 years	\$10.64
18 years of age	Level 1, At 18 years	\$12.28
19 years of age	Level 1, At 19 years	\$13.92
20 years of age	Level 1, At 20 years	\$16.37

##### **Level 2**

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>
16 years of age and under	Level 2, At 16 years and under	\$9.27
17 years of age	Level 2, At 17 years	\$10.95
18 years of age	Level 2, At 18 years	\$12.64
19 years of age	Level 2, At 19 years	\$14.32
20 years of age	Level 2, At 20 years	\$16.85

##### **Level 3**

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>
16 years of age and under	Level 3A, At 16 years and under	\$9.89

Modern award classification	Pre-modern award classification	Base rate of pay (hourly)
17 years of age	Level 3A, At 17 years	\$11.69
18 years of age	Level 3A, At 18 years	\$13.49
19 years of age	Level 3A, At 19 years	\$15.29
20 years of age	Level 3A, At 20 years	\$17.98

### Level 3A (new classification)

Modern award classification	Base rate of pay (hourly)
16 years of age and under	\$10.31
17 years of age	\$12.18
18 years of age	\$14.06
19 years of age	\$15.93
20 years of age	\$18.74

### Level 4A (new classification)

Modern award classification	Base rate of pay (hourly)
16 years of age and under	\$11.27
17 years of age	\$13.32
18 years of age	\$15.37
19 years of age	\$17.41
20 years of age	\$20.49

Casual employees under this pre-modern award were engaged either on an 'ordinary' or 'all-up' basis. 'Ordinary' casuals were entitled to receive a casual loading of 15 per cent, except when Saturday, Sunday, public holiday or night work penalties were payable under the pre-modern award. Those penalty rates were in substitution for the casual loading for those hours. 'All-up' casuals were entitled to a loading of 30 per cent for each hour worked (and were not entitled to those penalties under the pre-modern award).

### Casual ('Ordinary' casual)

#### Level 1

Modern award classification	Pre-modern award classification	Base rate of pay (hourly)	Post 26 March 2006 employer*
16 years of age and under	Level 1, 16 years and under	\$11.23 (24.67%)	\$11.08 (23%)
17 years of age	Level 1, At 17 years	\$13.27 (24.67%)	\$13.09 (23%)
18 years of age	Level 1, At 18 years	\$15.31 (24.67%)	\$15.10 (23%)
19 years of age	Level 1, At 19 years	\$17.35 (24.67%)	\$17.12 (23%)
20 years of age	Level 1, At 20 years	\$20.41 (24.67%)	\$20.14 (23%)

#### Level 2

Modern award classification	Pre-modern award classification	Base rate of pay (hourly)	Post 26 March 2006 employer*
16 years of age and under	Level 2, At 16 years and under	\$11.55 (24.67%)	\$11.40 (23%)
17 years of age	Level 2, At 17 years	\$13.65 (24.67%)	\$13.47 (23%)

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>	<b>Post 26 March 2006 employer*</b>
18 years of age	Level 2, At 18 years	\$15.75 (24.67%)	\$15.54 (23%)
19 years of age	Level 2, At 19 years	\$17.85 (24.67%)	\$17.61 (23%)
20 years of age	Level 2, At 20 years	\$21.00 (24.67%)	\$20.72 (23%)

### **Level 3**

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>	<b>Post 26 March 2006 employer*</b>
16 years of age and under	Level 3A, At 16 years and under	\$12.33 (24.67%)	\$12.17 (23%)
17 years of age	Level 3A, At 17 years	\$14.57 (24.67%)	\$14.38 (23%)
18 years of age	Level 3A, At 18 years	\$16.82 (24.67%)	\$16.59 (23%)
19 years of age	Level 3A, At 19 years	\$19.06 (24.67%)	\$18.80 (23%)
20 years of age	Level 3A, At 20 years	\$22.42 (24.67%)	\$22.12 (23%)

