

2019 March ESKi update pack

In this pack, you will find updated ESKi pages and resources which are also available at www.thepeopleindairy.org.au/eski

Dates are listed alongside so you can check your version and easily find / replace pages and resources you have downloaded. The pack includes information updated from **July 2018** and links to updates made across the site.

Bold indicates a recent and essential update to your folder.



Missed a previous ESKi update? Look out for this orange icon on pages that may require future updating.

| ESKi section | Page | Date updated | Inc. in pack | Summary | Update your ESKi (Y/N) |
|-------------------|-----------------|------------------------|--------------|---|------------------------|
| Getting Started | 3 | Mar 19 | Y | ESKi grid: updates to Leave section (includes family and domestic violence leave) | |
| | 5-7 | Mar 19 | Y | ESKi glossary – includes family and domestic violence leave. | |
| The Law | 1-2 | Mar 19 | Y | Ensure employees gave access to the National Employment Standards (inc. family & domestic violence leave). | |
| | 7 | Dec 18 | Y | Introduction to National Employment Standards - includes family and domestic violence leave. | |
| Employing Someone | 25-42; 43-50 | Feb 19 | Y | 2 documents: Permanent Award Employee (NES) employment contract example and template , includes family and domestic violence leave, requests for flexible working arrangements. | |
| | 51-55 | Jan 19 | Y | Casual contract template (updated notes) | |
| | | Oct 18 | N/A | <i>Regular casual employees are able to request that their employment be converted from casual employment to full time or part time work. See www.thepeopleindairy.org.au/engagement-reward/employees.htm#casual</i> | |
| Payroll | 3-4 | July 18 | N | Check the minimum pay, record keeping: see www.thepeopleindairy.org.au/engagement-reward/pay-rates.htm | |
| | 13-14 | Mar 19 | Y | FAQ: How do I tackle pay rates - includes minimum engagement for secondary school students (March 2019 update) and pay rates from 1 July 2018 (July 2018 update) | |
| | 19-20 | Mar 19 | Y | FAQ: Backpackers - visa requirements (as of Nov 2018) | |
| | 21-22 | Mar 19 | Y | FAQ: Part time vs casual – includes casual conversion and minimum engagement for secondary students. | |
| Leave | 1-4 | Mar 19 Aug 18 (pg3) | Y | Pg 1 updated – Can employees cash out their annual leave. Pg 2 – What are the other leave entitlements? Pg 3 – new page family and domestic violence leave. Pg 4 - How much notice do I give? | |
| | | Nov 18 | N/A | <i>Whilst not listed in the ESKi folder currently, long service leave has changed in Victoria - read more at www.thepeopleindairy.org.au/engagement-reward/Vic-state-industrial-laws.htm#long-service-leave</i> | |

| ESKi section | Page | Date updated | Inc. in pack | Summary | Update your ESKi (Y/N) |
|---------------------|------|---------------------|--------------|---|------------------------|
| IFA | 3-4 | Jul 18 | N | Flat rate pay calculator information updated, e.g. if you are thinking of trying out an IFA. See www.thepeopleindairy.org.au/eski/ifa.htm | |
| | | | | | |
| | | Jul 18 | N | Flat Pay Rate calculator: (not in this pack - excel spreadsheet). See www.thepeopleindairy.org.au/eski/ifa.htm | |
| | 5-13 | Aug 18 | Y | IFA template updated, revised information regarding Superannuation on page 6. | |
| Termination | 3-4 | Mar 19 | Y | Page 3 – How much notice must I give? | |
| | | Nov 18 | N/A | Whilst not listed in the ESKi folder, paying out notice provisions were amended as of the first pay period on/ or after 1 Nov 2018 - see www.thepeopleindairy.org.au/engagement-reward/termination.htm#dismissal-notice | |
| Pastoral Award 2010 | | 21 Nov 18 Dec 18 | N N | Pastoral Award 2010: 108pgs marked up version at http://bit.ly/PastoralAward (not in this pack) also visit the ESKi/ Pastoral Award page. Note: look for the date at the beginning of the document. National Employment Standards: 74pgs from the Fair Work Act 2009 - see the Green tip box on www.thepeopleindairy.org.au/engagement-reward/national-employment-standards.htm | |

In Western Australia? Read more WA state industrial laws: www.thepeopleindairy.org.au/WAstatelaws

