



NEW FINANCIAL YEAR UPDATE FOR EMPLOYMENT LAW

The commencement of the new financial year brought with it a number of important changes to national and Western Australian state minimum wages, unfair dismissal regulations, increases to federal civil penalties as well as the expanded coverage of the *Miscellaneous Award 2010*.

In this article, Murfett Legal, summarises the significant changes that all employers need to be aware of. It is critical that employers consider the implications of the changes and ensure that their businesses remain compliant with all statutory and regulatory obligations.

Increase to Minimum Wage Rates for National System Employers

Award Rates

Mindful of the “large shadow” which the COVID-19 pandemic has cast over the global economic landscape, the Fair Work Commission was cautious in introducing any increase to new minimum award rates of pay.

Consequently, the Fair Work Commission has decided that all modern award rates of pay are to increase by **1.75%** in accordance with the below schedule:

- Group 1 Awards – from 1 July 2020;
- Group 2 Awards – from 1 November 2020; and
- Group 3 Awards – from 1 February 2021.

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 have been hit the hardest. Group 1 includes industries considered to have been the least affected by the pandemic. This is

contrasted with those industries in Group 3 which includes industry sectors considered to have suffered the worst economic impact of the COVID-19 pandemic.

A list of which awards fall into which respective group can be found here.

National Minimum Wage

On 1 July 2020, the national minimum wage for adults working full time (38 hours per week) increased by \$13.00 per week from \$740.80 to **\$753.80**.

The national minimum hourly rate for permanent national system employees increased from \$19.49 to **\$19.84** 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 national system 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.

High Income Threshold in the Federal Unfair Dismissal Jurisdiction

On 1 July 2020 the high-income threshold increased from \$148,000 to **\$153,600**.

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 \$74,350 to **\$76,800** (half of the high-income threshold).

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 will increase by 1.75% from 1 January 2021; and
- the state minimum wage will remain at \$746.90 until 1 January 2021, at which time the state minimum wage will increase by \$6.20 from \$746.90 to **\$760.00** per week.

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 to **\$172,200**.

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 2020 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.

Increases to Federal Civil Penalties

On 1 July 2020 the maximum civil penalties applicable to breaches of the civil penalty provisions of the FW Act increased.

The maximum civil penalty for a 'non-serious'* contravention by a corporate entity increased from \$63,000 to **\$66,600**.

The maximum civil penalty for a 'non-serious'* contravention by an individual increased from \$12,600 to **\$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 increased civil penalties apply 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.

Expansion of the Coverage of the *Miscellaneous Award 2010*

On 12 February 2020 the Fair Work Commission amended the *Miscellaneous Award 2010* with effect from 1 July 2020. The changes extend the coverage of this Award to traditionally award-free employees with potentially far reaching consequences for some employers.

The consequence of these changes is that the Award may now apply to:

- more senior employees (though not managerial or professional employees) who were traditionally excluded from award coverage; and
- other employees performing award work traditionally covered by an award, but previously excluded from award coverage either because they did not fall under an industry or occupational based modern award or because they were not covered by the classifications in a relevant industry award.

All employers should consider whether any of its employees, who were previously award-free, are now covered by the Award. Employers will need to ensure compliance with the minimum entitlements under the Award, including pay rates and penalty rates. It is also critical that employers are aware that if the Award applies, irrespective of an employee's remuneration, they may now be considered protected employees for the purposes of the unfair dismissal jurisdiction of the Fair Work Commission and may be permitted to make an unfair dismissal claim in circumstances where their employment has been terminated.



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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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