

## NATIONAL EMPLOYMENT STANDARDS

### What are the National Employment Standards?

The National Employment Standards (NES) are a set of minimum employment standards that will apply under the Fair Work Act to all employees within the national workplace relations system. The NES will commence from 1 January 2010 and will replace the Australian Fair Pay & Conditions Standard.

### Who do the standards apply to?

The National Employment Standards will apply to all employees whose employment is regulated by the national system. Most ACPET members will be covered by the National system, however if you are not sure whether you are covered by the national system, then seek advice.

### Is there anyone who is not covered?

The NES includes all national system employees including those who are high income earners and those who have not traditionally been covered by awards such as the Chief Executive Officer of a national system organisation. While all employees are covered by the NES, there are some conditions within the NES that may not apply to casuals, for example annual leave. This is set out in each condition contained in the NES.

### What if I have an agreement that contains a different standard?

An employer who has an agreement in place with conditions that are detrimental compared to the NES will need to apply the NES rather than the inferior conditions in the agreement. Where an agreement contains a superior provision, then that can continue to apply. Fair Work Australia can assist employers to resolve any difficulties about the interaction of transitional agreements such as a collective agreement or continuing Australian Workplace Agreement and the NES.

### What happens if I do not apply the NES?

A person who contravenes the NES may be subject to a civil penalty provision which is a monetary penalty. The current maximum penalties are \$6,600 for an individual and \$33,000 for a corporation. This is why it is important for employers to understand their obligations under the NES.

### What conditions are contained in the NES?

#### Maximum hours of ordinary work

The maximum number of ordinary hours an employee can be requested or required to work is 38 each week. For details of hours of work under the NES see the Hours of work fact sheet.

### Requests for flexible working arrangements

Flexible working arrangements could include changes in hours of work such as moving to part-time work, changing start and finish times, changes in patterns or location of work such as working from home. There is no limitation on what arrangements an employee could request. For details of flexible working arrangements under the NES see the flexible working arrangements fact sheet.

### Annual leave

Employees, other than casuals, are entitled to 4 weeks annual leave each year plus an additional week for regular shift workers. For details of annual leave under the NES see the Annual Leave fact sheet.

### Personal/carer's leave

Employees, other than casuals, are entitled to a minimum of 10 days personal leave each year which can be used as either sick leave or carer's leave. For details of personal/carer's leave under the NES see the Personal/carer's leave fact sheet.

### Compassionate leave

Employees other than casuals are entitled to 2 days paid compassionate leave for each occasion. For details of Compassionate leave under the NES see the Compassionate leave fact sheet.



# fact sheet

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### Parental leave and related entitlements

The basic parental leave entitlement is 12 months unpaid leave for employees who have more than 12 months service. For details of parental leave under the NES see the Parental leave fact sheet.

### Community Service Leave

Community service leave includes jury service (including attendance for jury selection) and voluntary emergency management activity such as firefighting or State Emergency Service.

For details of community service leave under the NES see the community service leave fact sheet.

### Long service leave

Long Service Leave continues to apply in accordance with any award or agreement or State legislation. In the long term the Government intends to establish nationally consistent entitlements.

### Public holidays

The NES contains 8 National public holidays plus employees are entitled to any additional holidays gazetted by the relevant State Government. An employee is entitled to be absent and receive their base rate of pay for hours they would have usually worked on the public holiday. For details of public holidays under the NES see the Public Holidays fact sheet.

### Notice of termination

The employee must be notified in writing of the day of termination and provided with the following minimum notice period:

### Employee's period of continuous service with the employer at the end of the day the notice is given

Employee's period of continuous service with the employer at the end of the day the notice is given	Period
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

An additional week applies to employees over 45 years old and having completed at least 2 years of continuous service with the employer at the end of the day the notice is given. Payment in lieu of notice can be made.

### Redundancy pay

The NES sets out minimum redundancy payments applicable when an employee is made redundant. For details of who is eligible, amounts payable and other details about redundancy see the Redundancy fact sheet.

### Fair Work information statements

The Fair Work Information Statement will be published by Fair Work Ombudsman and is to be provided to all new employees after 1 January 2010. Employers should ensure that they incorporate providing the Fair Work Information statement in their recruitment or induction procedures.

### Employer Checklist - implementation of the National Employment Standards

#### Prior to 1 January 2010

- Ensure that the detail of the NES is understood and find out if unsure

- Ensure that record keeping systems accrue leave progressively and that any pay in lieu of annual leave is based on a progressive accrual.
- Compare any agreements or contracts, including senior managers, against the NES and identify if any detrimental conditions are detected
- Review any policy manuals to ensure consistency with NES
- Determine who should consider requests for flexible working arrangements and process for ensuring a written response within 21 days
- Determine how Fair Work Information statement will be delivered to new employees

#### From 1 January 2010

- Ensure NES is always applied as a minimum
- Commence providing Fair Work Information Statement for new employees

This advice is general summary only of the provision of the Fair Work Act in relation to this topic. The full text of the Fair Work Act and associated legislation should be used and advice sought before determining any course of action arising from obligations or requirements of the legislation which may be applicable to specific arrangements © WorkSight & ACPET 26 August 2009

