

Table of Contents

Chapter 1 – National Employment Standards and the <i>Fair Work Act</i>	1
Introduction to the National Employment Standards	1
Who is covered by the NES?	5
How does the NES interact with contracts of employment?	5
How does the NES interact with modern awards?	6
How does the NES interact with enterprise agreements?	7
How does the NES interact with “transitional instruments”?	7
Meanings of “service” and “continuous service” for the purpose of determining NES entitlements	8
Compliance and enforcement	10
Dispute resolution	11
Protection of workplace rights (General Protections)	12
Chapter 2 – Maximum Weekly Hours of Work	1
Determining the number of hours worked by an employee	1
What are “reasonable additional hours”?	2
Can enterprise agreements affect the maximum weekly hours of work?	5
Can hours of work be averaged over a period of greater than one week?	6
What is the effect of an averaging arrangement?	6
The right to disconnect	7
Questions and Answers	10
Chapter 3 – Requests for Flexible Working Arrangements	1
Overview	1
Entitlement to request a change in working arrangements	2
What types of working arrangements can the request be about?	3
Procedure for making a request for flexible working arrangements	3
Responding to a request for flexible working arrangements	3
Refusing a request	5
Dispute resolution	6
Modern award flexibility clause	8
Other laws about flexible work arrangements	8
Questions and Answers	11

Chapter 4 – Offers and requests for casual conversion	1
Overview.....	1
Background of casual conversion entitlements.....	2
What is a casual employment?.....	3
Casual conversion under the NES before 26 August 2024.....	7
When must an employer offer casual conversion?	7
Small business employer’s obligations to offer conversion.....	8
Not offering conversion on reasonable grounds	9
What happens when a casual employee accepts an offer to convert?	10
Residual right to request casual conversion	10
Casual conversion following 26 August 2024	11
Disruption resolution.....	13
Interaction with awards or agreements that provide for casual conversion.....	14
Does the employee’s service as a casual count towards the accrual entitlements?.....	15
Questions and Answers.....	17
Chapter 5 – Parental Leave and Related Entitlements	1
Overview.....	1
What is “parental leave”?.....	2
Entitlement to parental leave under the NES.....	3
Unpaid flexible parental leave.....	3
Notice requirements.....	5
Evidence requirements	6
When unpaid parental leave must start and end	6
Requesting a medical certificate from a pregnant employee within 6 weeks of the birth ..	6
Length of unpaid parental leave	7
Exceptions to the requirement that parental leave be a single period	8
Extending the period of parental leave to use more of the 12-month entitlement.....	10
Right to request further 12 months unpaid parental leave	10
Reducing the period of unpaid parental leave	13
Stillbirth or infant death.....	13
Effect of a period of unpaid parental leave on other NES entitlements.....	14
Using other forms of leave in conjunction with parental leave	14
Special parental leave	15
Unpaid pre-adoption leave.....	15
“Transfer to a safe job” entitlements	15
Consultation with employee on unpaid parental leave.....	17
Return to work guarantee	17
Interaction with modern awards and enterprise agreements	17
Paid Parental Leave	17
Questions and Answers.....	22

Chapter 6 – Annual Leave	1
Overview	1
Are casual employees entitled to annual leave under the NES?.....	2
Amount of annual leave and method of accrual	2
Accrual of annual leave during certain types of absences	3
Additional annual leave for certain shift workers	5
Taking annual leave.....	7
Can an employer require an employee to take annual leave?	8
Taking annual leave in advance.....	16
Payment for periods of annual leave.....	18
Interaction between annual leave and other absences	22
Cashing out annual leave.....	23
Interaction with modern awards and enterprise agreements.....	26
Questions and Answers	27
Chapter 7 – Personal/Carer’s Leave	1
Overview	1
What is personal leave?	1
What is carer’s leave?.....	1
Meaning of ‘unexpected emergency’	2
Employees entitled to paid personal/carers’ leave	4
Unpaid carer’s leave	4
How the paid personal/carers’ leave entitlements interact with modern awards and enterprise agreements.....	5
Amount of paid personal/carers’ leave and method of accrual.....	6
Accrual of personal/career’s leave during particular types of absences.....	7
Accrual of personal/carers’ leave – a summary	9
Payment for periods of paid personal/carers’ leave	9
Cashing out of paid personal/carers’ leave	10
Notice and evidence requirements.....	11
Questions and Answers	14
Chapter 8 – Compassionate Leave	1
Overview	1
What is “compassionate leave”?	1
Employees entitled to compassionate leave under the NES.....	2
Amount of compassionate leave	2
Taking compassionate leave.....	3
Payment for compassionate leave (excluding casuals)	3
Relationship between compassionate leave and personal/carers’ leave	4
Notice and evidence requirements.....	4
Interaction with modern awards	4
Interaction with enterprise agreements	5
Questions and Answers	6

