



Factsheet Two

WHERE DO I FIND MY CONDITIONS OF EMPLOYMENT?

Your 'terms and conditions of employment' are what are provided to you in return for work performed. They include such things as leave, rates of pay, penalty rates, hours of work, public holidays, probation periods, and superannuation. These things should be explained to you when you start a new job.

You will find your terms and conditions of employment in one or a combination of the following resources:

- the *Fair Work Act 2009* and the National Employment Standards which apply to all employees in the Northern Territory;
- NT legislation regarding occupational health and safety, workers' compensation, public holidays, long service leave, and anti-discrimination;
- a written common law contract;
- a verbal common law contract;
- a letter of offer;
- a workplace agreement; or
- a Modern Award.

A breakdown of each of these instruments is provided below in further detail.

The National Employment Standards (NES)

The *Fair Work Act 2009* contains minimum conditions known as the National Employment Standards (NES), which have operated since 1 January 2010. Some Modern Awards or agreements may contain additional terms which modify the way the NES applies to some people. In some cases, additional leave benefits may be provided for in some Modern Awards or agreements. You should check your Modern Award or agreement for such terms.

The NES set out the following **minimum conditions** for NT employees:

Maximum ordinary hours per week	A maximum of 38 ordinary hours of work per week, which can be averaged out over 12 months if agreed in writing, plus reasonable additional hours;
Flexible work arrangements	A request can be made for flexible working arrangements if you are a parent or have responsibility for the care of a child who is of school age or younger; are a carer (as per the meaning of the <i>Carer Recognition Act 2010</i>); have a disability; are 55 or older; are experiencing domestic or family violence from a member of the employee's family; or you are the carer or provide support to somebody who is experiencing domestic or family violence who requires care or support because they are experiencing violence from that person's family. To make a request you must have 12 months continuous service on a full-time or part-time basis with the employer, and if you are a long-term casual, you have an expectation of ongoing employment on a regular and systematic basis;
Parental leave	52 weeks of unpaid parental leave for each parent (for permanent workers and casuals who have worked continuously for the employer for at least 12 months), with the alternative for one parent to request a second 52 weeks unpaid leave if their partner is not intending to utilise theirs. The employer can refuse the second year of leave on reasonable business grounds;
Annual leave	4 weeks of paid annual leave per year for permanent full-time employees (pro rata for part-timers), with an additional week for employees who regularly work day and night shifts and shifts on Sundays, Saturdays and public holidays;
Personal / carer's leave	10 days of paid personal leave (which can be used for sick leave or carer's leave) for permanent full-time employees (pro rata for part-timers);
Carers leave	2 days of unpaid carer's leave per each occasion that a member of your immediate family or household is ill, injured or affected by an unexpected emergency. This entitlement is for permanent and casual employees. Permanent employees can only access the unpaid entitlement if they have already used all of their paid personal leave entitlements;
Compassionate leave	2 days of paid compassionate leave per occasion for permanent employees (unpaid for casual workers);
Community Service leave	Community service leave to engage in an eligible community service activity, including jury duty (usually 10 days paid leave) and voluntary emergency management activities (this is usually unpaid leave);
Long service leave	In the Northern Territory the amount of long service leave owed to an employee is generally determined by the <i>NT Long Service Leave Act</i> , a pre-modernised award or an agreement. It is often, but not always, 13 weeks of leave after 10 years of service.
Public holidays	A paid day off on a public holiday, except where reasonably requested to work.
Notice of termination and redundancy pay	Up to 5 weeks notice of termination and up to 16 weeks severance pay on redundancy, both are based on the length of service;
Provision of a Fair Work Information Statement	The statement must be provided to all new employees and contains information about the NES, Modern Awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, union rights of entry, transfer of business, and the respective roles of the Fair Work Commission and Fair Work

As well as the NES, you may be covered by conditions that are written in a Modern Award, agreement, individual contract, or the letter of offer given to you when you started work. When you start work, your employer should let you know which conditions cover you and where they are found.

For more information on the NES please contact the Fair Work Ombudsman at www.fairwork.gov.au

A term in your agreement, contract or Modern Award has no effect if it is detrimental to you when compared to an entitlement under the NES.

The NES apply to all employees, regardless of whether they are covered by a Modern Award or agreement.