What's in the ESKi

| | |
|---|---|
| <p>THE LAW</p> <p>Things every employer should know.</p> <p>Whether you're hiring staff for the first time, or have been an employer for a while, it's important that you understand what the law requires you to do. This section provides the resources to help you understand your rights and responsibilities.</p> <ul style="list-style-type: none"> ■ Pastoral Award 2010 ■ National Employment Standards | <p>EMPLOYING SOMEONE</p> <p>Hiring and keeping staff is much more than compliance with the law.</p> <p>For an employment relationship to work, both employer and employee must share the same expectations about the job. To make sure you are both 'on the same page', there are three documents you can't live without:</p> <ul style="list-style-type: none"> ■ The position description ■ The employment contract ■ The employee details form |
| <p>PAYROLL</p> <p>Nuts & bolts</p> <p>There are many things to think about when you're hiring staff. This list will help you get started.</p> <ul style="list-style-type: none"> ■ Their classification under the Pastoral Award 2010 ■ Their minimum pay ■ Whether the position will be full-time, part-time or casual ■ Breaks, maximum hours of work and overtime. ■ Record keeping ■ Pay slips ■ Tax ■ Superannuation ■ Time keeping | <p>LEAVE</p> <p>What are employees' leave entitlements?</p> <p>The National Employment Standards (NES) apply to all employees in the national workplace relations system. Casual employees get only some of the entitlements. The types of leave entitlements in the NES include:</p> <ul style="list-style-type: none"> ■ Annual leave ■ Personal/carer's leave, compassionate leave and family and domestic violence leave ■ Community service leave ■ Long service leave ■ Parental leave |
| <p>INDIVIDUAL FLEXIBILITY AGREEMENT</p> <p>How to pay a flat rate for all hours worked</p> <p>The Pastoral Award 2010 includes a flexibility term which enables employers and employees to agree on a flat rate of pay for all hours worked, using an Individual Flexibility Agreement. The employer must ensure the employee is better off overall under the agreement as compared with the Pastoral Award 2010.</p> | <p>TERMINATION</p> <p>Handle employee separation carefully</p> <p>Regardless of whether the employee is leaving because of resignation, redundancy or dismissal, following the right procedures minimises the risk of legal action and protects the reputation of both your business and you as an employer.</p> |
| <p>SAFETY</p> <p>How safe is your farm?</p> <p>You can use our dairy farm safety checklists to make sure you're meeting your obligations.</p> | <p>PASTORAL AWARD 2010</p> <p>What is the Pastoral Award 2010?</p> <p>What are the National Employment Standards?</p> |

Information provided in this folder is also available at www.thepeopleindairy.org.au/eski

ESKi glossary

Apprentice: An employee that is employed under a 'training arrangement'. A 'training arrangement' is a combination of work and training that is subject to a training agreement or a training contract between the employee and employer that takes effect under a State or Territory law relating to training employees.

Allowances: Additional payments made to employees for undertaking certain tasks, possessing a skill, using their own tools or performing work under adverse conditions. Types of allowances in the Pastoral Award include vehicle, tool & equipment, and allowances which recognise specific skills and responsibilities.

Australian Business Number (ABN): A unique identifier issued by the Australian Business Register (ABR), which is operated by the Australian Taxation Office (ATO).

Award rate of pay: The minimum rate of pay that may legally be paid to an employee who is covered by an award. An award generally contains a number of rates that vary according to the age of the employee and the employee's classification.

Bonus: An amount of money paid to an employee when a set target has been achieved.

BOOT: The BOOT (Better off overall test) requires that each employee covered by an award must be better off under an enterprise agreement or an individual flexibility agreement than they would be if the relevant award applied to them. The BOOT allows some award conditions to be traded off or excluded as long as the total remuneration and/or benefits received by the employee leave them better off than if the conditions remained the same.

Casual employees: Employees who work on an hourly basis. They receive a loading on top of normal wages because they do not receive benefits such as paid annual leave and paid personal (sick) leave.

Carer's leave: Leave taken to provide care or support to a member of the employee's 'immediate family' or household who requires care or support due to personal injury or illness or an unexpected emergency.

Casual loading: Casual loading is an amount paid on top of the base rate of pay to casual employees. The purpose of a casual loading is to compensate casual employees for not being paid certain entitlements that permanent employees receive, such as paid annual leave and personal (sick) leave.

Contractor: A person or company that enters into a contract to provide materials or do a job.

Days in lieu: Working days given as paid days off to compensate for unpaid penalty rates or overtime.

Discrimination (unlawful): When someone is not treated fairly or given the same opportunities because of personal characteristics or attributes. It is unlawful for an employer to discriminate against an employee or prospective employee on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

Exceptions apply where the discrimination is:

- authorised by or under a State or Territory anti-discrimination law
- taken because of the inherent requirements of the particular position concerned
- taken against certain persons in good faith for religious reasons.

Fair Work Commission (FWC): The Fair Work Commission is the national workplace relations tribunal, established by the Fair Work Act. It is an independent body with power to carry out a range of functions covering:

- the safety net of minimum wages and employment conditions
- enterprise bargaining
- industrial action
- dispute resolution
- termination of employment.

Family and domestic violence leave: Unpaid leave of 5 days per year for domestic violence victims to deal with family and domestic violence.

Gross salary: The total amount paid to an employee before any deductions (like income tax) have been made.

Group Certificates: see Payment Summary.

Immediate family: is defined as:

- A spouse, child, parent, grandparent, grandchild or sibling of the employee
- A child, parent grandparent, grandchild or sibling of a spouse of the employee.

Individual Flexibility Agreement (IFA): An agreement between an employer and an employee, that can vary the effect of some conditions of an award. The Individual Flexibility Agreement (IFA) must pass the better off overall test (BOOT).

Induction: The formal introduction to systems and procedures given to employees when they start a new job.

Leave loading: An award condition that provides for a pay bonus to be paid when annual leave is taken or on termination of employment when accrued annual leave is paid out. It is calculated at 17.5% of the annual leave being paid.

Modern Award: An award made by the Australian Industrial Relations Commission as part of the award modernisation process in 2008 and 2009. Modern awards operate together with the National Employment Standards (NES) to provide minimum conditions of employment for employers and employees in the 'national system'. Modern awards supplement the NES by

setting out additional minimum terms and conditions that apply in a particular industry or occupation including monetary entitlements such as wages, penalty rates and allowances. The Pastoral Award 2010, which covers most employees in the dairy industry, is a modern Award which replaces various State and federal awards. Modern awards commenced operation on 1 January 2010.

National Employment Standards (NES): A safety net of 10 minimum conditions, set out by law, in the Fair Work Act, for all employees.

Net salary: The amount paid to an employee after the relevant deductions (like income tax) have been made.

Parental leave: The entitlement of both male and female employees to take unpaid leave when their child is born or adopted.

