



AWARD MODERNISATION

under the

FAIR WORK ACT 2009

Irving Warren

- With effect from 1 January 2010 modern awards will replace existing federal awards.
- The aim is to dramatically reduce the number of awards and to provide consistency across Australia from about 4,000 to 150.
- Modern awards are considerably smaller than many that they replace but have been prepared without much industry input.

- Because they must be nationally uniform, the elimination of state differences will mean significant change in some provisions for various states.
- Modern awards will apply to all private employers throughout Australia, except in WA where the State government has not handed its industrial relations powers to the Commonwealth. Most public servants remain in state government controlled systems.
- Federal 'modern awards' will be very different to current state awards. This may provide some cost advantages to incorporated v non-incorporated contractors, or vice versa.

- Transitional provisions have been made for the change between the existing NBCIA 1999 and the modern award, with any changes to rates or allowances being phased in over 5 years.
- For the first time, apprentices in NSW will be covered by the federal system. The full implications of this are still to be determined, but there will be significant increases in wage rates for adult apprentices.

- All award employees will be affected. Clerks, draftspeople, drivers, storespeople, etc, all come under one of the new awards.
- **The Fair Work Ombudsman and its Building Industry Inspectorate** both have powers to inspect your time and wage records. Many employers have been prosecuted and fined for failing to comply with the award.

**THE BUILDING AND CONSTRUCTION INDUSTRY
ON-SITE AWARD 2010
(Award no. MA000020)**

A copy of this award can be downloaded from

http://www.airc.gov.au/awardmod/databases/building/Modern/building.doc#_Toc228330139

BRIEF SUMMARY OF SOME IMPORTANT CONDITIONS

- 1 Coverage.** Broadly, the award covers the same types of employees as the old award, except that apprentices in NSW are now covered.
- 2 Availability.** You must have either a hard copy of this award available for employees to read or give them electronic access to a copy. Similarly you must provide the National Employment Standards.

- 3 **Award flexibility.** The award provides for flexibility regarding: ***arrangements for when work is performed; overtime rates; penalty rates; allowances; and, leave loading.*** Any flexibility arrangement must be in writing and result in the individual employee being *'better off overall in relation to the employee's terms and conditions of employment'*

- 4 **Be careful!** If you make a flexibility arrangement it is legally enforceable. Do not be surprised if unions use this provision to try to push employers into paying *'allowances'* or to increase weekend or overtime rates.

5 **Consultation regarding major workplace change.**

An employer is required to notify employees when a decision is made to *'introduce major changes in production, program, organisation, structure or technology'*. There is an important proviso that *'where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect'*.

6 The building and construction award still provides for tradespeople and labourers to be on *'daily hire'* to cope with fluctuations in workload; this appears to be a provision described in 5 above.

- 7 **Dispute Resolution.** The award provides for disputes to be referred to the Commission by either party, if the dispute can not be resolved by direct negotiation. It also permits employers and employees to appoint persons to represent them (e.g. employer associations or unions).
- 8 The award also provides '*An eligible employee representative will be entitled up to five days paid leave per year to undertake training that will assist them in their settlement of disputes role*' - an eligible employee is an elected shop steward, delegate, etc, in an enterprise or workplace.

9 Types of employment. There are four types of employee:

- 9.1 daily hire tradesperson or labourer - one days notice of termination by either side or payment or forfeiture of wages in lieu.
- 9.2 full-time weekly employee - works an average of 38 hours per week
- 9.3 part-time weekly employee - works fewer than 38 per week
- 9.4 casual employee - engaged and paid as such (25% loading) - if working regular hours must be offered in writing full/part time work after 6 months.

- 10 At the time of employment the employer **must** inform each employee in writing of the terms of their employment. This means that building trade contractors must give employees a written notice stating words to the effect
'you are being engaged by ABC Contracting Pty Ltd as a [painter/plasterer/floor layer/labourer etc] on daily hire.'
- 11 There is no logical reason to hire tradespersons or labourers on a casual basis, unless they are going to work less than 7.6 hours per day. However, ancillary staff such as drivers, storespeople or clerks are on weekly hire, not daily hire.

