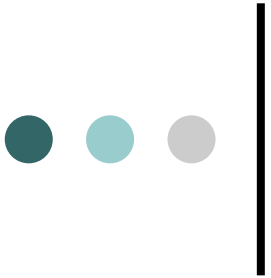




Federal Industrial Relations System for the Medical Industry

1. Coverage - Fair Work Act 2009 (Cth)
2. Safety Net
 - a) NES
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3. Modern Awards for the Medical Industry
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1. Coverage – Fair Work Act 2009 (Cth)

Subject to the referral of powers by the Qld Parliament, the Fair Work Act 2009 (Cth) applies to:

National System Employers

and

National System Employees.



What is a National System Employer?

- A National System Employer is among other things “a constitutional corporation so far as it employs, or usually employs an individual.” (s.14)
- Constitutional Corporation “means a corporation to which paragraph 50(xx) of the Constitution applies.” (s.12)
- Therefore, an employer that is a company, for example, Gold Coast Medical Pty Ltd that operates a medical practice business will be a constitutional corporation and therefore a National System Employer.
- If the employer is a trust, who is the trustee? If it is also a company, under the same circumstances, then it will be a constitutional corporation and therefore a National System Employer.



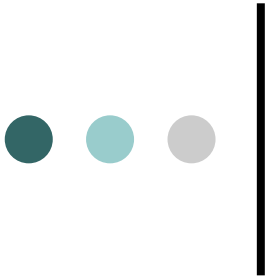
What is a National System Employee?

- A National System Employee “is an individual so far as he or she is employed, or usually employed, by a National System Employer, except on a vocational placement.” (s.13)
- “A Vocational Placement means a placement that is undertaken with an employer:
 - (a) for which a person is not entitled to be paid any remuneration; and
 - (b) undertaken as a requirement of an education or training course; and
 - (c) authorised under a law or an administrative arrangement of the Commonwealth, a State or a Territory.” (s.12)



2. Safety Net

- From 1 January 2010, National System Employers and National System Employees will be covered by the new safety net of pay and conditions. It will be comprised of 3 parts:
 - (a) National Employment Standards (NES);
 - (b) Modern Awards; and
 - (c) Wage Increases (FWA).



(a) National Employment Standards (NES)

- **What is the NES?**

The NES outlines the legislated minimum standards that apply to all National System Employees which cannot be displaced. These minimum standards which commence on 1 January 2010 relate to the following matters:

- maximum weekly hours of work
- the right to request flexible working arrangements
- parental leave and related entitlements
- annual leave
- personal / carer's leave and compassionate leave
- community service leave
- long service leave
- public holidays
- notice of termination and redundancy pay
- a 'Fair Work Information Statement' for all employees that make clear their rights and entitlements under the new system and how to get advice and help



(a) The NES

Maximum Weekly Hours of Work

- The standard/maximum weekly hours of work for an employee will be 38 hours per week (or for an employee who is not a full-time employee, the lesser number of hours which are their ordinary hours of work per week). An employer may request or require an employee to work reasonable additional hours.
- In considering whether additional hours are reasonable under the NES, it will be necessary to consider matters including: (a) 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; (b) the usual patterns of work in the industry in which the employee works; (c) the nature of the employees' role and their level of responsibility; and (d) whether the additional hours are worked in accordance with averaging provisions of a modern award.



(a) The NES

The Right to Request Flexible Working Arrangements

- A permanent employee who: (a) has completed at least 12 months of continuous employment with the employer; and (b) who is a parent or has responsibility for the care of a child under school age or is under 18 and has a disability; may make a request for a change in their working arrangements to assist the employee to care for the child.
- Casual employees who have been employed on a regular and systematic basis for at least 12 months and have a reasonable expectation of continuing work may also make a request.
- The request must be made in writing, specify the changes sought by the employee, and the reasons for the change. The employer must respond in writing to the request within 21 days and may only refuse the request on 'reasonable business grounds'



(a) The NES

Parental Leave and Related Entitlements

- The entitlement to parental leave under the NES will be generally the same as is currently provided for under the AFPCS, except that it has been extended to same sex couples.
- Eligible employees will be entitled to a period of 12 months. Generally only one parent may be on leave (other than a concurrent period of three weeks), and the leave is unpaid.
- The NES will introduce a right for an employee on parental leave to request an extension of the period of parental leave for an additional 12 months. The employee will be required to give their employer 4 weeks notice, and the employer must agree to the requested extension, unless the employer has 'reasonable business grounds' for refusing.



