



Two years on - are you still complying with the Fair Work Act?

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It has been almost two years since the introduction of the statutory safety net of minimum wages and employment conditions under the *Fair Work Act 2009 (Cth)* (**The Act**).

The statutory safety net applies to employees and employers covered by the Act. In Queensland, an employee will be covered by the Act unless they are employed by a State or local government employer.

It is important for employers to continue to make sure that they are complying with the statutory safety net, as failure to do so could result in a civil penalty of up to \$6,600.00 for an individual and up to \$33,000.00 for a corporation per contravention. Set out below is a brief summary of the statutory safety net applicable to employees.

Maximum Hours

Employers can not require full time employees to work more than 38 hours per week plus reasonable additional hours. What constitutes reasonable additional hours will depend on a number of factors which include:

- (a) Risk to health and safety from working the additional hours;
- (b) Personal circumstances, including family responsibilities;
- (c) Workplace needs or business operational requirements;
- (d) Whether the employee is entitled to receive overtime or higher remuneration;
- (e) Notice by the employer to work and the employee to refuse;
- (f) Industry work patterns;
- (g) An employee's role and level of responsibility; and
- (h) The effect of any averaging arrangement.

Flexible Working Arrangements

Eligible employees have a right to request flexible working arrangements. Flexible working arrangements might include arrangements such as a change to the employee's hours or location of work (e.g. working from home). To be eligible for flexible working arrangements the employee must:

- (a) be a parent or have the responsibility for the care of a child that is under school age or is under 18 and has a disability; and
- (b) have twelve months continuous service with the employer, or be a long term casual employee who has the expectation of regular continuing employment; and



- (c) request the flexible working arrangement in writing and detail the reason for the request.

The employer must respond to the employee's request in writing within twenty one days. If the employer refuses the request, written reasons for the refusal must be provided and the refusal must be based on reasonable business grounds.

Parental Leave

Both parents may be entitled to separate, unpaid periods of 12 months leave or one parent can request an extension of 12 months after the first 12 months of unpaid leave.

To be eligible for parental leave employees must:

- have completed 12 months continuous service or if a casual employee, be a long term casual employee with a reasonable expectation of continuing employment on a regular and systematic basis; and
- give at least 10 weeks notice (unless not practicable)

An employee may request an additional 12 months leave (after the first twelve months) by giving the employer 4 weeks notice.

If the employer refuses the request, written reasons for the refusal must be provided based on reasonable business grounds.

Employees who have taken unpaid parental leave are entitled to return to work in their previous position or one with equivalent status (if their previous position no longer exists).

Annual Leave

Employees (other than casual employees) are entitled to four weeks (or 20 days) of paid annual leave per year.

Shift workers accrue five weeks of paid annual leave per year. A shift worker is defined as:

- (d) a person who is classified as a shift worker in a modern award or enterprise agreement; or
- (e) a worker employed in a business in which shifts are continuously rostered twenty four hours a day seven days a week and is regularly rostered to work those shifts, Sundays and public holidays.

Employees may take paid annual leave as agreed with their employer. An employer may require an employee to take annual leave in certain circumstances if the requirement is reasonable.

Payment during annual leave is based on the employee's base rate of pay for ordinary hours of work. Base rate of pay is defined as a payment for ordinary hours of work excluding:

- (f) Bonuses;
- (g) Loadings;
- (h) Monetary allowances;
- (i) Overtime and penalty rates; and
- (j) Other separately identified amounts.

Employees may cash out of annual leave in certain circumstances. In all cases, cashing out of annual leave can only occur if a balance of four weeks untaken annual leave remains. Employees wishing to cash out of annual leave must record such arrangement in writing.



Personal/Carer's Leave

Employees (other than casual employees) are entitled to 10 days of paid personal/carers leave per year for times when they are not fit for work, where they are required to care for an immediate family member or member of their household, or where they experience an unexpected emergency.

Employees may take an additional two days of unpaid carers leave (if they have exhausted their paid personal leave) per occasion where an immediate family member or member of the employee's household requires care or support due to a injury, illness or an unexpected emergency.

Compassionate Leave

Employees may take two days of paid compassionate leave per occasion when a member of their immediate family or household experiences a life threatening illness or injury or dies.

Community Service Leave

Employees engaging in emergency management activities as defined in the Act are reasonably entitled to be absent from their employment during that period. Community Service Leave is unpaid leave.

Jury Service

Employees (other than casual employees) who engage in jury service are entitled to be absent from their employment. Except in circumstances where employees are eligible for jury service pay from a State or Federal Government, for the first ten days, they are entitled to be paid by their employer at their base rate of pay for ordinary hours of work.

Public Holidays

Full time employees are entitled to be absent on public holidays and be paid their base rate of pay for ordinary hours worked. Employers may reasonably request their employees to work on public holidays, and employees may not unreasonably refuse.

Notice of Termination

Unless otherwise specified in a modern award, enterprise agreement or contract of employment, employers must give written notice of termination (or payment in lieu of notice) according to the following table:

Period of continuous service	Notice Period
Not more than one year	1 week
More than one year but not more than three years	2 weeks
More than three years but not more than five years	3 weeks
More than 5 years	4 weeks

The above periods of notice are increased by one week where the employee is over 45 years of age and has completed at least two years continuous service with the employer.

Redundancy

Employees may be eligible for severance pay if their employment is terminated by reason of redundancy.

If an employee is eligible for severance pay, payments to be made (subject to more favourable terms in any Award, collective agreement, contract or policy) are as follows:



Period of continuous service	Redundancy Pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

An employer can apply to Fair Work Australia to reduce the amount payable.

Severance payments are not payable by employers who fall within the “small business employer” exemption.

If employees did not have an entitlement to severance payment prior to 1 January 2010, then the period of continuous service will commence from 1 January 2010 for the purposes of calculating severance pay entitlements.

Fair Work Information Statement

Employers must provide new employees with fair work information statements upon commencement of employment.

If you have any questions or wish to obtain further details in relation to the Fair Work Act, please contact our Employment Law and Workplace Relations team.



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