

## Modern award pay related entitlements to phase in from 1 July 2010

June 2010

### Modern awards

Modern awards commenced operation on 1 January 2010 replacing many former federal awards ("**pre-modern awards**"), including NAPSAs, throughout Australia.

Some parts of modern awards which deal with pay-related entitlements will phase in with 5 increments over a 4 year period, commencing 1 July 2010.

From 1 July 2010, the minimum wages in modern awards and some transitional instruments will also increase to include the minimum wage increase announced recently by Fair Work Australia ("**FWA**").

### Transitional arrangements

The majority of modern awards contain transitional arrangements. Transitional provisions may deal with the following pay-related entitlements:

- Minimum wages and piecework rates;
- Casual or part-time loadings;
- Saturday, Sunday and public holiday penalty rates;
- Evening and other penalty rates;
- Shift allowances.

During the period between 1 January 2010 and 1 July 2010, the pre-modern award (e.g. a former federal award or NAPSA) pay-related entitlements remain in effect.

From 1 July 2010, some modern awards will allow for the incremental phasing in of changes to minimum wages or penalty rates over a 4 year period if a modern award results in an increase or decrease in wages or penalty rates for employees.

These pay related entitlements that are to be phased in over a 4 year period will become the mandatory minimum safety net.

All employers and employees should consult their relevant modern award for industry specific transitional arrangements and/or any state based differences.

**Important:** Employers should check the relevant modern award to determine if any transitional arrangements apply.

### Minimum wage increase and what this means for modern awards?

From the 1st pay period after July 2010, the minimum wage will increase to \$569.90 per week (\$15 per hour). This increase in the minimum wage will also be reflected in an increase of \$26 per week, or \$0.69 per hour in all modern awards.

**Important:** From 1 July 2010, employers may need to adjust wages to comply with the minimum wage increase.

### Over-award payments

Employers who have previously made over-award payments where the over-award payment is equal to or greater than the corresponding minimum entitlement under a modern award may be able to continue to make payments at the same rate.

The model transitional provisions allow for increases to be absorbed into over-award payments and do not necessarily require employers to maintain or increase any over award payments.

However, the Fair Work Ombudsman ("**the Ombudsman**") has recently released a guidance note stating that as a general principle, over-award payments can only satisfy payment entitlements to which the payment is directed. For example, wages paid to an employee can be applied to increases in the minimum wage rate. However, over-award

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wages may not be able to be applied to increases in loadings and penalties. It may be necessary for an employer to obtain agreement from an individual employee before it can absorb any additional cost arising from modern awards into over-award payments.

It should be noted that the view of the Ombudsman is the subject of a challenge to FWA.

**Important:** Review existing arrangements to check whether monetary obligations may be absorbed into over-award payments.

### How will the phasing provisions operate?

From 1 July 2010, the 4 year phasing in period will commence. The phasing in provides for conditions to be transitioned in 20% increments. A simple example is if the current casual loading rate is 20% and the modern award provides for a casual loading rate of 25%.

The model transitional provision states:

First full pay period on or after:

1 July 2010 80%  
1 July 2011 60%  
1 July 2012 40%  
1 July 2013 20%

The transitional rate would be  $25\% - 20\% = 5\%$ .  
 $5\%$  multiplied by  $80\%$  (1 July 2010) =  $4\%$

So, the casual loading rate from 1 July 2010 is  $25\% - 4\% = 21\%$ . Over the 5 increments, from 1 July 2010, the casual loading will increase by  $1\%$  each 1 July until it reaches  $25\%$  on 1 July 2014.

### What if the pre-modern award rates are higher?

Any reduction in wage as a result of the modern award when compared to a pre-modern award will also be progressively phased in. The phasing in allows for 5 equal annual instalments, also to commence on 1 July 2010.

Should the employee as a result of the modern award be paid less than under a pre-modern award, FWA has the power to make a Take Home Pay Order, requiring the payment of an

amount to employees to ensure that their take home pay is no less than prior to the modern awards.

**Important:** Modern awards are not intended to result in less take home pay for individual employees.

### Considerations

All employers should carefully review the applicable transitional arrangements in the relevant modern award and ensure that they:

- comply with transitional arrangements from 1 July 2010;
- understand which entitlements are to be phased in; and
- correctly calculate the amount of any wage increase to be paid from 1 July 2010.

Employers who are currently in the enterprise agreement making process should ensure that the enterprise agreement will pass the better off overall test in accordance with the applicable test date (the date of application to FWA).

McKean Park can assist employers in a number of respects:

- ensuring that your workplace is compliant with transitional changes;
- assisting in the enterprise agreement making process to ensure that the enterprise agreement will pass the better off overall test;
- providing training to workplaces on the transitional changes.

**For further information, assistance with policies and training, or advice contact:**

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