Part-time employees: Employees who are engaged for a numbers of hours that are less than those for full-time employees. Part-time workers generally receive the same entitlements and benefits as full-time workers on a proportional (pro rata) basis.

Pastoral Award 2010: Awards are legal documents setting out minimum rates of pay and conditions of employment which apply to employees in a particular industry or occupation. As of 1 January 2010, the federal Pastoral Award 2010 covers employees in the dairy industry.

PAYG withholding: Pay as you go (PAYG) withholding is a legal requirement to withhold amounts (for income tax purposes) from payments made to employees for salary and wages.

Payment summary: You need to give those workers from whom you have withheld tax an annual payment summary, which shows the total payments you made to them in the financial year and how much tax you have withheld from their payments. These payment summaries contain all of the information needed for the employee to lodge a tax return and can be either electronic or in paper form.

Penalty Rates: Extra money paid to employees for working at times such as public holidays.

Personal Leave: is leave taken because the employee is not fit for work because of personal injury or illness. Under the National Employment Standards full time employees are entitled to 10 days' paid personal/carer's leave per year. Paid personal leave accumulates from year to year.

RDO: Rostered days off

Redundancy: Occurs when an employer no longer wishes the job that an employee has been performing to be undertaken by anyone- e.g., as the result of a business restructure. It has nothing to do with poor performance or misconduct.

Sick Leave : See personal leave



Things every employer should know

Whether you're hiring staff for the first time, or have been an employer for a while, it's important that you understand what the law requires you to do. This section provides the resources to help you understand your rights and responsibilities.

Give all new employees a copy of the Fair Work Information Statement

By law, you must give all new employees a copy of the **Fair Work Information Statement**, which provides basic information on matters that will affect their employment including:

- the National Employment Standards
- how a transfer of business affects entitlements
- modern awards
- agreements under the *Fair Work Act 2009*
- individual flexibility arrangements
- freedom of association
- termination of employment
- right of entry (including privacy laws to protect personal information)
- the Fair Work Ombudsman and Fair Work Australia.

Resources in this section

- Fair Work Information Statement
- FAQ – Contractor or employee?
- FAQ – Share dairy farmer or employee?

The Pastoral Award 2010 and the National Employment Standards are bulky documents which, for your convenience, are located at the back of this ESKi folder.



You must give all new employees a copy of the **Fair Work Information Statement**.

BY LAW

You must make a copy of the **National Employment Standards** available to all employees.

Ensure employees have access to the National Employment Standards

By law, you must make a copy of **The National Employment Standards** (also known as the NES) available to all employees. You can pin a copy to a conveniently located noticeboard, or use electronic means, whichever makes them more accessible. The NES are a safety net of 10 minimum conditions, set out by law, for all full- and part-time employees. These are:

- A maximum standard working work of 38 hours for full-time employees, plus 'reasonable' additional hours.
- A right to request family friendly flexible working arrangements for employees with caring responsibilities, parents or guardians of children that are school age or younger, employees with disability, employees who are 55 years or older, and employees who are experiencing family violence or who are caring for or supporting a family or household member who is experiencing family violence.
- Parental and adoption leave of 12 months (unpaid), with a right to request an additional 12 months.
- Four weeks paid annual leave each year.
- Ten days paid personal/carer's leave each year, two days paid compassionate leave for each permissible occasion; and two days unpaid carer's leave (once the ten paid days are used up) for each permissible occasion; and five days unpaid domestic violence leave (in a 12 month period).
- Community service leave for jury service or activities dealing with emergencies or natural disasters. This leave is unpaid except for jury service.
- Long service leave.
- Public holidays and the entitlement to be paid for ordinary hours on those days.
- Notice of termination and redundancy pay.
- The right for new employees to receive the **Fair Work Information Statement**.

Some of these conditions also apply to casual employees.

Best Practice Tip

Copy the Fair Work Information Statement in this section and give one to all new employees.



Fair Work audits do happen!

Fair Work Inspectors regularly audits or conducts face-to-face visits with randomly selected employers.

Inspectors check employers are complying with record-keeping and pay slip obligations, including giving employees sufficiently detailed pay slips within one working day of pay day and keeping correct time-and-wages records.

The Law checklist

- ☐ Have all employees been given a copy of the Fair Work Information Statement?
- ☐ Is the Pastoral Award 2010 available to all employees covered by the award?
- ☐ Are the National Employment Standards available to all employees?
- ☐ Are all casual and part time employees engaged for a minimum of 3 hours?
- ☐ Do you pay 17.5% leave loading on holiday pay?
- ☐ Does your employee have a valid Australian work visa?
- ☐ Do you know the difference between a contractor and an employee?

Learn more

Visit the ESKi at:
www.thepeopleindairy.org.au/eski



Introduction to the National Employment Standards

What are the National Employment Standards?

The National Employment Standards (NES) are the 10 minimum standards of employment which cover the following:

- [Maximum weekly hours of work](#) – 38 hours per week, plus reasonable additional hours.
- [Requests for flexible working arrangements](#) – certain employees can ask to change their working arrangement.
- [Parental leave and related entitlements](#) – up to 12 months unpaid leave and the right to ask for an extra 12 months unpaid leave. Also includes adoption-related leave.
- [Annual leave](#) – four weeks paid leave per year, plus an extra week for some shift workers.
- [Personal/carer's leave, compassionate leave, and family and domestic violence leave](#) – 10 days paid personal/carer's leave, two days unpaid carer's leave as required, two days compassionate leave as required and five days unpaid family and domestic violence leave (in a 12-month period).
- [Community service leave](#) – unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service.
- [Long service leave](#) – paid leave for employees who have been with the same employer for a long time.
- [Public holidays](#) – a paid day off on a public holiday (unpaid for casuals), except where reasonably requested to work.
- [Notice of termination and redundancy pay](#) – up to five weeks notice of termination and up to 16 weeks redundancy pay, both based on length of service.
- [Provision of a Fair Work Information Statement](#) – must be provided by employers to all new employees.

