



National Employment Standards Webinar

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Webinar Objectives

By the end of the webinar you will be able to:

- 1. Understand the History of the NES,**
- 2. Understand the importance of the NES,**
- 3. Know where to find the NES,**
- 4. Know the provisions of the NES,**
- 5. Ensure you are meeting or exceeding the NES provisions.**



Coverage

The National Employment Standards (NES) apply to all employees covered by the national workplace relations system, regardless of any award, agreement or contract.



Introduction-History

- In 2009 the Fair Work Act was introduced,
- The Act includes several minimum conditions of employment,
- These conditions are called the National Employment Standards – NES,
- All employees **MUST** receive these **minimum** conditions of employment,
- All employees **must** be provided a copy of the NES at the commencement of their employment.



Introduction – Function

- Designed as a safety net for employees,
- Awards/Enterprise agreements, Individual Flexibility arrangements cannot contravene or exclude the NES minimum provisions,
- An award or agreement may have more generous provisions than the NES but cannot have less.

The NES Minimum Conditions of Employment

1. **Annual Leave**, Clause 25. MIA 2020
2. **Personal/Carer's Leave**, Clause 26. MIA 2020
3. **Unpaid Family and Domestic Violence Leave**, Clause 30. MIA 2020
4. **Compassionate Leave**, Clause 26. MIA 2020
5. **Community Service Leave**, Clause 28. MIA 2020
6. **Long Service Leave**. Clause 29. MIA 2020



Minimum Conditions of Employment cont...

7. Parental Leave, Clause 27. MIA 2020

8. Maximum Hours of Work, Clause 14. MIA 2020

9. Public Holidays, Clause 31. MIA 2020

10. Notice of Termination & Redundancy, Clauses 35.1 and 36 MIA 2020

11. The Right to Request Flexible Working Arrangements. Clause 6. MIA 2020

1. Annual Leave – Conditions

- Four weeks for ordinary employees and five weeks for a seven-day shiftworker,
- Accrues throughout the year,
- Paid Annual Leave can be taken by agreement at any time,
- Employer not to unreasonably refuse employee's request for leave,
- Paid Annual Leave does not include Public Holidays or other paid leave,
- Casuals are not entitled to accrued or paid annual leave.

1. Annual Leave-Payment

- Paid at ordinary hours –for a General Butcher it is currently \$23.09 per hour,
- If an employee regularly works weekends as part of their ordinary hours the penalties are included in the leave calculation,
- Must include 17.5% leave loading when calculating leave to be taken OR paid out when an employee leaves employment,
- Guaranteed Superannuation Contributions are paid on Leave Loading for leave taken, but not on termination,
- The Meat Industry Award and the Fair Work Act allow for cashing out of annual leave, but with conditions.

2. Personal/Carer's – Definitions

Personal Leave:

Sick leave can be used when an employee is ill or injured.

Carers leave:

- An employee may have to take time off to care for an *immediate family* or *household member* who is sick or injured or help during a family emergency. This is known as carer's leave, but it comes out of the employee's personal leave balance.
- *An immediate family member is:*
A spouse or former spouse, de facto partner or former de facto partner, child, parent, grandparent, grandchild, sibling, or child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner, (or former spouse or de facto partner)
- *A household member* is any person who lives with the employee.

2. Personal/Carer's Leave - Provisions

Personal/Carers leave

- Excluding casuals, all other employees receive ten paid days per year, which accrues progressively throughout the year,
- May be taken as either sick leave or carer's leave,
- Paid at base rate of pay for ordinary hours,
- The Meat Industry Award 2020 has no cashing out provisions.

Unpaid carer's leave

- In addition, employees (including casuals) are entitled to 2 unpaid days of carer's leave for each occasion a member of the immediate family or household requires care because of illness or injury or emergency.



3. Family and Domestic Violence Leave

- An employee (including a casual employee) is entitled to five days of unpaid family and domestic violence leave each year. Employees are entitled to the full five days from the day they start work,
- The five days renews each 12 months but doesn't accumulate from year to year if it isn't used,
- Employees can take the leave if they need to do something to deal with the impact of family and domestic violence and it's impractical to do so outside their ordinary hours of work,

For example, this could include:

- planning for their safety, or safety of a family member (including relocation)
- attending court hearings, or
- accessing police services.

The leave doesn't need to be taken all at once and can be taken as single or multiple times.

- An employer and employee can also agree for an employee to take less than one day at a time.



4. Compassionate Leave

What are the minimum entitlements to compassionate leave?