### **Level 3A (new classification)**

<b>Modern award classification</b>	<b>Base rate of pay (hourly)</b>	<b>Post 26 March 2006 employer*</b>
16 years of age and under	\$12.85 (24.67%)	\$12.68 (23.00%)
17 years of age	\$15.19 (24.67%)	\$14.98 (23.00%)
18 years of age	\$17.52 (24.67%)	\$17.29 (23.00%)
19 years of age	\$19.86 (24.67%)	\$19.59 (23.00%)
20 years of age	\$23.37 (24.67%)	\$23.05 (23.00%)

### **Level 4A (new classification)**

<b>Modern award classification</b>	<b>Base rate of pay (hourly)</b>	<b>Post 26 March 2006 employer*</b>
16 years of age and under	\$14.05 (24.67%)	\$13.86 (23.00%)
17 years of age	\$16.60 (24.67%)	\$16.38 (23.00%)
18 years of age	\$19.16 (24.67%)	\$18.90 (23.00%)
19 years of age	\$21.71 (24.67%)	\$21.42 (23.00%)
20 years of age	\$25.54 (24.67%)	\$25.20 (23.00%)

### **Casual ('All up' Casual)**

#### **Level 1**

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>
16 years of age and under	Level 1, 16 years and under	\$11.35 (26.00%)
17 years of age	Level 1, At 17 years	\$13.41 (26.00%)
18 years of age	Level 1, At 18 years	\$15.47 (26.00%)

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>
19 years of age	Level 1, At 19 years	\$17.53 (26.00%)
20 years of age	Level 1, At 20 years	\$20.63 (26.00%)

## **Level 2**

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>
16 years of age and under	Level 2, At 16 years and under	\$11.67 (26.00%)
17 years of age	Level 2, At 17 years	\$13.80 (26.00%)
18 years of age	Level 2, At 18 years	\$15.92 (26.00%)
19 years of age	Level 2, At 19 years	\$18.04 (26.00%)
20 years of age	Level 2, At 20 years	\$21.23 (26.00%)

## **Level 3**

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>
16 years of age and under	Level 3A, At 16 years and under	\$12.46 (26.00%)
17 years of age	Level 3A, At 17 years	\$14.73 (26.00%)
18 years of age	Level 3A, At 18 years	\$17.00 (26.00%)
19 years of age	Level 3A, At 19 years	\$19.26 (26.00%)
20 years of age	Level 3A, At 20 years	\$22.66 (26.00%)

## **Level 3A (new classification)**

<b>Modern award classification</b>	<b>Base rate of pay (hourly)</b>
16 years of age and under	\$12.99 (26.00%)
17 years of age	\$15.35 (26.00%)
18 years of age	\$17.71 (26.00%)
19 years of age	\$20.07 (26.00%)
20 years of age	\$23.62 (26.00%)

## **Level 4A (new classification)**

<b>Modern award classification</b>	<b>Base rate of pay (hourly)</b>
16 years of age and under	\$14.20 (26.00%)
17 years of age	\$16.78 (26.00%)
18 years of age	\$19.36 (26.00%)
19 years of age	\$21.94 (26.00%)
20 years of age	\$25.81 (26.00%)

## **Casual ('All up' Casual – working Ordinary hours on a Saturday, Sunday or public holiday)**

### **Level 1**

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>
16 years of age and under	Level 1, 16 years and under	\$11.71 (30.00%)
17 years of age	Level 1, At 17 years	\$13.83 (30.00%)
18 years of age	Level 1, At 18 years	\$15.96 (30.00%)
19 years of age	Level 1, At 19 years	\$18.09 (30.00%)
20 years of age	Level 1, At 20 years	\$21.28 (30.00%)

## **Level 2**

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>
16 years of age and under	Level 2, At 16 years and under	\$12.05 (30.00%)
17 years of age	Level 2, At 17 years	\$14.24 (30.00%)
18 years of age	Level 2, At 18 years	\$16.43 (30.00%)
19 years of age	Level 2, At 19 years	\$18.62 (30.00%)
20 years of age	Level 2, At 20 years	\$21.90 (30.00%)

## **Level 3**

<b>Modern award classification</b>	<b>Pre-modern award classification</b>	<b>Base rate of pay (hourly)</b>
16 years of age and under	Level 3A, At 16 years and under	\$12.86 (30.00%)
17 years of age	Level 3A, At 17 years	\$15.20 (30.00%)
18 years of age	Level 3A, At 18 years	\$17.54 (30.00%)
19 years of age	Level 3A, At 19 years	\$19.87 (30.00%)
20 years of age	Level 3A, At 20 years	\$23.38 (30.00%)