Chapter 9 – Family and Domestic Violence Leave	1
Overview.....	1
Background of family and domestic violence leave	1
What is family and domestic violence?	3
Who is a “close relative”?	4
Family and domestic violence leave entitlement	4
When can an employee access family and domestic violence leave?.....	5
How does the entitlement accrue?	5
Rate of pay for paid family and domestic violence leave	6
Payslip disclosure restrictions.....	7
Notice and evidence requirements	8
Interaction with other forms of leave	9
Chapter 10 – Community Service Leave.....	1
Overview.....	1
Jury Service.....	1
Voluntary emergency management activities	3
Notice and documentary requirements	4
Additional state and territory laws in relation to community service leave	4
Question and Answer	5
Chapter 11 – Long Service Leave.....	1
Overview.....	1
Agreement-based transitional instruments containing long service leave provisions	2
Where there are no relevant award or agreement long service leave provisions	2
Where there are relevant award long service leave provisions.....	2
“Applicable agreement-derived long service leave terms”	3
Enterprise agreements made under the <i>Fair Work Act</i> on or after 1 January 2010?	3
Agreements which exclude long service leave	4
Continued operation of state and territory long service leave legislation	5
Questions and Answers.....	6
Chapter 12 – Public Holidays.....	1
Overview.....	1
What is a “public holiday”?.....	1
Additional public holidays under modern awards.....	2
Substitution of public holidays under state or territory law	2
Substituting public holidays under a modern award or enterprise agreement	3
Substituting public holidays – award/agreement-free employees	3
Requesting employees to work on a public holiday	4
Payment for absence on public holidays	8
Penalties for work on public holidays.....	9
Shiftwork and public holidays	10

Public holidays and other absences.....	11
Questions and Answers	15
Chapter 13 – Notice of Termination	1
Overview	1
What period of notice is required?	1
When must notice in lieu be paid?	3
Which employees are not entitled to notice?.....	3
Are employees required to give notice?.....	5
Interaction with modern awards	7
Interaction with enterprise agreements	8
Questions and Answers	9
Chapter 14 – Redundancy Pay	1
Overview	1
When is an employee entitled to redundancy pay?.....	1
What amount of redundancy pay is required?.....	2
Which employees are not entitled to redundancy pay?.....	3
Applications for exemption from redundancy pay under the NES	7
The effect of prior service as a casual employee on redundancy pay.....	10
Is redundancy pay separate to the entitlement to notice of termination?	11
Interaction with modern awards and enterprise agreements.....	11
Related entitlements in modern awards	11
Industry-specific redundancy schemes	13
Fair Entitlements Guarantee (FEG) scheme	14
Questions and Answers	15
Chapter 15 – Fair Work Ombudsman to prepare and publish statements.....	1
Overview	1
Fair Work Information Statement	1
Casual Employment Information Statement.....	2
Fixed Term Contract Information Statement	3
How must the Statements be given to employees?	3
What happens if an employer doesn't provide the Statements as required?	4
Question and Answer.....	4
Chapter 16 – The NES and Transfer of Employment.....	1
Overview	1
When does a transfer of employment occur?.....	2
General rule: service with old employer counts as service with new employer.....	2
When can an employer decide not to recognise service?	3
Question and Answer.....	4

Chapter 17 – Record Keeping	1
Overview.....	1
Form of records	1
Content of employment records.....	1
Employment records – general.....	2
Content of records – pay	2
Overtime	3
Averaging of hours	3
Leave.....	4
Superannuation contributions	4
Individual flexibility arrangements.....	4
Guarantee of annual earnings	5
Termination of employment	5
Child employment.....	5
Transfer of employment.....	5
Penalties for failing to comply	6
Reverse onus of proof if records are not kept.....	6
What if the employee is paid a salary under a contract?	7
Chapter 18 – Superannuation	1
Overview.....	1
NES obligation to make superannuation contributions	1
Preventing multiple actions.....	3
Orders for compensation	3
Modern award and enterprise agreement superannuation provisions	3
Rate of superannuation guarantee	5