- An employee (including a casual employee) is entitled to two days of compassionate leave to spend time with a member of their immediate family or household who has sustained a life-threatening illness or injury. Compassionate leave may also be taken after the death of a member of the employee's immediate family or household.

An employee may take compassionate leave for each occasion as:

- A single continuous two-day period, or
- Two separate periods of one day each, or
- Any separate periods to which the employee and his or her employer agree..



5. Community Service Leave

- All employees are entitled to Community Service Leave, Jury Duty, Voluntary Emergency Management activity,
- No set amount of leave, but must include a reasonable time to engage in the activity, reasonable travel time, and reasonable recovery time for the volunteer,
- Jury duty must always be considered reasonable by the employer,
- Employee's must give notice as soon as practicable including the expected period of absent,
- Provide evidence to the employer if requested that would satisfy a reasonable person.



5. Community Service Leave cont...

Defence Reservist Leave.

- Paid by defence reservist organisation,
- Employees cannot be forced to utilise other leave types such as annual leave,
- Employers *may* be eligible for a support payment scheme when an employee is released for Defence Reservist Leave.

Jury Duty and Jury Selection

- An employer *must* release an employee, including casuals, for Jury Duty,
- Jury Duty is paid by the judicial system,
- An employer must “top up” to their employees base pay for the first ten days of Jury Service,
- An employee must provide evidence of being paid by the judicial system or the employer does not need to top up the employees pay.



5. Community Service Leave-Unpaid

Community Service Leave includes:

1. Voluntary emergency management activity;
 - Fire fighting,
 - Dealing with a natural disaster.
2. It must be with a recognised “emergency management body” such as:
 - The SES,
 - The RSPCA,
 - The RFS.
3. Employee evidence of Community Service Work:
 - Evidence they are entitled to leave such as a request from an emergency management body,
 - Notice of absence as soon as practical,
 - Period or expected period of absence.



6. Long Service Leave

Whilst some AMIC members are still under the Federal Meat Industry Long Service Leave Pre-Reform provisions, others are covered by the relevant Long Service Leave Act in their State or Territory.

Prior to calculating and approving LSL or, paying out pro rata on termination, contact AMIC Member Services for advice and assistance.



7. Parental Leave

All employees in Australia are eligible for unpaid parental leave if they have completed at least 12 months of continuous service with their employer.

This includes casual employees, but only if:

- They have been employed on a regular and systematic basis for a sequence of periods over at least 12 months,
- Had it not been for the birth (or expected birth) or adoption (or expected adoption) of a child, they would have a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

7. Parental Leave cont...

Parental leave is only available to employees who have or will have responsibility for the care of a **child**.

The leave must be associated with:

- The birth of a child to the employee, the employee's spouse, or the employee's de facto partner, or the **placement** of a child under 16 with the employee for adoption,
- Paid leave is available for the biological mother through Centrelink application,
- Paid Dad and Partner is also available through Centrelink application.



7. Parental Leave cont...

The following rules apply where one employee (or only one member of an employee couple) takes leave:

- Leave must be taken in a single continuous period, (paid leave, such as annual leave, may be taken at the same time).
- In the case of a pregnant employee, leave can start up to six weeks before the expected date of birth, or earlier if the employer and employee agree,
- If the employee is not giving birth to the child, leave starts on the date of birth or placement of the child,
- Leave may start at any time within 12 months after the birth or placement of the child if:
 - a. The employee has a spouse or de facto partner who is not an employee, and
 - b. The spouse or de facto partner has responsibility for the care of the child.

7. Parental Leave cont...

Extending unpaid parental leave:

- An employee taking 12 months parental leave may request an extension of a further 12 months leave,
- The request must be in writing and given to the employer at least four weeks before the end of the employee's initial period of parental leave,
- The employer must respond in writing within 21 days, stating whether they grant or refuse the request. They may only refuse if they have given the employee a reasonable opportunity to discuss their request, and there are reasonable business grounds to do so, and must detail their reasons in writing.

7. Parental Leave cont...

Fitness to Work:

A pregnant employee wanting to work the six weeks before birth may be asked by the employer to provide a medical certificate containing the following:

- A statement of whether the employee is fit for work,
- If the employee is fit for work, a statement of whether it is inadvisable for the employee to continue in her present position because of:
 - illness or risks arising out of the employee's pregnancy, or
 - hazards connected with the position.

The employer may require the employee to take a period of unpaid parental leave as soon as possible if the employee:

- Fails to provide the requested medical certificate within seven days of the request, or
- Provides a certificate within seven days stating that they are not fit for work.