Who do the NES apply to?

The NES apply to all employees covered by the national workplace relations system, however only certain entitlements apply to casual employees.

These are:

- maximum weekly hours
- two days unpaid carer's leave and two days unpaid compassionate leave per occasion
- five days unpaid family and domestic violence leave (in a 12-month period)
- community service leave (except paid jury service)
- public holidays
- provision of the Fair Work Information Statement.

In addition, casual employees who have been employed for at least 12 months by an employer on a regular and systematic basis and with an expectation of ongoing employment are entitled to:

- make requests for flexible working arrangements
- parental leave and related entitlements.

There are also two NES that apply to all full-time and part-time employees, whether they are covered by the national workplace relations system or not.

These are:

- parental leave and related entitlements
- notice of termination.

How do the NES apply?

Terms in awards, registered agreements and employment contracts cannot exclude or provide for an entitlement less than the NES, and those that do have no effect. However, they can affect the operation of the NES in certain ways.

For example, they may specify terms that deal with:

- averaging an employee's ordinary hours of work
- the cashing out and taking of paid annual leave
- the cashing out of paid personal/carer's leave
- extra personal/carer's leave or annual leave in exchange for foregoing an equivalent amount of pay.
- the substitution of public holidays
- situations in which redundancy entitlements do not apply.

They may also supplement the NES by providing entitlements

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

Need language help?

Contact the Translating and Interpreting Service (TIS)
on **13 14 50**

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: **13 36 77**. Ask for the Fair Work Infoline **13 13 94**

Speak & Listen: **1300 555 727**. Ask for the Fair Work Infoline **13 13 94**

▲ Agreement making

You may be involved in an enterprise bargaining process where your employer, you or your representative (such as a union or other bargaining representative) negotiate for an enterprise agreement. Once approved by the Fair Work Commission, an enterprise agreement is enforceable and provides for changes in the terms and conditions of employment that apply at your workplace.

There are specific rules relating to the enterprise bargaining process. These rules are about negotiation, voting, matters that can and cannot be included in an enterprise agreement, and how the agreement can be approved by the Fair Work Commission.

You and your employer have the right to be represented by a bargaining representative and must bargain in good faith when negotiating an enterprise agreement. There are also strict rules for taking industrial action. For information about making, varying, or terminating enterprise agreements visit the Fair Work Commission website, www.fwc.gov.au.

▲ Individual flexibility arrangements

Your modern award or enterprise agreement must include a flexibility term. This term allows you and your employer to agree to an Individual Flexibility Arrangement (IFA), which varies the effect of certain terms of your modern award or enterprise agreement. IFAs are designed to meet the needs of both you and your employer. You cannot be forced to make an IFA, however, if you choose to make an IFA, you must be better off overall. IFAs are to be in writing, and if you are under 18 years of age, your IFA must also be signed by your parent or guardian.

▲ Freedom of association and workplace rights (general protections)

The law not only provides you with rights, it ensures you can enforce them. It is unlawful for your employer to take adverse action against you because you have a workplace right. Adverse action could include dismissing you, refusing to employ you, negatively altering your position, or treating you differently for discriminatory reasons. Some of your workplace rights include the right to freedom of association (including the right to become or not to become a member of a union), and the right to be free from unlawful discrimination, undue influence and pressure.

If you have experienced adverse action by your employer, you can seek assistance from the Fair Work Ombudsman or the Fair Work Commission (applications relating to general protections where you have been dismissed must be lodged with the Fair Work Commission within 21 days).

▲ Termination of employment

Termination of employment can occur for a number of reasons, including redundancy, resignation and dismissal. When your employment relationship ends, you are entitled to receive any outstanding employment entitlements. This may include outstanding wages, payment in lieu of notice, payment for accrued annual leave and long service leave, and any applicable redundancy payments.

Your employer should not dismiss you in a manner that is 'harsh, unjust or unreasonable'. If this occurs, this may constitute unfair dismissal and you may be eligible to make an application to the Fair Work Commission for assistance. It is important to note that applications must be lodged within 21 days of dismissal. Special provisions apply to small businesses, including the Small Business Fair Dismissal Code. For further information on this code, please visit www.fairwork.gov.au.

▲ Right of entry

Right of entry refers to the rights and obligations of permit holders (generally a union official) to enter work premises. A permit holder must have a valid and current entry permit from the Fair Work Commission and, generally, must provide 24 hours notice of their intention to enter the premises. Entry may be for discussion purposes, or to investigate suspected contraventions of workplace laws that affect a member of the permit holder's organisation or occupational health and safety matters. A permit holder can inspect or copy certain documents, however, strict privacy restrictions apply to the permit holder, their organisation, and your employer.

▲ The Fair Work Ombudsman and the Fair Work Commission

The **Fair Work Ombudsman** is an independent statutory agency created under the *Fair Work Act 2009*, and is responsible for promoting harmonious, productive and cooperative Australian workplaces. The Fair Work Ombudsman educates employers and employees about workplace rights and obligations to ensure compliance with workplace laws. Where appropriate, the Fair Work Ombudsman will commence proceedings against employers, employees, and/or their representatives who breach workplace laws.

If you require further information from the Fair Work Ombudsman, you can contact the **Fair Work Infoline** on **13 13 94** or visit www.fairwork.gov.au.

