



ASU GUIDE TO THE FAIR WORK LAWS

CHANGES AT A GLANCE:

- New minimum national employment standards.
- New national modern awards.
- Greater access to flexible work arrangements.
- Enhanced parental leave.
- Unfair dismissal protections.



On January 1, 2010, the Federal Government's new **National Employment Standards (NES)** came into effect, giving ASU members greater workplace protection.

The NES restores the basic conditions stripped away under the Howard government's unpopular WorkChoices legislation by setting out key minimum conditions for employment.

The NES expands the WorkChoices safety net from five basic entitlements to 10 (see below). **New modern awards** were also introduced

FAREWELL WORKCHOICES

In 2007, thousands of Australians began feeling the impact of the Howard Government's IR laws.

Unprecedented numbers of people joined with unions to take action because the government's unfair WorkChoices laws

went too far. In the 2007 federal election, Australians said "enough", and voted Howard out.

The new Fair Work Act is an attempt to correct the imbalance of WorkChoices, which failed to protect basic working rights.

on January 1, after the Government replaced thousands of existing awards with 122 new national

awards. The awards build on the basic conditions of the NES by establishing minimum wages, hours of

work, superannuation, and other entitlements for specific occupations and industries.

Therefore, your workplace may very well have better conditions than those outlined in the NES, which are merely the *minimum conditions* of employment under the new Act. Most modern awards contain transitional provisions which allow wages and penalty rates to be progressively phased in over five years.

■ Go to www.fairwork.gov.au or www.asupsvic.org for more information.

THE 10 NATIONAL EMPLOYMENT STANDARDS (NES)

1. A maximum standard working week of 38 hours (with paid overtime).

2. Right to request flexible work for parents who need to care for a child under school age, or a child (under 18) who has a disability.

3. Entitlement to take unpaid parental (or adoption) leave of 12 months after the birth of a child, with a right to request an extra 12 months' unpaid leave.

4. A minimum of four weeks' annual leave, with an extra week's leave for shift workers.

5. 10 days' paid personal or carer's leave each year.

6. A right to take "community service leave" for jury service or for certain emergencies or natural disasters. Only the jury service provision qualifies for paid leave.

7. Long service leave.

8. Public holidays.

9. New termination notice rules and redundancy pay.

10. The right for new employees to receive the Fair Work Information Statement.



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Your new rights at work

A key component of the new work laws is **the right to request flexible working arrangements**.

This means that employers for the first time have a legal obligation to consider a request for work flexibility – such as working from home or different start times – and can only refuse such a request on “reasonable business grounds”.

Furthermore, under the new Act workers on 12 months’ unpaid parental leave are able to **apply to have their leave extended for another 12 months**, which means employees who fit the criteria are potentially entitled to two years’ unpaid parental leave.

In addition to enhanced workplace flexibility, workers now enjoy greater protection from unfair dismissal. **No employee can be dismissed in a manner that is “harsh, unjust or**



unreasonable”. **Workers sacked unfairly may be eligible to apply to Fair Work Australia** for assistance. It is also unlawful for an employer to threaten to or actually dismiss an employee or negatively alter their position because they have a workplace right,

make an inquiry or complaint in relation to their rights, join the union or participate in lawful union activities.

An employee, union or fair work inspector can enforce a workplace right through an application to Fair Work Australia.

About Bargaining

■ Wages and employment conditions may be set down in an enterprise agreement, or EBA, rather than in an award. An enterprise agreement replaces the modern award, but not the NES. An enterprise agreement must be genuinely agreed to by the majority of employees at the workplace, and must leave employees *better off* overall (BOOT Test) than they would be if they had come under the industry award. Workers have the right to be consulted about changes in the workplace and represented (including by the ASU) in workplace agreements.

Watch the fine print: concern over ‘flexibility’

Modern awards and enterprise agreements must include a “flexibility term” and this is an area of concern for the ASU as it may allow employers to undermine the collective agreement. This term allows you and your employer to agree to

an Individual Flexibility Arrangement (IFA), which varies the terms of your agreement. It is important to note that workers cannot be forced to make a flexibility arrangement, and employees should agree to one only if it suits them. The ASU believes

employers should be required to demonstrate how the IFAs will result in workers being financially better off. IFAs must be made in writing and if you are under 18 years of age, your IFA must be co-signed by your parent or guardian.