7. Parental Leave - Provisions..

An employee is not entitled to take unpaid parental leave unless they:

- Inform their employer of their intention to take unpaid parental leave by giving at least 10 weeks written notice, (unless it is not possible to do so)
- Specify the intended start and end dates of the leave,
- At least four weeks before the intended start date:
 - a. Confirm the intended start and end dates, or
 - b. Advise the employer of any changes to the intended start and end dates. (unless it is not possible to do so).
- Where concurrent leave is to be taken in separate periods, these notice requirements apply to the first period of that leave. For second and subsequent periods, the employee must provide the employer with 4 weeks notice,
- An employer may require evidence that would satisfy a reasonable person of the actual or expected date of birth of a child (e.g. a medical certificate), or the day or expected day of placement of a child under 16.

Important NES Update to Parental Leave.

From 27 November 2020

Parents may be eligible to take unpaid parental leave for a maximum of 12 months if they experience a stillbirth or the death of a child during the first 24 months of life.



8. Maximum Hours of Work

An employer must not request or require an employee to work more than the following hours of work in a week, unless the additional hours are reasonable:

- for a full-time employee, 38 hours or
- for an employee other than a full-time employee, the lesser of:
 - 38 hours, or
 - the employee's ordinary hours of work in a week.

The hours an employee works in a week must be taken to include any hours of leave or absence (paid or unpaid) that is authorised:

- by the employer, or
- by or under a term of the employee's employment, or
- by or under a Commonwealth, State or Territory law, or an instrument in force under such a law.
- An employee may refuse to work additional hours if they are unreasonable.



9. Public Holidays – Overview

- Australia has several national public holidays,
- Variations occur between States and Territories on when and if additional or substitution days are available,
- A State or Territory may have their own statewide, regional or local public holiday, check the appropriate government website for details,
- Check the AMIC members only portal on our website for the major Public Holiday in your State or Territory.



9. Public Holidays – Provisions

- Employees are entitled to be absent on a public holiday,
- Employers can ask an employee to work but the employee may refuse if the request is unreasonable,
- If a Public Holiday falls on an employee's RDO they are entitled to any extra day off,
- If a Public Holiday falls on an employee's usual day on, but they are not required to work or they choose to not work, they must be paid an ordinary day's pay,
- Casuals are not paid for a Public Holiday unless they work it,
- Public Holidays may be substituted if the employer and employees agree,
- Employees who work may be paid with money or as the equivalent in time off,
- Employees who work on a Public Holiday on a day they are normally off are paid the appropriate Public Holiday rates only.

10. Termination and Redundancy

- The Notice provisions do not apply to casuals, apprentices, trainees or a fixed term contract employee,
- An extra week's notice is to be provided to an employee who has been employed a minimum of two years continuous service AND is 45 years of age or older,
- Employee to receive redundancy pay must have 12 month's continuous service, (not applicable to casuals)
- Redundancy payments not applicable to small business employer, (fewer than 15 employees)
- Transfer of Business employment rules and redundancy,
- Not a genuine redundancy if reasonable to redeploy employee elsewhere in enterprise. (acceptable alternative employment test)



11. Flexible Working Arrangements

- Employee who is a parent or person caring for a child may request change in working arrangements – child defined as under school age or under 18 with a disability,
- Employee must have completed 12 months Continuous Service,
- Long term casual with 12 month's service who has a reasonable expectation of continuing employment on a regular and systematic basis are covered,
- The request must be in writing/response within 21 days. Any refusal must be on reasonable business grounds but must give details of reasons,
- Remedy – employee may go to FWC for an order.



Casuals

- The NES varies between permanent and casual employees,
- Casuals do not receive all the entitlements that permanent employees receive, for example:
 - Paid Personal/Carers leave,
 - Paid Annual Leave and Leave Loading,
 - No Notice of Termination,
 - No Redundancy Pay.

Fair Work Information Statement

- Must be given to all employees when they commence employment.
- Contains information on:
 - National Employment Standards,
 - Flexibility,
 - Ending employment,
 - Protections at Work,
 - Transfer of Business,
 - Right of entry of union officials.



Example of a Dispute Listing

Listings dated 2 December 2020 – Fair Work Commission Website

| | | |
|--------------|--|---|
| 10:00 | Kaalverink v Defence Housing Australia U2020/14206 s.394 - Application for unfair dismissal remedy | Deputy President Dean By Telephone |
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Questions ??