The **Fair Work Commission** is the national workplace relations tribunal established under the *Fair Work Act 2009*. The Fair Work Commission is an independent body with the authority to carry out a range of functions relating to the safety net of minimum wages and employment conditions, enterprise bargaining, industrial action, dispute resolution, termination of employment, and other workplace matters.

If you require further information, you can visit the Fair Work Commission website, www.fwc.gov.au.

The Fair Work Information Statement is prepared and published by the Fair Work Ombudsman in accordance with section 124 of the *Fair Work Act 2009*.

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From 1 January 2010, this Fair Work Information Statement is to be provided to all new employees by their employer as soon as possible after the commencement of employment. The Statement provides basic information on matters that will affect your employment. If you require further information, you can contact the **Fair Work Infoline** on **13 13 94** or visit **www.fairwork.gov.au**.

▲ The National Employment Standards

The *Fair Work Act 2009* provides you with a safety net of minimum terms and conditions of employment through the National Employment Standards (NES).

There are 10 minimum workplace entitlements in the NES:

1. A maximum standard working week of 38 hours for full-time employees, plus 'reasonable' additional hours.
2. A right to request flexible working arrangements.
3. Parental and adoption leave of 12 months (unpaid), with a right to request an additional 12 months.
4. Four weeks paid annual leave each year (pro rata).
5. Ten days paid personal/carer's leave each year (pro rata), two days paid compassionate leave for each permissible occasion, and two days unpaid carer's leave for each permissible occasion.
6. Community service leave for jury service or activities dealing with certain emergencies or natural disasters. This leave is unpaid except for jury service.
7. Long service leave.
8. Public holidays and the entitlement to be paid for ordinary hours on those days.
9. Notice of termination and redundancy pay.
10. The right for new employees to receive the Fair Work Information Statement.

A complete copy of the NES can be accessed at **www.fairwork.gov.au**. Please note that some conditions or limitations may apply to your entitlement to the NES. For instance, there are some exclusions for casual employees.

If you work for an employer who sells or transfers their business to a new owner, some of your NES entitlements may carry over to the new employer. Some NES entitlements which may carry over include personal/carer's leave, parental leave, and your right to request flexible working arrangements.

▲ Right to request flexible working arrangements

Requests for flexible working arrangements form part of the NES. You may request a change in your working arrangements, including changes in hours, patterns or location of work from your employer if you require flexibility because you:

- are the parent, or have responsibility for the care, of a child who is of school age or younger
- are a carer (within the meaning of the *Carer Recognition Act 2010*)
- have a disability
- are 55 or older
- are experiencing violence from a member of your family or
- provide care or support to a member of your immediate family or household, who requires care or support because they are experiencing violence from their family.

If you are a parent of a child or have responsibility for the care of a child and are returning to work after taking parental or adoption leave you may request to return to work on a part-time basis to help you care for the child.

▲ Modern awards

In addition to the NES, you may be covered by a modern award. These awards cover an industry or occupation and provide additional enforceable minimum employment standards. There is also a Miscellaneous Award that may cover employees who are not covered by any other modern award.

Modern awards may contain terms about minimum wages, penalty rates, types of employment, flexible working arrangements, hours of work, rest breaks, classifications, allowances, leave and leave loading, superannuation, and procedures for consultation, representation, and dispute settlement. They may also contain terms about industry specific redundancy entitlements.

If you are a manager or a high income employee, the modern award that covers your industry or occupation may not apply to you. For example, where your employer guarantees in writing that you will earn more than the high income threshold, currently set at \$142,000 per annum and indexed annually, a modern award will not apply, but the NES will.

<insert business name>

EMPLOYMENT CONTRACT

(For Permanent Award Employees of National System Employers)

This is an employment contract

BETWEEN <insert company name/partnership/other name > the Employer

AND

<insert employee's full name> the Employee

1 Commencement Date

This employment contract commences on the <insert commencement date>.

2 Probation (See Note 1)

- 2.1 Employment is subject to the satisfactory completion of a three-month probation period.
- 2.2 The purpose of the probation period is to enable the employer and the employee to assess their suitability and capability to work together.
- 2.3 During the probation period the employer or the employee has the right to terminate the employment with one week's notice for any reason and without any repercussions.

3 Award

The <insert name of award> Award and the federal industrial laws govern this employment contract.

4 Employment Category (See Note 2)

The employee is employed as a full-time permanent/part-time *[delete where not applicable]* <insert position title> to undertake the duties as outlined in the attached position description. *[attach position description.]*

5 Employment Classification (See Note 4)

The employee is classified as a <insert classification>.

6 Ordinary hours of work (See Note 3)

The ordinary hours of work are <insert ordinary hours of work>.

7 Overtime/Additional hours (See Note 3)

- 7.1 The employee will be expected to work reasonable additional hours.
- 7.2 This contract anticipates that the employee will work <insert number of overtime/additional hours anticipated to be worked >

8 Remuneration (See Note 4)

- 8.1 The rate of pay is ~~<insert pay rate>~~ per hour/per week *[delete where not applicable]*.
- 8.2 The rate of pay for overtime is ~~<insert pay rate>~~.
- 8.3. The employer will pay the employee weekly/fortnightly *[delete where not applicable]* into a bank account/by cheque/in cash *[delete where not applicable]*.

9 Annual Leave (See Note 5)

[full-time employees]

- 9.1 The employee is entitled to four weeks paid annual leave for each completed year of service with the employer. Annual leave accrues throughout the year and from year to year.

