



**Employer
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NEWSLETTER

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Award Modernisation Process; Proposed Revised ATO Ruling on Ordinary Time Earnings; Upcoming ES Workshop Program on Fair Work Bill.

Award Modernisation Process

The process initiated by Julia Gillard (Deputy Prime Minister) directing the Australian Industrial Relations Commission to create Modern Simple Awards continues apace with 17 "Stage 1" Awards created on 19 December (in place of 500 Pre Reform Federal Awards) and 24 "Stage 2" Exposure Drafts issued for Consultation on 23 January 2009.

Note: These Modern Awards will commence on 1 January 2010.

Enterprise Awards will continue on past 1 January 2010, but all others cease to apply from 31 December 2009.

The AIRC has released its timetable for "Stage 3" Awards and the final release of these Awards will not occur until 3 September 2009. "Stage 4" Awards will not be released until 4 December 2009 and yet will come into effect on 1 January 2010.

Overall an estimated 3000 instruments are being collapsed into approximately 100 Modern Awards.

Unlike Pre Reform Federal Awards, respondentcy will be by common rule rather than being a named respondent. This is a fundamental change in the 100 year history of Federal Award regulation but Federal Labor have built on John Howard's use of the Corporation's power in WorkChoices and have certainly not diminished this power in any way.

As announced by the AIRC, the standard casual loading will be 25%. This represents a reduction in some Awards and an increase under other Awards.

The Directive by Julia Gillard was that Modern Awards were not to increase Employer costs or reduce employee entitlements. This was an impossible directive and examination of the released Awards reveals potential significant costs for some employers.

Transition Time Frame

The Directive to the AIRC envisaged a possible 5 year transition from the superseded Awards/NAPSAs to the Modern Awards but presently that is "up in the air".

On 19 December 2008 the AIRC determined that –

"Transitional provisions

Transitional provisions must be developed, that, in a practical way, take account of the intention of the consolidated request that modern awards not disadvantage employees or increase costs for employers.

In general, however, we are convinced that, as many contended, transitional provisions are best dealt with after the terms of the priority awards have been published, if it is practical to do so. There are a number of reasons. The first and obvious reason is that it is difficult to know what the effect of the award will be until those affected have had an opportunity to consider the impact in detail. The second reason is that in many cases the effect of the award upon employees and employers is not uniform and depends upon the terms of the NAPSA or pre-reform award which applied previously. More debate will be needed as to how the differing situations of employers and employees are to be viewed and dealt with.

There is an additional consideration. It is desirable that transitional provisions, including supersession provisions, take account of the legislative scheme in which they will operate. For that reason it is our intention not to deal with transitional provisions until the legislation, including the foreshadowed transitional legislation, has been passed by the Parliament. At that time we shall be in a position to assess the overall economic impact and to give consideration to how transitional provisions are to be finalised for the remaining stages of the modernisation process. On current indications we would expect to address these matters towards the middle of 2009."

Until such time as the AIRC determines how the terms and conditions; wages and allowances are to be transitioned or phased in, it is not possible to be specific about overall cost implications.

Will there be overlapping coverage of Awards?

The AIRC have said no and Industry Awards are favoured over Occupational Awards. Of the 41 Awards so far only 3 Awards– Clerical Occupational, Nurses Occupational, and Medical Practitioners Occupational - have been made.

There will be Industry Awards that contain Clerical classifications and conditions. Only after "Stage 3" and "Stage 4" will we know for certain how many Occupational specific Awards have been made. We can however expect Teachers in Non Governmental schools to be covered by an Occupational Award.

Will the Wage Rates and Allowances in released Awards increase before 1 January 2010?

There will be a decision by the Australian Fair Pay Commission in mid year. Given the concerns about Australia's economy it cannot be concluded that there will be a general wage increase at all (the AIRC would flow on any increase in the Modern Awards so the Award is up to date on 1 January 2010). One constant aspect of the Modern Awards released to date has been to fix increases in allowances to the "Standard Rate" which varies from Award to Award. In the Modern Clerical Occupational Award the Standard Rate is Level 2 - \$637.60 per week. When this wage increases the percentage is applied to various allowances. For instance, the First Aid Allowance is 1.5% or \$9.56 per week. Expense allowances will increase in line with the applicable Index figure in the 8 Capitals CPI. However, not all Awards are similar. (Employer Services will calculate all wages and allowances to support Clients who are Award Subscribers).

How do the Modern Clerical Occupational Award wages compare today with current wages in the Clerical Employees Award (Queensland) NAPSA?