(a) The NES

Parental Leave and Related Entitlements cont...

- The provisions of the AFPCS dealing with unpaid special maternity leave, and the right of an employee to be transferred to a safe job (or take paid no safe job leave) will be retained under the NES, as will the right of an employee on finishing a period of unpaid parental leave to return to their pre-parental leave position.
- In addition, if an employee is on unpaid parental leave and his/her employer makes a decision that will have a significant effect on the status, pay or location of the employee's pre-parental leave position, the employer must take all reasonable steps to give the employee information about, and an opportunity to discuss, the effect of the decision on the pre-parental leave position.



(a) The NES

Annual Leave

- Employees, other than casuals, will be entitled to: (a) 4 weeks of annual leave; and (b) for an employee employed under a modern award/enterprise agreement who falls within the definition of a shift worker in the modern award/enterprise agreement or for an award/agreement free employee who falls within the definition of a shift worker under the Act, an additional 1 week annual leave for each year of service with their employer. The leave entitlement will accrue throughout the year.
- The entitlement to the additional week's annual leave for a shift worker under the NES will be much broader than the additional entitlement under the AFPCS, as it will be based upon the modern award definition of a shift worker and not a statutory definition.



(a) The NES

Annual Leave cont...

- The NES requires annual leave to be taken at a time agreed between the employer and the employee, and an employer must not unreasonably refuse to agree to a request.
- A modern award or enterprise agreement may include terms requiring an employee to take annual leave in particular circumstances but only if the requirement is reasonable. Employees covered by a modern award or enterprise agreement may under certain circumstances agree to cash out a proportion of their annual leave entitlement.



(a) The NES

Personal/Carer's Leave and Compassionate Leave

- There is an entitlement to personal/carer's leave which is generally in line with the AFPCS. Employees, other than casuals, will be entitled to take personal/carer's leave:

(a) because the employee is unfit for work because of a personal illness or injury affecting the employee (personal leave); or

(b) to provide care or support to a member of the employee's immediate family or household because of:

- (i) a personal illness or injury affecting the member; or
- (ii) an unexpected emergency affecting the member (carer's leave).



(a) The NES

Personal/Carer's Leave and Compassionate Leave cont...

- Employees, other than casuals, will be entitled to up to 10 days of personal/carer's leave in each year, which accrues throughout the year and will accumulate with no limitation. Unlike under the AFPCS, there is no cap on the amount of carer's leave an employee may take in any year.
- A Modern Award or Enterprise Agreement may include terms allowing the cash out of personal/carer's leave.
- Further, there is an entitlement for all employees, including casuals, who do not have an entitlement to paid personal/carer's leave to have up to 2 days of unpaid carer's leave.
- The notice and evidentiary requirements for the taking of personal/carer's leave under the NES will be generally the same as under the AFPCS, however the evidence which is required need only be evidence that would satisfy a reasonable person, rather than the current requirement for a medical certificate or statutory declaration. However, a modern award can contain different evidence requirements.



(a) The NES

Personal/Carer's Leave and Compassionate Leave cont...

- As was the case under the AFPCS, the NES will afford all employees an entitlement to 2 days compassionate leave (which is paid leave for all employees except casuals) on each occasion that a member of the employee's immediate family or household:

(a) contracts or develops a personal illness or sustains a personal injury that poses a serious threat to his or her life;
or

(b) dies.



(a) The NES

Personal/Carer's Leave and Compassionate Leave cont...

A casual employee is entitled to:

- 2 days of unpaid carer's leave per occasion;
- 2 days of unpaid compassionate leave per occasion.