## **Level 3A (new classification)**

<b>Modern award classification</b>	<b>Base rate of pay (hourly)</b>
16 years of age and under	\$13.40 (30.00%)
17 years of age	\$15.84 (30.00%)
18 years of age	\$18.27 (30.00%)
19 years of age	\$20.71 (30.00%)
20 years of age	\$24.36 (30.00%)

## **Level 4A (new classification)**

<b>Modern award classification</b>	<b>Base rate of pay (hourly)</b>
16 years of age and under	\$14.65 (30.00%)
17 years of age	\$17.31 (30.00%)
18 years of age	\$19.97 (30.00%)
19 years of age	\$22.64 (30.00%)
20 years of age	\$26.63 (30.00%)

Level 3A and Level 4A are new classifications inserted into the modern award with effect from 16 November 2012. As these classifications were not present in the award at 1 January

2010, the modern award rates apply in full. Penalties and loadings, including casual loadings, apply in accordance with the model transitional provisions.

### **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.

### **Supported Wage**

Please refer to clause 17.3 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:

<b>First full pay period on or after</b>	<b>Proportion of transitional percentage</b>
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.

<b>1/01/2010</b>	<b>1/07/2014</b>	<b>1/07/2010</b>
<b>Pre-modern award penalty</b>	<b>Modern award penalty</b>	<b>Penalty rate (phased)</b>
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.

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

1/01/2010 Pre-modern award penalty	1/07/2010 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%
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:

<b>First full pay period on or after</b>	<b>Percent of modern award loading/penalty</b>
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.

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

For more information about transitional arrangements for loading/penalty entitlements please visit [www.fairwork.gov.au](http://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**

<b>Clause</b>	<b>Allowance Type</b>	<b>Description</b>	<b>Effective Date</b>	<b>Rate</b>
18.1	Leading hand allowance	An employee at classification Level 4 or below in charge of 1 to 5 employees will be paid this allowance.	1/07/2013	\$0.5428 per hour.  This weekly allowance has been converted to an hourly amount. It should be applied to all ordinary hours of work (up to a maximum of 38 hours per week). (3.00%)
18.1	Leading hand allowance	An employee at classification Level 4 or below in charge of 6 to 10 employees will be paid this allowance.	1/07/2013	\$0.7419 per hour.  This weekly allowance has been converted to an hourly amount. It should be applied to all ordinary hours of work (up to a maximum of 38 hours per week). (4.10%)
18.1	Leading hand allowance	An employee at classification level 4 or below in charge of more than 10 employees will be paid this allowance.	1/07/2013	\$0.9952 per hour.

Clause	Allowance Type	Description	Effective Date	Rate
				This weekly allowance has been converted to an hourly amount. It should be applied to all ordinary hours of work (up to a maximum of 38 hours per week). (5.50%)
18.2	Meal allowance	An employee required to work overtime for more than one and a half hours immediately after their ordinary work will be paid this meal allowance, unless the employer provides a meal.	1/07/2013	\$10.5700 per meal
18.3(a)	Vehicle allowance	An employee, who by agreement with the employer, uses their own motor vehicle during work must be paid this allowance.	1/07/2013	\$0.7600 per kilometre travelled
18.3(b)	Vehicle allowance	An employee, who by agreement with the employer, uses their own motorcycle during work must be paid this allowance.	1/01/2010	\$0.2500 per kilometre travelled
18.4	Broken shift allowance	An employee working a rostered broken shift must be paid this allowance.	1/07/2013	\$11.6892 per day (64.60%)
18.4	Broken shift allowance	An employee working a rostered broken shift must be paid this allowance for excess fares.	1/07/2013	\$1.8400 per day
18.5	First aid allowance	An employee rostered on first aid duty at a particular time must be paid this allowance.	1/07/2013	\$2.2003 per day (12.16%)

