



NEW FINANCIAL YEAR UPDATE FOR EMPLOYMENT LAW 2021

INCREASE TO MINIMUM WAGE RATES FOR NATIONAL SYSTEM EMPLOYERS

Award Rates

Mindful of the current performance of the economy, which has exceeded previously forecasted expectations, and the Government support measures for low-income households, the Fair Work Commission has decided to increase the national minimum award rates of pay by a greater percentage than that awarded in the 2019-2020 annual wage review.

The Fair Work Commission has decided that all modern award rates of pay are to increase by **2.5%** in accordance with the below schedule:

- Stage 1 (most awards) – from 1 July 2021;
- Stage 2 (Retail Award) – from 1 September 2021; and
- Stage 3 (21 awards deemed to have exceptional circumstances) – from 1 November 2021.

A list of the 21 awards to be increased in Stage 3 can be found [here](#).

The COVID-19 pandemic continues to have significant economic consequences for many industries; accordingly, the minimum wage rate increase has been staggered to assist industry sectors which the Fair Work Commission considers are continuing to experience the ongoing economic impacts of COVID-19. Stage 1 includes industries considered to have been the least affected by the pandemic. This is contrasted with those industries in Stage 3 which includes industry sectors considered to have suffered the worst economic impact of the COVID-19 pandemic.

National Minimum Wage

On 1 July 2021 the national minimum wage for adults working full time (38 hours per week) increased by **\$18.80** per week from **\$753.80** to **\$772.60**.

The national minimum hourly rate for permanent national system employees increased 2.5% from **\$19.84** to **\$20.33** per hour.

We note however, that the casual loading for award/agreement free employees has remained set at **25 per cent** consistent with the standard casual loading in all modern awards.

**Please be aware that the changes as detailed above, apply to all employees employed by a national system employer, including junior employees, employees with a disability, employees to whom training arrangements apply and to piece rates.*

We would encourage all employers to conduct a review of their current remuneration arrangements, including the use of annualised wage arrangements, to ensure regulatory compliance with the changes to the minimum wage rates.

UNFAIR DISMISSAL PROTECTION THRESHOLD IN THE FEDERAL UNFAIR DISMISSAL JURISDICTION

As of 1 July 2021, the high-income threshold in the federal unfair dismissal jurisdiction increased from \$153,600 to **\$158,500**.

The high-income threshold is relevant for the purposes of the operation and eligibility of employees to access a number of *Fair Work Act 2009* (Cth) (**FW Act**) provisions, namely:

- for determining whether a federal system employee, not covered by a modern award or a statutory workplace agreement is a protected employee and has access to the federal unfair dismissal jurisdiction of the Fair Work Commission;
- for determining whether a modern award applies to an employee – specifically, a modern award (that would ordinarily apply) will not apply to an employee who has a guarantee of annual earnings above the high-income threshold. Please be aware however, that such an employee remains covered by the applicable award and is therefore, subject to meeting the other criteria, still able to access the protection of the unfair dismissal jurisdiction; and
- for determining the maximum compensation which is available to a successful applicant in an unfair dismissal claim. The maximum compensation has increased from \$76,800 to **\$79,250** (half of the high-income threshold) for dismissals occurring on or after 1 July 2021.

Please be aware that award-free employees who earn over the high-income threshold and are therefore jurisdictionally barred from commencing an unfair dismissal claim, may still have access to a number of other causes of action under the FW Act.

WESTERN AUSTRALIAN STATE SYSTEM EMPLOYERS

For those state system employers in Western Australia:

- all Western Australian State award rates of pay increased by **2.5%** from 1 July 2021; and
- the state minimum wage for adults (21 and over) working full-time increased by 2.5% (\$19 per week) from **\$760.00 to \$779.00** per week from 1 July 2021.

We also note that the high-income threshold for employees in the Western Australian State-system accessing protection under the *Industrial Relations Act 1979* (WA) has increased from \$172,200 to **\$176,900** as of 1 July 2021.

NEW FAIR WORK INFORMATION STATEMENT

The Fair Work Commission has published the latest version of the Fair Work Information Statement which all employers must give to each new employee before (or as soon as practicable after) the employee starts his or her employment.

This may occur by any means, for example:

- giving it to the employee personally;
- sending it by pre-paid post to the employee's residential address or a postal address nominated by the employee;
- sending it to the employee's work email address or another email address nominated by the employee;
- providing the employee with an electronic link to the Fair Work Ombudsman website on which the Statement is located;
- having an electronic link that takes the employee directly to a copy of the Statement on the company intranet (if applicable); or
- sending it by facsimile to the employee.

The latest version of the Statement which applies from 1 July 2021 can be found [here](#).

Please note that employers are not required to give the Statement to an employee more than once in a 12-month period. However, failure to provide a copy of the Statement to an employee is a breach of the National Employment Standards and employers risk the imposition of a civil penalty.

NEW CASUAL EMPLOYMENT INFORMATION STATEMENT

In addition to the Fair Work Information Statement, employers must now give casual employees a copy of the specific Casual Employment Information Statement before, or as soon as practicable after, the employee commences employment.

Following the recent casual employee reforms, small business employers must provide their existing casual employees (employed on or before 27 March 2021) a copy of the new Casual Employment Information Statement as soon as possible.

All other employers must provide their existing casual employees (employed on or before 27 March 2021) a copy of the new Casual Employment Information Statement on or before **27 September 2021**.

The latest version of Casual Employment Information Statement, as published on 20 May 2021, can be found [here](#).

Failure to provide a copy of the Casual Employment Information Statement to a casual employee is a breach of the National Employment Standards and employers risk the imposition of a civil penalty.

INCREASE TO FAIR WORK COMMISSION FEES

On 1 July 2021, the Fair Work Commission's filing fee for dismissals, general protections and bullying at work applications increased to **\$74.90**.

This filing fee can be waived in cases of serious financial hardship. An application form for waiver of the filing fee can be found [here](#).

INCREASE TO SUPERANNUATION GUARANTEE

On 1 July 2021, the superannuation guarantee charge percentage increased to **10%** (up from 9.5%) for eligible employees.

The superannuation guarantee charge percentage is scheduled to progressively increase to 12% by July 2025.

CIVIL PENALTIES

The maximum civil penalties applicable to breaches of the civil penalty provisions of the FW Act remain unchanged.

Accordingly, the maximum civil penalty for a ‘non-serious’* contravention by a corporate entity is **\$66,600**.

The maximum civil penalty for a ‘non-serious’* contravention by an individual increased is **\$13,320**.

The civil penalty provisions in the FW Act are extensive and include those relating to:

- contraventions of the National Employment Standards, modern awards and enterprise agreements;
- the protection of workplace rights and other employee protections;
- record-keeping and pay slip requirements; and
- rights of entry and industrial action.

Please be aware that the civil penalties as detailed above apply only to contraventions which occur on or after 1 July 2020. Contraventions that occurred prior to 1 July 2020 will continue to attract the applicable penalties as at the date when the contravention occurred.

* The *Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017* introduced a new ‘serious contravention’ provision which increased tenfold the penalty units payable for a breach of a civil remedy provision of the FW Act. A serious contravention happens when the court finds that: the person or business knew they were contravening an obligation under workplace laws; and or the contravention was part of a systematic pattern of conduct affecting one or more people.

For further information or assistance contact Murfett Legal on [+61 8 9388 3100](tel:+61893883100).

Note: The above is a summary for general information purposes only. It is not intended to be comprehensive or constitute legal advice. You should seek formal legal or other professional advice in relation to your particular circumstances before relying on the content of this article.

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