

# Ordinary Hours, Penalties & Overtime

Presented by NSW Industrial Relations

# Ordinary Hours, Penalties & Overtime

## TOPICS COVERED

- \* Key dates
- \* Modern Awards
- \* Penalties Key Points
- \* Overtime Key Points
- \* Useful contacts and links

# Ordinary Hours, Penalties & Overtime

## Key Dates

### 1 January 2010

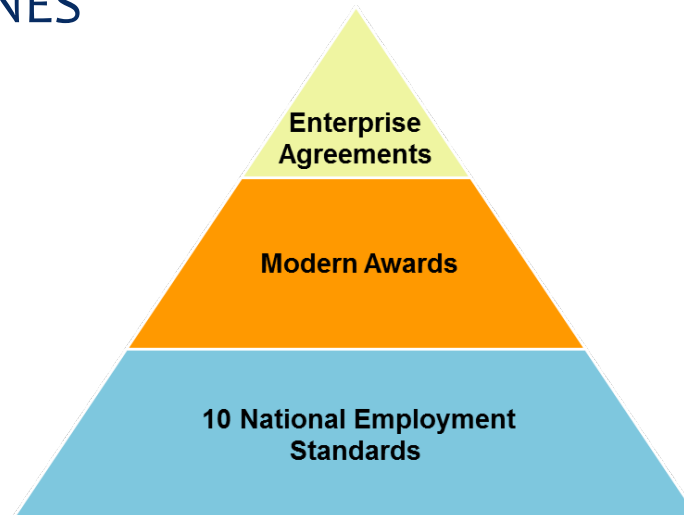
- \* Fair Work Act 2009 takes full effect for all NSW private sector employers and employees
- \* 10 National Employment Standards commence
- \* Modern awards apply

### 2016

- \* Modern Award review process

# National Employment Standards (NES)

- \* 10 minimum conditions of employment that apply to all National Industrial Relations system employees, including those not covered by a modern award
- \* Modern Awards and other instruments build on, supplement and interact with the NES



# Ordinary Hours, Penalties & Overtime

## NES

### *Hours of work*

- \* Requests for flexible work arrangements
- \* Parental leave
- \* Annual leave
- \* Personal / Carers and compassionate leave
- \* Community Service Leave
- \* Long Service Leave
- \* Public Holidays
- \* Notice of termination and redundancy
- \* Fair Work Information Statement

# What are Ordinary Hours?

**Ordinary hours** means the hours agreed by the employer and employee as the employee's ordinary hours of work (**see Modern Award**)

- \* the NES provides that an employer must not request or require an employee to work more than the following, unless the additional hours are reasonable:
  - for a full-time employee - 38 hours; or
  - for an employee who is not a full-time employee - the lesser of:
    - 38 hours; and
    - the employee's ordinary hours of work in a week
- \* Employee may refuse to work unreasonable additional hours if they are unreasonable.

# What are Ordinary Hours?

## Factors to help determine reasonable

- \* Any risk to employees health and safety
- \* Employees personal circumstances
- \* Needs of the business
- \* Whether employee entitled to overtime or other benefits
- \* Was reasonable notice given
- \* Nature of employee role and the usual patterns of work in the industry
- \* Whether additional hours are in accordance with averaging terms

An employer and an award/agreement free employee may agree in writing to an averaging arrangement under which hours of work over a specified period of not more than 26 weeks are averaged.

# Ordinary Hours, Penalties & Overtime

## MODERN AWARDS





# Modern Awards

- \* Modern Industry and occupation awards
- \* Provide conditions equal to or more beneficial than NES
- \* Not all employees are covered by a modern award
- \* Both employer and employee must be covered by award to derive benefits from it
- \* An employer may still have multiple modern awards applying to their workforce
- \* Copy of award and NES must be available for employees
- \* Modern Award Review process currently underway

# Modern Awards

## PART 5 – HOURS OF WORK AND RELATED MATTERS

- \* The modern award provides a definition of when ordinary hours may be worked.
- \* These may vary depending on the employees status as a full-time, part-time or casual employee.
- \* If averaging provisions apply the modern award provides details of how the average 38 hour week may be worked and over what time span e.g. up to 152 hours worked over a 4 week period.
- \* This clause normally provides descriptions relating to when ordinary hours may be worked including:
  - Days of the weeks that employee can work ordinary hours.
  - Maximum number of hours that can be worked on a daily basis.
  - Span of hours that employee can work ordinary hours.