OR

[part-time employees]

The employee) is entitled to annual leave of four weeks per year calculated on a pro-rata basis according to the number of hours worked each week. Annual leave accrues throughout the year and from year to year.

- 9.2 The employee is entitled to an annual leave loading of 17.5% for all annual leave taken or paid out upon termination of employment.

10 Personal/Carer's leave and Compassionate Leave (See Note 6)

"Immediate family" is defined as follows:

- a) A spouse, child, parent, grandparent, grandchild or sibling of the employee;
- b) A child, parent grandparent, grandchild or sibling of a spouse of the employee.

[full-time employees]

- 10.1 The employee is entitled to 10 days paid personal/carers' leave per year for personal injury or illness. Personal/carers' leave accrues throughout the year and from year to year.

OR

[part-time employees]

The employee is entitled to paid personal/carers' leave of 10 days per year calculated on a pro-rata basis according to the number of hours worked each week. Personal/carers' leave accrues throughout the year and from year to year.

- 10.2 The employee can use their personal/carers' leave as paid carers' leave for the purpose of caring for a member of the employee's immediate family or household who requires care or support because of personal injury, illness or an unexpected emergency.

- 10.3 The employee is entitled to two days unpaid personal/carer's leave per occasion for the purpose of caring for a member of their immediate family or household who requires care or support because of personal injury, illness or an unexpected emergency.
- 10.4 The employee is entitled to two days paid compassionate leave per occasion for the purpose of attending the funeral of a member of the employee's immediate family or a member of the employee's household or for spending time with a member of the employee's immediate family or a member of the employee's household who has a personal injury or illness which poses a serious threat to his or her life.
- 10.5 The employer may require medical evidence or a statutory declaration for any period of personal/carer's leave or compassionate leave.

11 Public Holidays (See Note 7)

[full time employees]

- 11.1 In accordance with the National Employment Standards, the employee is entitled to a day's paid leave for public holidays which fall on days when the employee would ordinarily work.

OR

[part time employees]

In accordance with the National Employment Standards, the employee is entitled to be paid for the hours they would ordinarily work on public holidays which fall on days when the employee would ordinarily work.

- 11.2 If the employee works on a public holiday he/she is entitled to be paid at double time.

12 Community Service Leave (See Note 8)

The employee is entitled to 10 days paid jury service leave or unpaid leave to attend a voluntary emergency management activity as provided for in the NES. The employee must provide evidence of the need for the leave if required to do so by the employer.

13 Long Service Leave (See Note 9)

The employee is entitled to long service leave as provided for in the National Employment Standards or state legislation.

14 Parental Leave (See Note 10)

The employee is entitled to Parental Leave in the form of Maternity, Paternity or Adoption Leave as provided for in the National Employment Standards.

15 Flexible Working Arrangements (See Note 11)

The employee is entitled to make a written request for flexible working arrangements once the employee has completed 12 months continuous service.

16 Family and Domestic Violence leave (See Note 12)

The employee is entitled to 5 days' unpaid leave per year to deal with family and domestic violence in accordance with clause 26A of the Pastoral Award 2010.

17 Superannuation

The employer will make superannuation contributions to a fund nominated by the employee. The superannuation contribution will be not less than that required under the *Superannuation Guarantee (Administration) Act*.

18 Termination (See Notes 13 & 14)

18.1 The following minimum notice periods apply to termination of employment:

| Employee's period of continuous service with the employer at the end of the day the notice is given | | Period |
|---|---|---------|
| 1 | Not more than 1 year | 1 week |
| 2 | More than 1 year but not more than 3 years | 2 weeks |
| 3 | More than 3 years but not more than 5 years | 3 weeks |
| 4 | More than 5 years | 4 weeks |

18.2 If the employee is over 45 years of age and has worked at least two years of continuous service with the employer the period of notice will be increased by one week.

18.3 Payment in lieu of notice will be made if the appropriate notice period is not required to be worked.

18.4 The employee is required to give the employer the same amount of notice as a minimum. This does not include the extra week based on age of the employee. If the employee does not give the employer notice the employer can deduct one week's pay from the employee's termination payments.

18.5 If the employee has been given notice of termination he/she is entitled to up to one day off without loss of pay to look for work.

18.6 The period of notice to be given by the employer will not apply in the case of dismissal for serious misconduct that justifies instant dismissal, including conduct which causes imminent and serious risk to the health or safety of a person or the

reputation, viability or profitability of the employer's business; attendance at work under the influence of alcohol or drugs; theft, fraud, assault in the course of employment or refusal to carry out a lawful and reasonable instruction.

19 Other Benefits

[Other benefits e.g. accommodation can be listed here.] (See Note 15)

SIGNED

..... **THE EMPLOYER**

..... **THE EMPLOYEE**

DATED

.....

NOTES TO THE FEDERAL EMPLOYMENT CONTRACT FOR PERMANENT EMPLOYEES

GENERAL – INTERPRETATION

National system employer

This template is for national system employers employing permanent full time or part time employees who are covered by the Pastoral Award 2010. There is a separate template for non award managers.

All employers in the private sector in New South Wales, Victoria, Tasmania, South Australia, Queensland, the Australian Capital Territory and the Northern Territory are called national system employers.

Businesses in Western Australia run by a company, including trusts with a company trustee, which employ workers as part of their business, are called national system employers.

Employers in Western Australia who run their business as a sole trader, partnership or trust which does not have a company trustee are called non national system employers. They should use the template for Western Australia which applies to managers as well as non managerial employees.