An employee (other than a casual employee) is entitled to:

- 10 days of paid personal/carers leave for each year of service;
- 2 days of unpaid carer's leave per occasion (if paid carer's leave is exhausted);
- 2 days of paid compassionate leave per occasion.



(a) The NES

Community Service Leave

- An employee who engages in an eligible community service activity, being jury service or carrying out a voluntary emergency management activity (or other activities which may be prescribed in the future), will be entitled under the NES to be absent from work for the time when the employee is engaged in the activity and any reasonable traveling and rest time, so long as the absence is reasonable in the circumstances. In the case of jury service, the absence need not be reasonable.
- Employees wishing to take community service leave under the NES must give notice to the employer of their absence as soon as is reasonable practicable, and must provide evidence to satisfy a reasonable person that the absence was due to the employee engaging in an eligible community service activity



(a) The NES

Community Service Leave cont...

Community service leave will generally be unpaid under the NES, except in the case of jury service for an employee who is not a casual, where the employee will be entitled to their base rate of pay (ie exclusive of incentives, loadings, allowances, or overtime or other penalty rates) for the first 10 days of jury service.

In relation to jury service leave, an employee (other than a casual employee) is entitled to 'make-up pay' which is the difference between what the employee receives in respect of jury service (not including any expense related allowances) and the employee's base rate of pay for their ordinary hours of work for the time that the employee is absent on jury leave.



(a) The NES

Long Service Leave

- The NES refers to other instruments to determine the long service leave entitlement of an employee. Whilst there is a desire for a uniform long service leave entitlement for employees throughout Australia, the NES appears to retain the current entitlements for employees.
- Until a uniform long service leave NES is developed, long service leave entitlements in pre-modernised awards, NAPSAs or state or territory laws will be preserved to ensure they cannot be bargained away.
- Therefore, in Queensland the long service leave entitlements from the *Industrial Relations Act 1999* (Qld) will apply.



(a) The NES

Long Service Leave cont...

The entitlement is essentially:

- 8 and 2/3 weeks long service leave after 10 years continuous service;
- employees who have completed 7 but less than 10 years continuous service are entitled to pro rata long service leave only if:
 - the employee's service is terminated by their death;
 - the employee terminates their service because of their illness or incapacity or because of a domestic or other pressing necessity;
 - the employer dismisses the employee for a reason other than the employee's conduct, capacity or performance; or
 - the employer unfairly dismisses the employee.



(a) The NES

Long Service Leave cont...

- Note 1: Entitlement extends to certain casual employees since 23 June 1990
- Note 2: For those employees in employment as at 3 June 2001, the entitlement to take long service, based on the 8 2/3 weeks entitlement, is subject to a 'phasing in' period. Because of the reduction in time to become entitled to long service leave, the Act provides that only 2/3 of an employee's continuous service completed before 3 June 2001 counts as continuous service for the purposes of working out when long service leave may be taken. As a result, the date upon which long service leave becomes due is affected.



(a) The NES

Public Holidays

- Employees will be entitled to be absent from work on a day or a part-day that is a public holiday under the NES, and is also entitled to be paid for his or her ordinary hours that would have normally been worked at their base rate of pay. An employer will be able to request an employee work on a public holiday, but the employee may refuse the request if the request is not reasonable or the refusal is reasonable.
- The NES sets out a number of considerations to determine whether a request to work or a refusal to work is reasonable, which are generally the same as the considerations under the WR Act.



(a) The NES

Public Holidays cont...

When determining whether a refusal to work on a public holiday is unreasonable, the following must be taken into consideration:

- the nature of the employer's workplace or enterprise (including its operational requirements);
- the nature of the work performed by the employee;
- the employee's personal circumstances including family responsibilities;
- whether the employee could reasonably expect that the employer might request work on the public holiday;
- overtime payments, penalty rates or other compensation or a level of remuneration that reflects an expectation of work on the public holiday;
- the type of employment of the employee;
- the amount of notice in advance given by the employee if refusing the request to work on a public holiday; and
- any other relevant matter.