# Modern Awards

## Ordinary hours

Modern awards will prescribe ordinary hours for the following situations:

- \* Days of the week that can be rostered as ordinary hours
  - (Mon – Fri or Mon – Sun)
- \* Bandwidth of ordinary hours per day (ie; 7.00am to 6.00pm)
- \* Max hours per day to be worked within bandwidth, usually 8, 10 or 12 by agreement
- \* Max hours per week (38) or
- \* Cycle of hours to be worked over a period of 1, 2, 3 or 4 weeks (ie;152 over 4 weeks)
- \* Whether rostered days off (RDO) cycle maybe worked and days accumulated
- \* Definitions of when Afternoon, Evening or Early Morning shifts start and cease contained in shiftwork clause

# Modern Awards

- \* **Full Time** – ordinary hours
- \* Employee engaged to work 38 hours per week (or an average of up to 4 weeks)
- \* **Part Time** – ordinary hours
- \* Employee who is engaged to work less than 38 hours per week and who has reasonably predictable hours
- \* Modern Awards may require a written agreement prior to employment on the regular pattern of work including:
  - Number of hours
  - Days of the week
  - Starting and ceasing times
  - Terms may be varied by written agreement
  - Overtime provisions may apply – check modern award
- \* **Casual**
  - Minimum engagement

# Modern Awards

## Rostering

- \* The ordinary hours of work for each employee may need to be displayed on a roster (usually fortnightly) in a place conveniently accessible to employees
- \* The roster usually posted at least two weeks before the commencement of the roster period
- \* Seven days' notice may be given of a change in a roster:
  - However, a roster may be altered at any time to enable the functions of the workplace to be carried on where another employee is absent from duty on account of illness or in an emergency.

# Modern Awards

## Consultation – 1 January 2014

- \* From 1 January 2014, Modern Awards and Enterprise Agreements must contain a term requiring employers to consult with employees or their representatives about changes to their regular rosters or ordinary hours of work.

### Employer must:

- \* Provide to the employee or employees affected (and their representatives, if any), information about the proposed change.
- \* Invite the employees affected to give their views about the impact of the proposed change such as impact on family and care responsibilities.
- \* Give consideration to the impact changes will have on employee.
- \* Does not apply when employees hours are sporadic, irregular or unpredictable.
- \* These provisions are to be read in conjunction with Modern Award.

# Modern Awards

## Meal Breaks - Modern Award

### Awards generally specify:

- \* the number of hours which may be worked before a meal break (lunch) is taken (generally no more than 5 hours)
- \* the duration and time of the meal breaks (generally no more than 1 hour or less than 30 minutes)
- \* Penalty payment if meal break is interrupted or not able to be taken within specified timeframe

### Meal breaks are generally:

- \* unpaid breaks for day workers
- \* paid breaks for shift workers
- \* paid breaks for employees working overtime (meal allowances may also apply)

# Modern Awards

## Penalties

Penalties apply in various circumstances depending on the modern award, some examples of when a penalty is required to be paid:

- \* Employee working ordinary hours during the weekend (Sat/Sun).
- \* Employee required to perform evening work (General Retail Award provides for a 25% penalty if permanent employee is required to perform ordinary hours after 6.00 pm.
- \* Employee required to work on a public holiday (Commonly required to be paid a penalty payment (General Retail Modern Award requires a penalty payment of 150% be made if employee performs any work during a public holiday).



# Modern Awards

## SHIFT PENALTIES

- \* Modern Awards provide details relating to Shiftwork
- \* Definition of a Afternoon Shift, Night Shift, Permanent Night Shift, Early Morning shift etc.
  - (Clerks modern award: Afternoon shift means any shift finishing after 7.00 pm and at or before midnight)
- \* Shift Work Clause provides details also of what penalty will apply if an employees is deemed to be a shift worker, e.g. Afternoon Shift Worker receives a 15% penalty (for the whole shift)
- \* This clause also provides details regarding:
  - When overtime and weekends are worked
  - meal breaks (crib)
  - required breaks between shifts before an employee can be required to attend work

# Modern Awards

## Weekend Penalties

Modern Awards require employers to provide penalties in certain circumstances:

### \* Payment for Working Ordinary Hours on Weekends (Weekend Penalties)

#### **General Retail Modern Award 2010 (current)**

- 29.4 b) A penalty payment of an additional 25% will apply for ordinary hours worked on a Saturday for full-time and part-time employees
- A casual employee must be paid an additional 10% for work performed on a Saturday between 7.00 am and 6.00 pm.
- 29.4 c) A penalty payment of an additional 100% loading will apply for all hours worked on a Sunday.
- This penalty payment also applies to casual employees instead of the casual loading in clause [13.2](#). (25%)

