



Restaurant  
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## **New IR Laws and Awards: What has changed?**

### **Wednesday 13 January 2010**

On 1 January 2010, the final elements of the new national system came into effect, making the Fair Work system fully operational. The National Employment Standards (NES) and the Modern Awards are now binding to all employers. Here is a rundown of the key changes that employers must be aware of as we venture forward.

#### **Current Pay Rates are preserved**

Most Modern Awards, including the *Restaurant Industry Award 2010* and the *Hospitality Industry (General) Award 2010*, contain transitional provisions that preserve the current pay rates. Therefore the pay rates that came into effect on 1 October 2008, continue to apply until 30 June 2010.

On 1 July 2010, the Minimum Wage Order will take effect and the first stage of the transitional phasing will commence. Restaurant and Catering will release wage tables when the Minimum Wage Order has been handed down, until then it is not possible to provide wage tables for the new Awards.

#### **Superannuation**

The *Restaurant Industry Award 2010* and the *Hospitality Industry (General) Award 2010* reduce the monthly earnings threshold for superannuation entitlements to \$350. From 1 January 2010, employees who have "ordinary time earnings" which exceed \$350 in a calendar month will be entitled to superannuation guarantee payments. However, the *Superannuation Guarantee (Administration) Act 1992* has not been modified; the change is only enforceable through the Modern Awards.

Consequently, businesses that have individual or collective agreements in place that were modelled against the old Victorian hospitality awards are still subject to the \$450 threshold. There is one exception to this rule, the *AP783479 Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award* already have the \$350 threshold, so agreements modelled against this award are already subject to the lower threshold.

The entitlements for juniors have not changed. Employees under the age of 18 are only entitled to superannuation payments if they work more than 30 hours per week.

#### **Leave Accrual**

Under the previous safety net, annual leave and personal leave accrued on a monthly basis. Therefore if a permanent employee resigned, they were only entitled to be paid out annual leave for each full month that they had worked. From 1 January 2010, the NES requires annual leave and personal/carers leave to be fully accrued. If an employee resigns, they are now entitled to be paid out annual leave accruals for each hour they have worked (accrual rate 7.69%).

#### **Cashing out annual leave**

Previously agreements could include provisions that allowed for the cashing out of annual leave, for a maximum of two weeks cashed out per year. Under the NES, agreements still have provisions for cashing out annual leave but the employees must retain a balance of 4 weeks. Any amount of annual leave in excess of 4 weeks can be cashed out, there is no cap. Existing agreements must incorporate this change; a variation agreement does not have to be lodged, but staff should be notified that the cashing out provisions have been modified as a result of the NES coming into effect.

### **Parental Leave**

Under the previous safety net employees were entitled to 12 months unpaid parental leave. Under the NES, employees are entitled to 12 months unpaid parental leave, but upon completion of the 12 months of leave, they can request an additional 12 months leave. Employers have the right to refuse the second period of leave on reasonable business grounds. The paid maternity leave scheme is still being finalised. This scheme will take effect on 1 January 2011.

### **Request for Flexible work arrangements**

Under the NES, employees have a right to request flexible working arrangements to assist them to care for a child. To be eligible for this entitlement, employees must have completed at least 12 months of continuous service and have a child under school age or a disabled child under the age of 18. The request must be made in writing and detail the changes sought. Employers must give employees a written response to the request within 21 days, stating whether they grant or refuse the request. Employers have the right to refuse the request on reasonable business grounds.

### **Fair Work Information Statement**

From 1 January 2010, employers must give each new employee a copy of the *Fair Work Information Statement*. This statement contains information about the role of Fair Work Australia and the Fair Work Ombudsman, the National Employment Standards, Awards and Agreements. This document should accompany the employment Letter of Offer/Contract and be issued before, or as soon as possible after, the employee starts employment.

### **Preserved Redundancy Provisions**

Under the NES, businesses with less than 15 employees are exempt from severance pay obligations. However, the *Restaurant Industry Award 2010* and the *Hospitality Industry (General) Award* preserve more generous redundancy provisions from old awards until 1 July 2014. Based on this exemption not existing in old Victorian hospitality Awards, the old award's "more generous" entitlements will continue to operate until 30 June 2014.

### **ITEAs**

From 1 January 2010, Individual Transitional Employment Agreements (ITEAs) can no longer be created. If you have lodged ITEAS on or before the 31 December 2009, these agreements are still valid if they pass the No Disadvantage Test. If you receive a failure notice from the Workplace Authority, you still have the opportunity to vary it to make it pass. The variation must be lodged within 37 days of the date on the failure notice.

While all ITEA's pass a nominal expiry date on 31 December 2009, this does not mean the agreement terminates, the only significance of the nominal expiry date is that after this date, either party can terminate the agreement without the other parties consent. If both parties are happy for the agreement to continue, then the nominal expiry date has no significance. ITEAS will only terminate if a *Form F29 - Application for termination* is approved by Fair Work Australia.

Call to register your interest to attend one of our four half day seminars planned for 8 February and 3 March.

Alternatively for more information about the NES and Modern Awards, or to arrange a Fair Work Act phone consultation, call Restaurant & Catering's industrial relations Hotline 1300 722 878.