The National Minimum Wage

The Fair Work Commission sets a National Minimum Wage for any employee not covered by a Modern Award or agreement.

For adults the National Minimum Wage was increased on 1 July 2016 to \$17.70 per hour before tax or \$672.70 per week for a normal 38 hour a week role. The National Minimum Wage is adjusted each year on 1 July.

Casual employees are entitled to an hourly casual loading for every hour that they work. From 1 July 2015 casuals are paid a minimum additional loading of 25%. The casual loading compensates them for entitlements they do not receive such as paid annual leave and paid personal leave.

Note that junior employees are not entitled to the adult National Minimum Wage but are covered by special junior rates. Please read factsheet 4 *What about my pay?* for further details about wages for juniors, apprentices, trainees and people with disabilities.

What is a Modern Award and am I covered by one?

Modern Awards apply from 1 January 2010. Modern Awards provide minimum conditions for all employees in a particular industry or occupation. Where a Modern Award applies to you, your employer must provide you the conditions contained in the Modern Award as a minimum. The terms and conditions contained in the Modern Award can only be changed if you enter into a workplace agreement.

Most Modern Awards contain a transitional clause which phases in changes to wages and

penalty rates over five annual installments from 1 July 2010.

Note that Modern Awards may in some cases not apply to employees who earn above \$138,900 per annum (indexed annually). The NES will still apply to these employees.

What is an agreement?

An agreement sets out the conditions of employment between an employee (or a group of employees) and their employer. From 1 January 2010, only enterprise agreements can be made (see below).

Other types of agreements made before this date will continue on until they are terminated or replaced. These include collective agreements (also known as Enterprise Agreements or EAs, Certified Agreements or CA's or workplace agreements), AWAs (Australian Workplace Agreements) and ITEAs (Individual Transitional Employment Agreements).

ITEAs and AWAs are no longer able to be made. If you are covered by an AWA or ITEA and you wish to terminate it, contact the Fair Work Commission for information on how that can be done.

You can only be covered by one agreement at a time.

Enterprise Agreements

What is an enterprise agreement and am I covered by one?

An enterprise agreement is a formal employment contract made between a group of employees and an employer and registered with the Fair Work Commission. Once an enterprise agreement is entered into, any Modern Award that did apply to your employment may no longer apply. The NES however continue to apply.

If you are a new employee, any existing agreement which applies to your job may also cover you.

Making an enterprise agreement

The *Fair Work Act 2009* sets out rules about how enterprise agreements should be entered into. Your employer must first give employees notice of their right to appoint a bargaining agent who can represent them in the bargaining process. If you want to, you can then appoint a bargaining representative to act on your behalf by notifying your employer in writing. If you are a union member, your union will automatically be your bargaining representative unless you appoint someone else. No later than 7 days before the vote on the agreement is to take place, the employer must make sure that employees get a copy of the agreement to consider, and that the terms of the agreement are fully explained to all employees in an appropriate way, particularly for young or culturally and linguistically diverse employees. Employees cannot vote on the agreement until 21 days have passed since the

day they were given notice of their representational rights.

An enterprise agreement must be approved by a majority of employees. This would normally be done by a vote of employees. Once approved by the employees, the agreement must be lodged with the Fair Work Commission within 14 days for approval.

The agreement will have to pass the Better Off Overall Test (BOOT). Under this test, the Fair Work Commission compares the agreement to the relevant Modern Award(s) to make sure that each Modern Award covered employee would be better off overall under the agreement when compared to the Modern Award. Agreements cannot include unlawful content, including discriminatory or objectionable terms.

How long will an Enterprise Agreement operate?

Agreements cannot have a nominal expiry date of more than 4 years after the date of the Fair Work Commission approval.

Terminating an Enterprise Agreement

An enterprise agreement can be terminated by agreement between the parties at any time, or by one party in accordance with any early termination procedure set out in the agreement. An agreement can also be terminated by applying to the Fair Work Commission.

It is important to note that an agreement will continue to operate after the nominal expiry date and will only cease operating if it is terminated, declared void by a court, or replaced.

After termination, you will be covered by the NES, and any relevant Modern Award.

How do I decide whether to enter into an Enterprise Agreement?

When offered an enterprise agreement, it is important to understand your rights and weigh up the costs and benefits carefully as your decision can make a significant difference to your pay and conditions. You should not accept the agreement unless you are sure you know what is contained within it and you agree with it.