- 12 The National Employment Standard in regard to termination does not apply to workers on daily hire, i.e., there is no scale linking length of service to the quantum of notice. However, there is a scale that applies to ancillary staff such as clerks, drivers, etc.
- 13 **Redundancy.** This is essentially the same as the existing award for construction workers.
- 14 **Wages.** This clause is essentially the same as the existing award for tradespersons and labourers. However apprentice wages will change and the details are not yet available.

- 15 **Expense related allowances:** Tool allowance, meals, compensation for clothes, tools; these are essentially the same as the existing award.

- 16 **Site and General Allowances:** Special, industry, multi-storey, laser, first aid, etc allowances: these are essentially the same as the existing award.

- 17 **Special Rates:** insulation, hot/cold/wet/dirty/height work, confined space, swing scaffold, asbestos, plaster or composition spray, computing quantities, etc, these are essentially the same as the existing award.

- 18 **Inclement Weather and Living Away from Home:** these are essentially the same as the existing award.
- 19 **Fares and Travel Pattern Allowance:** There has been a significant change in this provision. The NBCIA was based on work being carried out in the County of Cumberland or the County of Northumberland. The modern award prescribes a 50 km radius from the GPO, or the principal post office in a regional city or town.

- 20 This appears to allow employers based in a city such as Parramatta, Campbelltown, Maitland, Gosford, etc to draw a 50 km radius around the principal post office in the appropriate city.
- 21 **Superannuation:** this is essentially the same as the existing award.
- 22 **Hours of work & RDOs:** this provision has been simplified and there is no need to involve the union in an agreement to make alternative RDO arrangements. It is essential that any agreement to vary the award provision be recorded in writing.

23 **Shift work, overtime & meal breaks:** these are essentially the same as the existing award. There is still a requirement to provide a paid 20 minute crib break if overtime is worked for 2 hours or more.

24 **Annual Leave and Public Holidays:** Annual leave is now provided in the NES - it is important to note that it accumulates progressively during a year of service to give 4 weeks of paid annual leave per year.

This may require a change to computer programs which calculate entitlements.

- 25 Also, it is important to note that there is a 17.5% loading on annual leave when it is taken (that loading is based on the paid rate plus fares), but there does not appear to be a need to pay the loading on pay in lieu on termination.
- 26 The award does NOT permit for payment in lieu of taking annual leave.
- 27 **Personal/carer's Leave:** is provided under the NES

- 28 **Community Service Leave:** is provided under the NES for jury service and emergency management services. Jury service make up pay is limited to 10 days jury duty. There is no obligation to pay for emergency service leave.
- 29 **Public Holidays:** are provided under the NES - essentially no change.

30 Summary: It is essential that companies plan for the introduction of modern awards. It is a very important change to the way you do business. Get all the awards applying to your business and read them.

31 If anything is unclear, check with your Association. Don't risk a \$33,000 fine per offence, plus back paying anything you get wrong.

32 All employers should now be preparing for the introduction of modern awards. Some of the most important awards for building employers are:

Building and Construction General On-site Award 2010:
http://www.airc.gov.au/awardmod/awards/building_t.pdf

Clerks Private Sector Award 2010:
http://www.airc.gov.au/awardmod/awards/clerks_private_3_t.pdf

Road Transport and Distribution Award 2010:
http://www.airc.gov.au/awardmod/awards/road_distribution_t.pdf

Storage Services and Wholesale Award 2010:

<http://www.airc.gov.au/awardmod/awards/storage.pdf>

The full list of awards is at:

<http://www.airc.gov.au/awardmod/fullbench/awards.htm>

Also, from 1 January 2010 the **National Employment Standards** (NES) will commence. These standards can be found at:

http://www.workplace.gov.au/NR/rdonlyres/1955FD28-3178-44CD-9654-56A3D5391989/0/NationalDiscussionPaper_web.pdf

The NES will apply to all employees. Modern awards have incorporated the terms of the NES.

If an employer has an enterprise agreement, it is important to check that the agreement provides at least the equivalent benefit of each term in the NES. If it does not then the NES will over-ride the agreement in regard to the deficiency and an employer could have a significant back pay problem, when the deficiency is discovered.

Existing approved agreements are not affected by the modern awards, but new agreements must pass the employees 'Better Off Overall Test', to get approval from FWA