## **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](http://www.fairwork.gov.au)

### **All states covered by this instrument**

<b>Clause</b>	<b>Conditions Type</b>	<b>Description</b>
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"><li>- arrangements for when work is performed</li><li>- overtime rates</li><li>- penalty rates</li><li>- allowances</li><li>- leave loading.</li></ul> <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"><li>- duty to notify, and</li><li>- duty to discuss change.</li></ul>
9	Dispute resolution (Instrument)	<p>The award sets out a dispute resolution procedure for dealing with disputes in relation to a matter under the award or the National Employment Standards (NES).</p>

<b>Clause</b>	<b>Conditions Type</b>	<b>Description</b>
12.2	Part-time conditions (Instrument)	<p>At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.</p> <p>Any agreed variation will be in writing.</p> <p>A part time employee's minimum hours of work is three hours.</p>
13.4	Casual conditions (Instrument)	<p>Aside from the condition below or on a public holiday, a casual employee must be provided or paid a minimum of 3 hours work.</p> <p>A casual employee who is classified as a Level 2, 3 or 4 instructor or trainer or as a student undertaking practical work involvement may be provided with or paid for a minimum of one hour's work.</p>
14.2	Termination of employment - notice of termination by an employee (Instrument)	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.
14.3	Termination of employment - job search entitlement (Instrument)	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.
15.2	Redundancy - transfer to lower paid duties (Instrument)	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.
15.3	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.
15.4	Redundancy - job search entitlement	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.

Clause	Conditions Type	Description
	(Instrument)	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.
15.5	Redundancy - transitional provisions (Instrument)	<p>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.</p> <p>The entitlement to redundancy pay under the NAPSA is limited to the amount which exceeds the entitlement under the NES.</p> <p>This clause does not reduce an employee's entitlement to redundancy pay under any other instrument and ceases to operate on 31 December 2014.</p>
18.6	Clothing, footwear and/ or equipment (Instrument)	<p>An employee who is required to wear specific clothing as part of their employment must be reimbursed for the reasonable cost of purchasing and cleaning the clothing.</p> <p>This will not be paid if the clothing is provided by the employer without cost to the employee or is cleaned by the employer. Where clothing is provided by the employer it will remain the property of the employer.</p>
18.7	Travelling time (Instrument)	An employee who is required by the employer to travel from one place of work to another must be paid by the employer all fares necessarily incurred by the employee. All time occupied in travel will be counted as time worked.
18.8	Sleepovers (Instrument)	<p>The employer must take all reasonable steps to enable the employee to sleep at the workplace including providing a bed with privacy. Access to a bathroom, toilet and a meal room must also be provided free of charge to the employee.</p> <p>An employee will only sleep over if:</p> <ul style="list-style-type: none"> <li>- agreed between employer and employee at least one week's in advance, except in the case of an emergency; and</li> <li>- the sleepover consists of eight continuous hours.</li> </ul>

Clause	Conditions Type	Description
		<p>The sleepover allowance is equivalent to three hours payment at the employee's ordinary rate of pay. Such payment is compensation for the sleepover and for all necessary work of up to two hours duration during the sleepover period.</p> <p>Any work required in excess of two hours during the sleepover period must be paid at overtime rates in addition to the sleepover allowance.</p> <p>An employee on a sleepover must not be required to work more than eight hours before or after, unless an agreement is made at a workplace to work longer hours for the purpose of providing more continuous leisure time within the roster, taking into account the health and safety of the employee.</p>
19	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>
20	Accident pay (Instrument)	<p>An employee is entitled to accident pay in accordance with the terms of:</p> <ul style="list-style-type: none"> <li>- 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</li> <li>- 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.</li> </ul> <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>