You also may have the option of negotiating the agreement. The idea of negotiating with your employer can be intimidating but you will be more confident about getting a satisfying agreement if you know and understand your rights. See factsheet 8 *Negotiating with your Employer* for more information on how to negotiate.

What you should check before entering into an Enterprise Agreement

- Has your employer provided you with notice of your representational rights at least 21 days before the vote on the agreement is to take place? This informs you of your right to appoint any person to negotiate on your behalf as a bargaining agent. (If you are a union member your union is automatically your bargaining agent, unless you notify the employer that you want to have a different bargaining agent).
- Has your employer provided you with a copy of or access to the proposed agreement, and a copy of any previous award or agreement if these terms have been included, at least 7 days before the vote will take place?
- Has your employer notified you of the time and place of the vote and the voting

method that will be used at least 7 days before the vote will take place?

- If you are young or from a culturally or linguistically diverse background, has your employer ensured you understand the terms and conditions within the agreement?
- Have you checked and compared your current entitlements under a Modern Award or existing agreement against the proposed agreement, to ensure you will be better off overall under the proposed agreement?
- Have you been given 7 days to consider the agreement?

Do I have to enter into an Enterprise Agreement?

You **do not** have to vote in favor of a proposed agreement. The *Fair Work Act 2009* makes it unlawful for an employer to apply coercion or duress, or to make false and misleading statements, in relation to an agreement.

This means that it is against the law for an employer to sack or threaten you for refusing to make, negotiate, sign, extend, vary, or terminate an agreement. It is against the law for an employer who takes over a business to make you sign an agreement as a condition of continued employment.

However, if a majority of employees vote in favor of a proposed agreement even if you do not, then you may become covered by that agreement.

What if I start at a job where there is already an Enterprise Agreement in place?

Once an agreement has been lodged with the Fair Work Commission any new employee joining the workplace covered by that agreement will usually automatically be covered by it even if they did not participate in the making and approval of the agreement. However, this depends on whether they have become a new employee because there is a transfer of business from the old to the new employer. You should be advised by your new employer what will happen in a transfer situation. If you are unsure, seek advice.

What is a Common Law Contract and am I covered by one?

You might be asked to sign a written common law contract or a letter of offer, or you may simply have verbally agreed with your employer that you will work in return for wages. Even if there is nothing in writing, the terms and conditions you agree to form a verbal common law contract and are legally binding. A common law contract, whether written or verbal, is different to an enterprise agreement. It does not need to comply with the rules in the *Fair Work Act 2009* for making agreements, nor does it need to be registered with the Fair Work Commission.

When you enter into a common law contract, the NES and any relevant Modern Award may still apply to you. This means you cannot sign away those conditions. A common law contract containing terms and conditions that are lower than those in the NES is unenforceable in relation to those terms and conditions. This means that if the terms and conditions in the common law contract are lower than the NES, you are still able to claim the NES conditions. A common law contract can contain terms and conditions that are more

generous than the NES or the Modern Award that would otherwise apply.

If you are offered a written common law employment contract or letter of offer it is important that you read and understand it before you sign and return a copy of the contract to your employer. Any verbal negotiations should be recorded. You should always keep a copy of the contract for your records.

What if I am not covered by a Modern Award or an agreement?

If you are not covered by any Modern Award or agreement, then the NES set the minimum terms and conditions of your employment.

Where can I get more help?

NT Working Women's Centre

Freecall: 1800 817 055

Web: www.ntwwc.com.au

Your Union

Unions NT

Ph: 8941 0001

Web: www.unionsnt.com.au

The Fair Work Ombudsman

Fair Work Info line: 13 13 94

Web: www.fairwork.gov.au

The Fair Work Commission

Ph: 08 8936 2800

Local call: 1300 799 675

Web: www.fwc.gov.au

To access an interpreter

Interpreting and Translating Service NT

Ph: 1800 676 254

Web: www.itsnt.nt.gov.au/

Aboriginal Interpreter Service

Ph: 8999 8353

Web: www.ais.nt.gov.au/

For people with a hearing and/or speech impairment

National Relay Service

Ph: 133 677

Freecall: 1800 555 677

The NT Working Women's Centre provides free and confidential information, advice and assistance to women about work related matters.

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