(a) The NES

Notice of Termination of Employment and Redundancy Pay

- The NES provides for the same minimum notice periods to be afforded to permanent employees as the WR Act on the termination of their employment.
- The NES confirms the requirement for the notice of termination of employment to be in writing. There is no notice requirement under the NES for casual employees.



(a) The NES

Notice of Termination of Employment and Redundancy Pay cont...

- The NES will introduce for the first time a statutory entitlement to redundancy pay for permanent employees whose employer employs 15 or more employees (excluding casuals not employed on a regular and systematic basis).
- The entitlement to redundancy pay reflects the Australian Industrial Relations Commission (AIRC) standard, which is a scale of between 4 and 16 weeks depending upon the employee's period of continuous service with the employer.
- Subject to the exclusions, the redundancy pay NES provides that an employee is entitled to redundancy pay if:
 - the employee's employment is terminated at the initiative of the employer because the employer no longer requires the job to be done by anyone except where this is due to the ordinary and customary turnover of labour; or
 - because of the insolvency or bankruptcy of the employer.



(a) The NES

Notice of Termination of Employment and Redundancy Pay cont...

The following employees will be excluded from the NES redundancy pay entitlement:

- an employee employed for a specific period of time or for a specific task;
- an employee who is terminated for serious misconduct;
- an employee with less than 12 months continuous service;
- casual employees;
- an employee to whom a training arrangement applies and whose employment is for a specified period of time or is for any reason limited to the duration of the training arrangement;
- an employee covered by a modern award with an industry specific redundancy scheme; and
- other employees who may be prescribed by the regulations in the future.



(a) The NES

Notice of Termination of Employment and Redundancy Pay cont...

- The NES redundancy pay entitlement will not apply in the case of a transmission of business where the employee accepts employment with the new employer, or rejects an offer of employment with the new employer which recognises the employee's service with the old employer, and the terms and conditions of employment offered to the employee are substantially similar to, and no less favourable than, their current terms and conditions of employment.
- Note: There is no entitlement to redundancy pay if the employee is employed by a business with fewer than 15 employees (excluding casuals not employed on a regular and systematic basis).



(a) The NES

Fair Work Information Statement

- Fair Work Australia (FWA), the body to replace the Australian Industrial Relations Commission (AIRC) and the Australian Fair Pay Commission, is required under the NES to publish a statement called the Fair Work Information Statement (Statement). The Statement will detail various matters including: (a) the NES; (b) modern awards; (c) agreement making; (d) the right to freedom of association; (e) the role of FWA; and (f) any other matters which may be prescribed in the future.
- The NES will require an employer to provide each employee with a copy of the Statement before or as soon as practicable after the employee commences employment.



(b) Modern Awards

- Award Modernisation is the process currently being undertaken by the Australian Industrial Relations Commission (AIRC) to create Modern Awards that will cover employers in the federal industrial relations system from 1 January 2010. Modern Awards will replace all NAPSA's (Notional Agreements Preserving State Awards) and Pre-Reform Federal Awards, with the exception of those awards confined to a single business.
- The process is divided into four (4) stages. In each stage, the AIRC examines a number of industries and consults with businesses, employer associations and unions about the content and structure of Modern Awards to cover the industry/industries. Each stage is completed with finalised Modern Awards being issued for the respective industry/industries. The Award Modernisation Process will be completed on 4 December 2009.



(b) Modern Awards

- Modern Awards will build on the NES entitlements and include an additional 10 minimum conditions of employment including: minimum wages, types of employment, arrangements for when work is performed, overtime and penalty rates, annualized wage or salary arrangements, allowances, leave related matters, superannuation and procedures for consultation, representation and dispute settlement.
- There will also be a flexibility clause in each Modern Award which will enable employers and employees to negotiate arrangements to meet individual needs subject to a better off overall test.
- Modern Awards will not apply to employees with guaranteed annual earnings in accordance with the Act of more than \$108,300 (pro-rata for part-time employees). This High Income Threshold will be adjusted on 1 July each year.