NOTE (1) PROBATION PERIODS

All new employees should be placed on a period of probation to enable both the employee and the employer to determine whether the employee is capable of doing the job and is suitable for the enterprise. Probation periods must be determined before work begins and cannot be extended. The length of the probation period must be reasonable in the circumstances and three months is generally accepted to be reasonable. If employers feel they need a longer period this must be justifiable based upon the special requirements of the job and the responsibilities which the employee will be required to undertake.

The federal industrial laws provide that employees of small businesses engaged for less than 12 months and employees of other businesses engaged for less than 6 months cannot bring an action for unfair dismissal.

NOTE (2) EMPLOYMENT CATEGORY

Full-time employees

Full-time employees are engaged on a permanent basis and the following entitlements usually apply: paid annual leave and personal leave (sick leave, carer's leave, compassionate leave/bereavement leave); parental leave and notice of termination. In addition, the Pastoral Award 2010 specifies payment for public holidays.

Part-time employees

Part-time employees are engaged for fixed hours every week and receive the same entitlements as full-time employees but on a pro-rata basis calculated on the proportion of the full-time rate.

The Pastoral Award 2010 provides that part-time employees must be engaged for a minimum of three consecutive hours, or 2 hours for full time secondary school students who are 18 years of age, or under, on any shift.

NOTE (3) HOURS OF WORK

Hours of work may be governed by an award or legislation. Most employees on dairy farms will be covered by the Pastoral Award 2010 (see below).

Managers

Some managers may be excluded from awards and therefore the federal industrial laws will govern their employment entitlements.

Employers who wish to engage a manager should check that the duties they are performing and their responsibilities are significantly greater than the duties contained in the FLH7 and FLH8 classifications in the Pastoral Award 2010. If the duties match these descriptions then the manager should be engaged as an award employee.

If employers want to put in place hours of work which are more flexible than the award then they should enter into a formal enterprise agreement or an Individual Flexibility Agreement under the award.

Pastoral Award 2010

Ordinary hours

The term 'ordinary hours' means hours of work where overtime is not payable.

Under this award ordinary hours are 152 hours worked over a four-week period. Ordinary hours for casuals are the same as for full-time employees.

Ordinary hours for part-time employees covered by the Pastoral Award 2010 are any hours less than 38 and must be agreed in writing specifying the hours and days of the week that the employee will work and the actual starting and finishing times each day.

Overtime

Once the 152 hours have been worked overtime is paid at the rate of time and a half for all hours worked with double time being paid for any work done on Sundays. Feeding and watering stock on Sundays is paid at the rate of time and one half. This does not include milking.

For an explanation of how the 152 hours over 4 consecutive weeks works in practice, download the **Overtime vs Ordinary Hours fact sheet** at

www.thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=147571

Overtime for part-time employees

Overtime for part-time employees applies to all hours over the agreed part-time hours.

The National Employment Standards (NES) about reasonable additional hours also applies to award employees. (See below)

Time Off Instead of Overtime (previously time off in lieu – TOIL- or ‘banked hours’)

The Award provisions about TOIL changed substantially as of the first pay period on or after 27 November 2017. For further information visit:

www.thepeopleindairy.org.au/engagement-reward/pastoral-award.htm#hours

Federal Industrial Laws – The NES

The National Employment Standards (NES) apply to all employment contracts as a minimum for all national system employers.

Reasonable Additional Hours

The NES does not use the word ‘overtime’. Under the NES, employees may be asked to work reasonable additional hours. The employment contract can only express hours of work in excess of the maximum 38 hours per week as *reasonable additional hours*.

What is reasonable for additional hours is decided by weighing up a variety of factors including risks to occupational health and safety; operational requirements of the business; personal circumstances and family commitments; whether the employee has had notice of the likelihood of the need for additional hours; and whether the employee has previously indicated a willingness or capacity to work additional hours. Generally, this will be a process of balancing the needs of the enterprise with the employee’s needs.

NOTE (4) PAY RATES

National system employers

Employers bound by the Pastoral Award 2010 should consider the pay rates contained in this award.

Classifications – Pastoral Award 2010

The Pastoral Award 2010 creates five separate classifications for dairy farm employees with different rates of pay for each classification.

The classifications reflect the different experience and skills of employees. The classifications are as follows:

- dairy operator grade 1A (farm and livestock hand level 1 - FLH1)

- dairy operator grade 1B (farm and livestock hand level 3 - FLH3)
- dairy operator grade 2 (farm and livestock hand level 5 - FLH5)
- senior dairy operator grade 1 (farm and livestock hand level 7 - FLH7)
- senior dairy operator grade 2 (farm and livestock hand level 8 - FLH8)

Pay rates

As pay rates vary, no pay rates are included in this document.

Visit the following websites for more information:

Pastoral Award 2010 http://www.fwa.gov.au/documents/modern_awards/pdf/MA000035.pdf

When determining a pay rate employers and employees should consider not only wages and salary but also other benefits which may be provided by the business for the purpose of making the position more attractive to the employee and thus assisting in staff retention. Employers could consider other benefits such as accommodation and use of vehicles, provision of meat and milk, extra superannuation, and extra leave entitlements.

Frequency of payment

The Pastoral Award 2010 specifies that award employees must be paid weekly or fortnightly.

For more information on working out a remuneration package, including information on Fringe Benefits Tax, visit www.thepeopleindairy.org.au

NOTE (5) ANNUAL LEAVE

The National Employment Standards (NES) apply to all employment contracts as a minimum and the template employment contract contains the NES terms.

The Pastoral Award 2010 contains the NES about annual leave. The Pastoral Award 2010 applies to all national system employers in the dairy industry for all employees in the classifications set out in the award. (See note 4)

Whilst the NES is a minimum, employers may wish to consider offering extra annual leave as part of a package.

