



IMPORTANT INFORMATION FOR ALL UNITING CHURCH EMPLOYERS WITHIN THE BOUNDS OF THE SYNOD OF NSW AND THE ACT

The National Employment Standards¹

IMPORTANT NOTE:

The NES apply to all employers, regardless of their status as a constitutional corporation or non-constitutional corporation.

Following the referral of all states (except WA) industrial powers to the Federal Government all private sector employers will be regulated by the *Fair Work Act, 2009* from 1 January 2010.

The National Employment Standards (“NES”) will commence operation on 1 January 2010, at the same time as Modern Awards. The Modern Awards will have application to all workplaces based in the ACT from 1 January 2010.

To obtain access to Modern Awards employers and employees should go to Uniting Resources Website www.unitingresources.org.au/hrs.

The NES are new core national standards that underpin the terms of any modern award or enterprise agreement.

The NES are a set of extensive employee rights that include extended parental leave, a new right to request a change in working conditions for employees returning from a period of parental leave and minimum redundancy payments for national system employees.

¹ Source information in this paper provided by AFEI

The ten NES relate to:

1. maximum weekly hours
2. requests for flexible working arrangements
3. parental leave and related entitlements
4. annual leave
5. personal/carer's leave and compassionate leave
6. community service leave
7. long service leave
8. public holidays
9. notice of termination and redundancy pay
10. Fair Work Information Statement.

The NES are set out in the *Fair Work Act, 2009 (Cth)* ("the Act") and replace the Australian Fair Pay and Conditions Standard.

1 Maximum weekly hours

An employer cannot ask an employee to work more than 38 hours in a week unless the additional hours are reasonable.

To determine the reasonableness of these additional hours, employers must take into account any relevant matters, but specifically:

- any risk to employee health and safety from working the additional hours
- the employee's personal circumstances, including family responsibilities
- the needs of the workplace or enterprise in which the employee is employed
- whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours
- any notice given by the employer of any request or requirement to work the additional hours
- any notice given by the employee of his or her intention to refuse to work the additional hours
- the usual patterns of work in the industry, or the part of an industry, in which the employee works
- the nature of the employee's role, and the employee's level of responsibility

- whether the additional hours are in accordance with averaging terms in the employee's modern award or enterprise agreement.

An employee can refuse to work additional hours if these hours are not reasonable.

2 Requests for flexible working arrangements

Employees responsible for the care of a child may request flexible working arrangements until their child reaches school age. The employer may refuse on 'reasonable business grounds'.

Where a pregnant employee needs to be transferred to a safe job for OHS reasons, and no safe job is available, she is entitled to paid leave for the risk period.

3 Parental leave

Employees who have completed at least 12 months of continuous service are entitled to 12 months of unpaid parental leave if the leave is associated with the birth or adoption of a child and the employee has responsibility for the care of that child.

Casual employees are not entitled to leave (other than unpaid pre-adoption leave) unless they are a long term casual employee of the employer with a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

12 month extension to unpaid parental leave

Each parent has a separate entitlement to 12 months' unpaid parental leave or one parent can request up to 12 months additional leave.

Casual employees who have worked with the one employer on a regular and systematic basis over a 12 month period also have this entitlement.

4 Annual leave

The four weeks entitlement (five weeks for certain shift workers) to annual leave will accrue progressively for all periods of employment other than periods of unpaid leave, unpaid absence (other than community service leave) and unauthorised leave.

Progressive accrual means that leave accrues continually, rather than by a defined period of time (e.g. annual service, or monthly service) so employees

don't have to wait for a certain period of service before they are entitled to take leave.

An employer cannot 'unreasonably' refuse a leave request. Annual leave is to be paid at the employee's base rate of pay (excluding overtime and penalty rates, bonuses and similar payments).

For Award or Agreement covered employees, annual leave cannot be cashed out unless in accordance with a term of a modern Award or Enterprise Agreement.

For Award or Agreement free employees, an employer and employee can agree, in writing, to cash out a portion of annual leave as long as the remaining balance of the entitlement is at least 4 weeks.

5 Personal/carer's leave and compassionate leave

An employee can take paid personal/carer's leave because they are not fit to work as a result of sickness or injury to care for an immediate family or household member who needs care or support because of sickness or injury.

Leave is also permitted for an employee who must care for an immediate family or household member because of an emergency.

Notice and evidence

An employee's entitlement to personal/carer's leave and compassionate leave is contingent on the employee meeting notice and evidence requirements of both the Act and their modern Award or enterprise agreement.

Under the Act, employees must tell their employer as soon as practicable that they are taking leave and the leave period, or if that's not possible, the estimated period of leave.

If the employer requires employees to provide documentary evidence that they have taken leave for illness/injury or caring responsibilities, that evidence must satisfy a 'reasonable person'.

Employers are entitled to question medical certificates and request more information about the nature of the sickness or injury. The Act specifies that the employee must be unfit for work as a consequence of the illness or injury.

Unpaid carer's leave

The Act provides for unpaid carer's leave for times when an employee has used their paid carer's leave entitlement, but an immediate family or household member needs care or support because of sickness or injury or an unexpected emergency.

Period of unpaid carer's leave

The length of unpaid carer's leave can be up to two days, taken as a single continuous period or another period that the employee and employer agree to. The entitlement is for leave each time a family or household member needs care.

Compassionate leave

A permanent employee is entitled to paid compassionate leave if a member of their immediate family or household:

- has a life threatening illness
- has a life threatening injury
- dies.

Casual employees are entitled to unpaid compassionate leave.