Levels	Year	NAPSA Weekly Rate	Modern Award Weekly Rate
Level 1	1	\$585.20	\$580.00
	2	\$593.94	
	3	\$601.92	
	4	\$610.66	
Level 2	1	\$618.64	\$637.60
	2	\$627.00	
	3	\$637.64	
Level 3	1	\$666.52	\$675.00
	2	\$679.06	
Level 4	1	\$685.52	\$710.00
	2	\$698.06	
Level 5	1	\$727.32	\$740.00
	2	\$734.92	

Note that the Divisional and District Allowances are not specified in the Modern Award.

Clerical Exemption Rate

Many Employers exempt their employees from the NAPSA by paying above Level 5 -Year 2: \$734.92 per week.

However, the Modern Award sets an Exemption Rate of 15% above Level 5 which means \$851.00 per week some \$116.08 above the current exemption rate.

If the new level is not paid from 1 January 2010 (subject to possible Transitional provisions) employees may fall under all the terms of the Modern Award.

Whilst the Federal Government seemingly does not want to increase costs for employers as part of the Modern Award process, this example reveals how wages can easily escalate.

How will we receive our Modern Awards?

We will issue the latest versions of the Modern Awards in the latter half of this year, once their terms and conditions are finalised. "Stage 4" Awards (Child Care is one) will not be available before 4 December 2009 due to the program set by the AIRC. The new Awards will operate in conjunction with the NES (National Employment Standards) which will also be supplied as part of our full service delivery to clients.

Possible Increase in Superannuation Contributions

At a time of unprecedented economic certainty Employers face possibly increased Superannuation Guarantee Contributions due to a draft ruling (SGR 2008/D2) issued by the Australian Taxation Office in December last year.

In previous rulings SGR 94/4 and SGR 94/5 a number of remuneration/payments were left to interpretation. Now the ATO has sought to clarify its intent.

The draft ruling (SGR 2008/D2) will, when made into a final ruling, replace SGR 94/4 (dealing with OTE and SGR 94/5 (dealing with salary or wages) from 1 July 2009. The Tax Office's view of the meaning of OTE is different from the current view in SGR 94/4 and will be important for employers if it is reproduced in the final ruling. Although employers should be aware of the possible changes, they should not respond to the Tax Office interpretation until it is final.

Significant differences include:

- Whereas SGR 94/4 excludes overtime from OTE, the draft ruling includes overtime where it is clear from the regular work patterns of an employee that the hours worked are consistently different from the standard hours in an award or agreement;
- In SGR 94/4, top-up payments when serving on jury duty or with reserve forces are not OTE, but in the draft ruling they are OTE as a reward for services during ordinary hours of work.
- Maternity leave and paternity leave payments are not OTE in SGR 94/4, but are in the draft ruling.

The ruling is still in draft form but if determined as final has the capacity to drive up employment costs once implemented.

We shall keep clients updated but if there are concerns as to the administration of these potential changes, contact your Accountant or Superannuation adviser.

Fair Work Bill Information Sessions

Very shortly we will be forwarding registration details for our information sessions on the implications of the Fair Work Bill. The format will follow our successful "Workchoices" sessions run over 2006-2008.

What can Employer Services do for your Business?

In addition to our ever popular 'Award Update Service', *Employer Services* offers an array of services you may find useful.

Examples of Consultancy Services accessible at competitive rates include:

- Expert advice on composing employment instruments and documents such as -
 - Workplace Agreements (in both State & Federal Systems)
 - Employment Contracts (Common Law Contracts)
 - Policies and Procedures Manuals
- Conducting Payroll Audits, Calculations for Wage Claims, Wage & Salary Reviews, etc;
- Composition of warning letters, appointment letters, 'show cause' documents, letters of termination, etc;
- Training courses structured to your specifications, offered in-house or at our premises. Popular topics include -
 - 'Back-to-Basics' (Understanding Awards/Agreements);
 - Workplace Bullying / Harassment;
 - Anti-Discrimination;
 - Termination & Counselling Procedures;
 - Handling of Grievances;
- Workplace investigations and mediation;
- Representation in various Commissions and Tribunals;
- Comprehensive strategic advice on complex issues such as -
 - Performance management and counselling procedures
 - Handling of grievances
 - Termination and redundancy processes
 - Organisational restructuring

If you would like further information on any of the services listed above (and more), please feel free to contact us on (07) 3220 3500 to discuss.