

Information Sheet


Modern Awards

September 2021

What is a modern award?

From 1 January 2010, modern awards together with the National Employment Standards (NES) created the new minimum conditions for national system employers (i.e. constitutional corporations).

Modern awards replaced federal awards and notional agreements preserving state awards (NAPSAs).

 For further information about whether you are a national system employer, contact CCI's Employee Relations Advice Centre on (08) 9365 7660 or email advice@cciwa.com

Modern award coverage and application

Modern awards are industry and/or occupation-based and are applicable to national system employers.

A modern award **applies**:

- if the award covers an employee and employer in accordance with the coverage clause in the modern award; and
- no other provision of the *Fair Work Act 2009* provides, or has the effect, that the modern award does not apply.

For example, the Aged Care Award 2010 **covers** employers who provide services to aged persons in a hostel, nursing home or any other aged care accommodation as detailed in the modern award. Furthermore, the Aged Care Award **covers** employees working for these employers in numerous positions ranging from gardeners to chefs and pay clerks to cleaners. However, the modern award may not **apply** if an enterprise agreement is in place that applies to the employee in relation to that employment or the employee is a high-income employee who has entered into a guarantee of annual earnings.

What conditions may modern awards contain?

Similar to pre-modern awards, modern awards may contain the following provisions:

- minimum wages;
- type of employment (e.g. full-time, part-time, casual);
- work arrangements (including hours of work, rostering, notice periods, rest breaks, variations to working hours);
- overtime and penalty rates;
- annualised salary arrangements;
- allowances (e.g. travel allowance or leading hand allowance);
- leave, leave loadings and arrangements for taking leave including leave to deal with family and domestic violence;
- payment of wages and superannuation;
- procedures for consultation, representation and dispute settlement; and
- requests for flexible working arrangements.

Employers should acquaint themselves with the modern award(s) applicable to their business. Failure to comply with a modern award may result in an infringement being issued along with the underpayment/overpayment of an employee.

Is there an alternative to modern awards?

Where a modern award covers an employer and employee, the following arrangements may be entered into:

- enterprise agreements;
- guarantee of annual earnings;
- individual flexibility arrangements; and/or
- annualised salary arrangements.

Enterprise Agreements

Enterprise agreements provide the opportunity to negotiate terms and conditions of employment as an alternative to awards.

Whilst in operation, enterprise agreements override awards, unless otherwise stated in the agreement.

However, the base rate of pay under an enterprise agreement must not be less than the relevant rate provided for by the modern award.

For enterprise agreements made after 1 January 2010, the Fair Work Commission must be satisfied that each current and prospective award employee is better off overall when compared to the modern award and that the terms of the agreement do not contravene the NES.

Guarantee of annual earnings

A guarantee of annual earnings (Guarantee) is a written undertaking given by an employer to a high income employee covered by a modern award guaranteeing the employee payment of earnings over a period of 12 months or more.

A high income employee is an employee who is guaranteed to earn an annual rate of earnings in excess of the high income threshold. Indexed annually at 1 July each year, the current indexed high income threshold amount is \$158,500 per annum as at 1 July 2021.

An employee's earnings for the purposes of a Guarantee include:

- wages;
- amounts paid on behalf of the employee or at the employee's direction;
- the agreed monetary value of non-monetary benefits; and
- non-statutory superannuation.

A Guarantee may be given as a condition of accepting employment. However, an employer must not apply undue influence or pressure to an employee in connection with the offer or acceptance of a Guarantee. Once both parties agree to a guarantee of annual earnings, the award provisions no longer apply.

Individual flexibility arrangements

Modern awards contain flexibility terms enabling the employer and individual employee to agree on varying the effect of certain award provisions in order to meet both parties' genuine needs.

The individual flexibility arrangement (IFA) must be confined to a variation of one or more of the following terms and must still result in the employee being better off overall than the employee would have been if no IFA had been entered into:

- arrangements for when work is performed;
- overtime rates;
- penalty rates;
- allowances; and/or
- leave loading.

IFAs must be in writing, signed by the employer and the individual employee, made without duress or coercion and cannot be offered as a condition of employment. There is no requirement to lodge the IFA, however, the employer must provide a copy of the IFA to the employee and retain a copy.

Modern award flexibility arrangements may be unilaterally terminated by either party by providing thirteen weeks written notice, or at any time by agreement.

Annualised salary arrangements

Some, modern awards allow the employer and individual employee to enter into an annualised salary arrangement. This arrangement may relieve the employer of the requirement to pay overtime, penalties or other award-derived monetary entitlements.

Where the modern award provides for the ability to enter into an annualised salary arrangement, it will provide specific obligations that must be adhered to. In most cases the following minimum provisions are likely to be contained in annualised salary provisions:

- the employee must be paid a salary sufficient to cover what the employee would have earned had all the award entitlements been complied with;

- the arrangement must be in writing; and
- the parties must genuinely make the arrangement without coercion or duress.

For specific obligations, refer to the relevant modern award.

☎ Employers requiring further information should contact CCIWA's Employee Relations Advice Centre on (08) 9365 7660, email advice@cciwa.com or visit CCIWA's website at www.cciwa.com.

Disclaimer: *This information is current as at the date of this information sheet. CCIWA has taken all reasonable care in preparing this information, however, it is provided as a guide only. It is not legal advice and should not be relied upon as such. CCIWA does not accept liability for any claim which may arise from any person acting or refraining from acting on this information. This document is subject to copyright. Its reproduction and use outside its intended purpose is not permitted without prior written permission.*