Notice and evidence

The employee must provide the same notice and evidence for compassionate leave as would be required for paid personal/carer's leave.

Period of compassionate leave

Employees who are entitled to compassionate leave can take the leave on each occasion as:

- a single continuous two day period
- two separate periods of one day each
- any separate periods to which the employee and his or her employer agree.

Amount of leave

An employee is entitled to two days of compassionate leave for each occasion (a permissible occasion). Further, if the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the employee may take the compassionate leave for that occasion at any time while the illness or injury persists.

Rate of pay

The employer must pay the employee at their base rate of pay for their ordinary hours of work for that period.

6 Community service leave

An employee who engages in a community service that meets the eligibility definition in the Act is entitled to an unpaid absence from work if it is reasonable in all the circumstances.

There are notice and evidence requirements under the Act for community service leave.

Jury duty is treated differently and employers must pay the first 10 days of absence for jury duty. Payment is the difference between what the employee was paid for jury duty and the employee's base rate of pay.

7 Long service leave

Existing Entitlements to long service leave form part of the NES.

Long service leave remains, for the time being, governed by current state and territory legislation, and where relevant, award or agreement provisions.

8 Public holidays

The NES provide the following public holidays:

- Christmas Day, Boxing Day, New Year's Day, Australia Day, Anzac Day, Queen's Birthday, Good Friday and Easter Monday
- a substitute public holiday under a state or territory law where, for example, a public holiday falls on a weekend
- any other public holiday under a state or territory law, including a regional public holiday in the place where the employee works.

An employer can ask an employee to work on a public holiday only if the request is 'reasonable'.

9 Redundancy pay

From 1 January 2010, the NES provides a statutory minimum entitlement for redundancy pay for permanent employees whose employer employs 15 or more employees (including casual employees employed on a regular basis).

NES Redundancy Pay Scale

Employee's period of continuous service with the employer on termination	Redundancy pay period
1 At least 1 year but less than 2 years	4 weeks
2 At least 2 years but less than 3 years	6 weeks
3 At least 3 years but less than 4 years	7 weeks
4 At least 4 years but less than 5 years	8 weeks
5 At least 5 years but less than 6 years	10 weeks
6 At least 6 years but less than 7 years	11 weeks
7 At least 7 years but less than 8 years	13 weeks
8 At least 8 years but less than 9 years	14 weeks
9 At least 9 years but less than 10 years	16 weeks
10 At least 10 years	12 weeks

Small business (less than 15 employees) and employees with less than 12 months service are exempt from redundancy payments; and the redundancy payments requirements do not apply to certain categories of employees, including casuals, employees on probation, fixed term or seasonal employment.

Where the employee's modern award is more generous than the NES

Many modern awards provide that if the employee would have received a better redundancy entitlement under their former NAPSA or award, they will continue to receive that entitlement under a five-year transitional arrangement.

NES and employees with no redundancy entitlements prior to 1 January 2010

If an employee has no NAPSA, award, agreement or contractual entitlement to redundancy payments prior to 1 January 2010, only their service from 1 January 2010 is to be used when calculating redundancy entitlements.

For example, an employee with 5 years service as at 1 January 2010 who is retrenched in June 2010 would receive no entitlement as their service from 1 January is less than one year.

10 Period of Notice under the National Employment Standard

The NES require employers to give an employee a minimum period of notice in writing, based on their years of service.

Length of Service	Notice
Not more than 1 year's continuous service	1 week's notice
More than 1 year but not more than 3 years' continuous service	2 weeks' notice
More than 3 years' but not more than 5 years' continuous service	3 weeks' notice
More than 5 years' continuous service	4 weeks' notice

An employee over 45 years of age who has completed more than 2 years' continuous service with the employer is entitled to an additional week's notice of termination.

Notice requirements: exempt employees

The NES notice requirements apply to all employees except the following:

- an employee employed under a contract of employment for a specified period of time or a specified task
- an employee serving a period of probation, or a qualifying period
- an employee whose employment is terminated because of serious misconduct
- a casual employee
- a seasonal employee
- a trainee employed under an agreement prescribed by the regulations
- an employee with less than 12 months' continuous service (in the case of redundancy pay only)
- an employee who is an apprentice (in the case of redundancy pay only).

11 Fair Work Information Statement

Employers have to give new employees a Fair Work Information Statement as soon as practicable after they start work.

This is a fact sheet that sets out an employee's rights and entitlements at work, including the NES, modern awards, agreement making, right to join a union and the role of Fair Work Australia.

Its purpose is to give employees advice about where to go for information and help, as well as providing contact details for FWA.

The information sheet must be given to all new employees who start employment after 1 January 2010. It does not have to be given to current employees.

Employers don't have to give the information sheet to an employee more once in any 12 month period where they employ an employee more than once in that 12 month period (e.g. a casual employee).

The Fair Work Information Statement is a two page document and can be downloaded from the Fair Work Australia Website www.fairwork.gov.au.

What should employers do next?

It's important that employer's assess the impact of these new entitlements on their workplace.

Some of the conditions will not differ from what employers already offer employees in their workplace, however others are new obligations.

To comply with the NES employers should consider reviewing contracts of employment or reconsider workplace policies and practices.

All parts of the NES are operative on **1 January 2010**.

Employers must be compliant on and from this date.

FURTHER INFORMATION

If Uniting Church employers have any questions please contact HR Services by telephone on (02) 8267 4365 or (02) 8267 4369 or e-mail vickir@nsw.uca.org.au or alit@nsw.uca.org.au.