# Modern Awards

## Overtime

The Modern Award provides details relating to overtime

- \* When is overtime paid
- \* How is overtime paid
- \* Payment for overtime and shift penalties
- \* Required rest periods after employee has worked overtime
- \* Whether Time off in lieu of overtime is available and how it applies

Clerks – Private Sector Award 2010- 27.1 Payment for working overtime

Employees working overtime:

- \* within the hours fixed in clause 25 - Ordinary hours of work (other than shiftworkers), of this award but in excess of the hours fixed for an ordinary week's work; or
- \* outside the hours fixed in clause 25 of this award;
- \* must be paid time and a half for the first two hours and double time thereafter calculated on a daily basis

# Modern Awards

## Overtime

### When does overtime apply?

*See Part 5 of your Modern Award*

Working in excess of the ordinary hours prescribed in the award:

- \* Working in excess of 8 or more hours in a day
- \* Working outside of the ordinary daily span of hours
- \* Working outside of a part time arrangement
- \* Working on days deemed outside of the ordinary days, such as weekends
- \* Working during an unpaid meal break or not having a break within the required time span

# Modern Awards

## Time off instead of overtime

- \* Commonly referred to as time off in lieu in many modern awards
- \* An employee may elect with the consent of the employer, to take time off instead of receiving payment for overtime worked
- \* Modern Awards vary on how the time off is calculated, it may be either:
  - Time taken off at the overtime equivalent
  - Time taken at an hour for an hour

If time off in lieu is not taken within a certain period then employer may be required to pay out the overtime entitlement (check your modern award as periods vary)

# Modern Awards

## Payment for working overtime

- \* It is essential that you refer to Part 5 of the award to understand how overtime is paid
- \* Many awards provide for time and a half for the first two hours and double thereafter but others have different requirements

## Other issues

- \* Overtime provisions for shift workers may vary
- \* Modern awards may require a rest period (normally 8 or 10 hours) to be taken when an employee is required to work overtime
  - Penalty may apply if rest period is not provided
- \* Awards allow for workplace flexibilities via an Individual Flexibility Arrangement (Better off overall test applies)
- \* Casuals may have different requirements

# USEFUL INFORMATION AND CONTACTS

# NSW IR Services

## Workshop and Webinar Programs

- \* NSW IR is helping NSW businesses better understand how the national workplace relations system works through a comprehensive employer information program.
- \* NSW IR's team of experts conduct free face-to-face workshops and seminars and also live and recorded online webinars on important workplace issues
- \* Further information on our current program and online registration may be found at:  
[www.industrialrelations.nsw.gov.au/Workshops.page](http://www.industrialrelations.nsw.gov.au/Workshops.page)
- \* NSW IR Telephone Service 131628 for enquiries relating to Long Service Leave, Public Holidays and the Taxi and Entertainment Industry



# Useful Information and Contacts

## NSW IR Contacts and Services

- \* NSW IR is working with NSW businesses to help them better understand their rights and responsibilities as an employer. Through a comprehensive workshop and webinar program NSW IR are providing employers with information and tools to deal with Industrial Relations issues and Human Resource issues
- \* Face to Face IR and HR Workshops include:

### Industrial Relations:

- Rights and Responsibilities
- Workplace issues for Bookkeeper and Payroll
- Various Modern Awards workshops including:
  - Health Professionals
  - Childrens Services

### Human Resources:

- Managing Employees
- Writing Workplace Policies
- Bullying in the Workplace
- Workplace Negotiations
- Workplace Investigations

# Getting IR Advice

## Where to go?

### *NSW Industrial Relations Workshops*

- \* Upcoming Workshops in your area

### *NSW Industrial Relations Webinars*

- \* Webinar held the last week of every month

### *Website*

- \* [NSW Industrial Relations](http://www.industrialrelations.nsw.gov.au)  
[www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au)

### *Phone*

- \* 131628

# Getting IR Advice

## Where to go?

### *Fair Work Ombudsmen*

- \* [www.fwo.gov.au](http://www.fwo.gov.au)
- \* 131394
- \* For information relating to your Modern Award, the National Employment Standards and the Fair Work Act 2009

### *Fair Work Commission*

- \* [www.fwc.gov.au](http://www.fwc.gov.au)
- \* For information relating to Fair Work Agreements, the modern award review and other cases