Clause	Conditions Type	Description
21	Higher duties (Instrument)	An employee appointed by the employer to perform the work of a classification higher than the employee's usual classification must be paid at least the higher rate for the hours worked.
22	Payment of wages (Instrument)	<p>Wages can be paid by cash, cheque or electronic funds transfer, as determined by the employer, into the nominated bank or financial institution account of the employee.</p> <p>Where an employee is paid wages by cash or cheque and the employee is not rostered to work on pay day, the employee must be paid by at least the day after pay day. However, the employer can arrange for the employee to be paid the day before pay day.</p>
22.4	Hours of work (Instrument)	<p>Where an employee's ordinary hours in a week are greater or less than 38 hours and such employee's pay is averaged to avoid differing wage payments, the following applies:</p> <ul style="list-style-type: none"> <li>- The employee accrues a credit for each day the employee works ordinary hours in excess of the daily average.</li> <li>- The employee incurs a debit for each day or part day of absence from duty other than when the employee is on paid leave, workers compensation or jury service.</li> </ul>
23	Superannuation (Instrument)	<p>The award contains information on:</p> <ul style="list-style-type: none"> <li>- the employers responsibility to make superannuation contributions to a superannuation fund</li> <li>- the ability for an employee to authorise their employer to pay on their behalf contributions to a superannuation fund</li> <li>- the employers responsibility to make superannuation contributions to another superannuation fund that is chosen by the employee.</li> </ul>
24	Hours of work (Instrument)	<p>The ordinary hours of a full-time employee are an average of 38 hours per week over a period of four weeks. Which is worked over any five days of the week, between the hours of:</p> <ul style="list-style-type: none"> <li>- 5.00 am and 11.00 pm, Monday to Friday; and</li> <li>- 6.00 am and 9.00 pm, Saturday and Sunday.</li> </ul> <p>The ordinary hours of a full-time or part-time employee must not exceed 10 hours per day.</p>

Clause	Conditions Type	Description
		<p>An employee may be rostered to work a broken shift on any day provided that:</p> <ul style="list-style-type: none"> <li>- the shift is not broken into more than two parts;</li> <li>- the total length of the shift is not less than three hours, exclusive of meal breaks; and</li> <li>- the span of hours from the start of the first part of the shift to the end of the second part of the shift is not more than 12 hours.</li> </ul> <p>An employee must be notified by their employer of their rostered hours. At least seven days' notice must be given to employee for any roster changes, except in the case of an emergency.</p>
24.5	Rostered days off (Instrument)	<p>An RDO system may be established by agreement with majority of employees. The terms of any agreement must be set out in the time and wages records along with specific staff RDO arrangements.</p> <p>Once introduced, an employee may elect, with the consent of the employer, to take a full or part rostered day off at any time or to accrue some or all rostered days off for the purpose of creating a bank to be drawn on by the employee at a time mutually agreed between the employer and the employee.</p>
24.6	Make-up time (Instrument)	<p>An employee may elect, with the consent of the employer, to work make-up time under which the employee takes time off during ordinary hours and works those hours at a later time, during the spread of ordinary hours provided in this award. An employer must record make-up time arrangements in the time and wages record.</p>
25.1	Breaks - meal (Instrument)	<p>An employee must be given an unpaid meal break of between 30 and 60 minutes no later than five hours after starting work and five hours after the resuming work from a previous meal break.</p>
25.2	Breaks - rest (Instrument)	<p>An employee, other than a casual employee who works three hours or less per shift, must be allowed a paid 10 minute rest break between their time of starting work and their meal break and a paid 10 minute rest break between their meal break and their time of ending work for the day.</p>
26.4	Overtime – time off in lieu (Instrument)	<p>An employee may elect, with the consent of the employer, to take time off instead of payment for overtime at a time agreed with the employer, provided that:</p> <ul style="list-style-type: none"> <li>- when this time off is taken during ordinary hours it must be taken at the ordinary time rate, that is an hour for each hour worked; and</li> </ul>

Clause	Conditions Type	Description
		<ul style="list-style-type: none"> <li>- an employer must, if requested by an employee, provide payment at the appropriate overtime rate for any overtime worked which has not been taken as time off within four weeks of its accrual; and</li> <li>- these arrangements must be set out in the time and wages records.</li> </ul>
27.2	Annual leave loading (Instrument)	During a period of annual leave an employee must also be paid an annual leave loading of 17.5%.

### **Frequency of Payment**

Wages must be paid weekly or fortnightly or, by agreement between the employer and the majority of employees, monthly.

**IMPORTANT NOTE: Disclaimer**

The Fair Work Ombudsman is committed to providing advice that you can rely on.

Your situation and the law can change so we encourage you to check back with us by looking at <http://www.fairwork.gov.au/pay/pay-and-conditions-guides/pages/default.aspx>