(c) FWA Wage Increases

- Fair Work Australia (FWA) will be responsible for setting minimum wages for National System Employees from 2010 consisting by way of an Annual Wage Review.
- In an Annual Wage Review, FWA:
 - must review:
 - (i) modern award minimum wages; and
 - (ii) the national minimum wage order; and
 - may make one or more determinations varying modern awards to set, vary or revoke modern award minimum wages; and
 - must make a national minimum wage order. (s.285(2))
- Annual Wage Review determinations varying Modern Awards come into operation on 1 July each year. (s.286(1))
- National Minimum Wage Orders comes into operation on 1 July each year. (s.287(1))



3. Modern Awards for the Medical Industry

(a) Medical Practitioners Award 2010

(b) Nurses Award 2010

(c) Health Professionals and Support
Services Award 2010



(a) Medical Practitioners Award 2010

Basic Features

- Coverage – National System Employers of medical practitioners including General Practitioners in general medical practice (ie. Community Medical Practitioner)
- Types of Employment – Full-time, part-time or casual (ie. 25% casual loading)
- Minimum Annual Salaries (for Community Medical Practitioners) – Pay Point 1 - \$61,460 to Pay Point 8 - \$76,695
- Allowances – managerial (for senior doctors only as defined), meal, telephone, travelling/transport and fares and higher duties



(a) Medical Practitioners Award 2010

Basic Features cont...

- Hours of Work – average of 38 hours per week based on specified rostering, span of hours for day worker Medical Practitioners except Senior Doctors as defined are 6am to 6pm Monday to Friday, Community Medical Practitioners will be allowed 8 hours off duty between successive periods of duty
- Penalties and Overtime – time and a half on weekends, overtime entitlements for hours worked in excess of 38 per week (ie. time and a half and double time), recall and public holiday penalties

Note: In order to be exempt from this Modern Award, a Medical Practitioner must be guaranteed annual earnings in accordance with the Act of more than \$108,300 (pro-rata for part-time employees). This High Income Threshold will be adjusted on 1 July each year



(b) Nurses Award 2010

Basic Features

- Coverage – National System Employers in the health industry who employ a nurse principally engaged in nursing duties.

Nurse comprises Nursing Assistant, Student Enrolled Nurse, Enrolled Nurse, Registered Nurse (includes Clinical Nurse Consultant, Nurse Manager, Nurse Educator, Assistant Director of Nursing of Management or Education), Occupational Health Nurse and Nurse Practitioner

- Types of Employment – Full-time, part-time or casual (ie. 25% casual loading)
- Minimum Weekly Wages – Nursing Assistant Level 1 Year 1 - \$596.10 to Experienced - \$637.60); Student Enrolled Nurse - \$550 to \$580; Enrolled Nurses - \$650 to \$685; Registered Nurse – Level 1 Pay Point 1 - \$697 to Level 5 Grade 6 - \$1579; Nurse Practitioner Year 1 - \$1087 to Year 2 - \$1120; Occupational Health Nurse – Level 1 Pay Point 1 - \$750 to Level 3 Pay Point 4 and thereafter - \$994
- Allowances – clothing and equipment, meal, on call and travelling, transport and fares



(b) Nurses Award 2010

Basic Features cont...

- Hours of Work – average of 38 hours per week, 76 hours per fortnight or 152 hours over 28 days, span of hours for a day worker are 6am to 6pm Monday to Friday
- Penalties and Overtime – Non-day workers receive 50% on Saturday and 75% on Sunday, shift penalties Monday to Friday for afternoon shifts (12pm to 6pm - 12.5%) and night shifts (6pm to 7.30pm - 15%), overtime entitlements (including TOIL) for hours worked outside of ordinary hours (ie. time and a half and double time), rest period after overtime, rest break during overtime, recall, public holiday penalties and higher duties
- Annual Leave – 5 weeks annual leave for day workers, for medical practices during close down periods a nurse may be directed to take annual leave or annual leave in advance
- Note: In order to be exempt from this Modern Award, a nurse must be guaranteed annual earnings in accordance with the Act of more than \$108,300 (pro-rata for part-time employees). This High Income Threshold will be adjusted on 1 July each year.



(c) Health Professionals and Support Services Award 2010

Basic Features

- Coverage – National System Employers in the health industry of health professional employees and support service employees
- Support Service comprises:
 - General and Administrative Services (eg. cleaner, secretary),
 - Food Services (eg. cook, chef); and
 - Technical/Clinical (eg. Medical Imaging Support, Theatre Attendant, Pathology Collector)
- Health Professionals comprises allied health employees:

(eg. Recording Technician (including EEG and ECG), Anaesthetic Technician, Audiologist, Dietician, Counsellor, Medical Imaging Technologist, Nuclear Medicine Technologist, Radiation Therapy Technologist, Sonographer, etc)



(c) Health Professionals and Support Services Award 2010

Basic Features cont...

- Types of Employment – Full-time, part-time or casual (ie. 25% casual loading)
- Minimum Weekly Wages (for Support Service Employees) – Level 1 - \$580 to Level 9 Pay Point 3 - \$862) (for Health Professional Employees) – Level 1 Pay Point 1 - \$670 to Level 4 Pay Point 4 - \$1578.
- Allowances – blood check, clothing and equipment, damaged clothing, heat, meal, nauseous work, on call, telephone, tool, travelling/transport and fares
- Hours of Work – average of 38 hours per week based on a fortnight or four week period, span of hours for a day worker in private medical, dental and pathology practices are 7.30am to 9pm Monday to Friday and 8am to 4.30pm on Saturday



(c) Health Professionals and Support Services Award 2010

Basic Features cont...

- Penalties and Overtime – On weekends, 50% for non-casuals and 75% in lieu of the casual loading for casuals, overtime entitlements (including TOIL) for hours worked outside of ordinary hours (ie. time and a half and double time), recall, public holiday penalties and higher duties
- Annual Leave - For dental and medical practices during close down periods, an employee may be directed to take paid annual leave or annual leave in advance
- Note: In order to be exempt from this Modern Award, a health professional employee or support service employee must be guaranteed annual earnings in accordance with the Act of more than \$108,300 (pro-rata for part-time employees). This High Income Threshold will be adjusted on 1 July each year.



4. Transitional Process for Modern Awards

- Integral to the process of Award Modernization is the development of transitional arrangements to phase-in cost increases, including but not limited to increased loadings, penalties, rates of pay and overtime, incurred when employers transfer from a NAPSA or Pre-Reform Federal Award to a Modern Award.
- The AIRC Award Modernization decision of 2 September 2009 specified that cost increases for employers and monetary decreases for employees could be phased in over five annual installments starting on 1 July 2010.
- Increases in monetary provisions that can be phased in include those relating to minimum wages, casual and part-time loadings, Saturday, Sunday, public holiday, evening and other penalties and shift allowances.



4. Transitional Process for Modern Awards

- While the final installment will be on 1 July 2014, the AIRC bench suggested employers facing small cost increases might introduce these all at once rather than going through complex mathematical calculations to pay these in increments.
- The “model transitional provisions” state that no existing employee’s take-home pay can fall and that an existing award employee may apply to FWA if their take-home pay was reduced.
- However, monetary payments to new employees can start at minimum levels specified under the Modern Award, even if existing employees are paid at higher rates during the transition period.



Points to Remember

1. Is the Employer a National System Employer or subject to the referral of powers by the Qld Parliament?
2. The NES entitlements apply to all applicable National System Employees regardless of pay or Modern Award coverage
3. Modern Awards will commence operation on 1 January 2010 subject to the transitional process
4. In order to be exempt from an applicable Modern Award, a National System Employee must be guaranteed annual earnings in accordance with the Act of more than \$108,300 (pro-rata for part-time employees). This High Income Threshold will be adjusted on 1 July each year.
5. The FWA Annual Wage Review will take effect on 1 July 2010.



What To Do

1. Classify all employees under an applicable Modern Award
2. Ensure awareness and compliance with NES and Modern Award entitlements
3. Update Appointment Letters and Contracts



THE END

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