The NES & the Pastoral Award 2010

The National Employment Standards (NES) for annual leave is four weeks per year which accrues progressively throughout the year and from year to year.

Annual leave must be paid at a rate which is no less than the base rate of pay for ordinary hours the employee is paid at the time of taking the leave.

Cashing out of annual leave

Annual leave can only be cashed out by award employees if it is a term of an award or enterprise agreement.

As of 29 July 2016 employers and employees covered by the Pastoral Award 2010, can agree in writing to cash out annual leave. The maximum amount of annual leave that can be cashed out in any 12-month period is 2 weeks and employees must keep a minimum of 4 weeks' accrued leave. The Award provides a template written agreement in a Schedule at the end of the award. This agreement must be kept with the employee's employment records.

For a template agreement to cash out annual leave, visit

www.thepeopleindairy.org.au/engagement-reward/national-employment-standards.htm#annual

The Pastoral Award 2010 – Annual Leave Loading

The award also requires payment of a 17.5% annual leave loading for all annual leave. Annual leave loading must also be paid when annual leave is paid out on termination.

NOTE (6) PERSONAL/CARER'S LEAVE AND COMPASSIONATE LEAVE

The National Employment Standards (NES) apply to all employment contracts as a minimum and the template enterprise agreement contains the NES terms.

The Pastoral Award 2010 contains the NES about personal/carer's leave. The Pastoral Award 2010 applies to all national system employers in the dairy industry for all employees in the classifications set out in the award. (See note 4)

Whilst the NES is a minimum, employers may wish to consider offering extra personal/carer's leave as part of a package.

The NES & The Pastoral Award 2010

Personal/ Carer's Leave and Compassionate Leave

Under the NES, employees (other than casual employees) are entitled to 10 days paid personal/ carer's leave for each year of service.

Personal/carer's leave accrues on a pro rata basis throughout the year and from year to year and there is no cap on how much of this leave can be used for carer's leave. Personal/carer's leave and compassionate leave accrue on the basis of the employee's ordinary hours of work.

Personal leave can be taken if the employee is not fit for work due to personal illness or injury.

Payment for personal/carer's leave is at the employee's base rate of pay for ordinary hours of work.

Carer's leave

Carer's leave can be taken to provide care or support for a member of the employee's household or immediate family due to personal illness or injury or an unexpected emergency.

Immediate family is defined to mean:

- a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.

Immediate family includes extended and blended families, de facto partners, step-relationships, adoptive relationships and same sex relationships)

All employees, including casual employees are entitled to 2 days of unpaid carer's leave per occasion. Permanent employees can only take unpaid carer's leave if they have used up all of their paid leave entitlement.

Compassionate leave

Employees are also entitled to 2 days of paid compassionate leave per occasion and casual employees are entitled to 2 days unpaid compassionate leave.

Compassionate leave can be taken on 2 consecutive days, 2 separate days or any other period as agreed between the employer and the employee.

Compassionate leave is available for employees to spend time with a member of their immediate family or household who has developed personal illness or injury or after the death of a member of their immediate family or household.

Payment for compassionate leave is at the employee's base rate of pay for ordinary hours of work.

Notice and evidence requirements

When taking personal/carer's leave and compassionate leave, employees must do the following or they are not entitled to take the leave:

- notify their employer as soon as is reasonably practicable (which can be a time after the leave has started);
- state the period, or expected period, of the absence
- if required by the employer—provide evidence that would satisfy a reasonable person of their entitlement to take the leave. (this can be a medical certificate or statutory declaration)

Cashing out of personal/carer's leave

Personal/carer's leave can only be cashed out if it is a term of an award or enterprise agreement.

The Pastoral Award 2010 does not provide for cashing out of personal/carer's leave. Therefore, employees can only cash out accrued personal/carer's leave if it is a term of a formal enterprise agreement.

NOTE (7) PUBLIC HOLIDAYS

The NES & the Pastoral Award 2010

The NES provides for employees to be absent from work on specified public holidays.

Payment is the employee's base rate of pay for ordinary hours of work.

Full-time employees are entitled to a paid day off for public holidays if they would normally work on that day.

Part-time employees are entitled to be paid for the hours they would normally work on public holidays. If they do not normally work on the day of the public holiday they are not entitled to public holiday pay.

The following days are public holidays for the NES:

- 1 January (New Year's Day)
- 26 January (Australia Day)
- Good Friday
- Easter Monday
- 25 April (Anzac Day)
- Queen's birthday holiday
- 25 December (Christmas Day)
- 26 December (Boxing Day)

If a State or Territory substitutes another day or declares an additional day, the employee is entitled to be absent on that day. If a day is substituted then this day becomes the public holiday for the purpose of working out entitlements and not the other day.

Substitution of other days

The Pastoral Award 2010 allows for employers and individual employees or employers and the majority of employees to agree to substitute an alternative day for the public holiday.

Enterprise Agreements can also provide for substitution of public holidays.

Requests to work on public holidays

An employer may request an employee to work on a public holiday if the request is reasonable.

The request may be refused if it is unreasonable or the employee's refusal is reasonable. The NES provides list of factors to be taken into account when determining the reasonableness of a request or refusal.

Payment for working on public holidays

Payment for working on a public holiday is an award entitlement which does not apply to non award employees such as managers.

The Pastoral Award 2010

Work done on public holidays by farm and livestock hands is paid at the rate of double time.

NOTE (8) COMMUNITY SERVICE LEAVE

The NES provides an entitlement to leave for all employees required to attend jury service and for those who engage in a voluntary emergency management activity.

Jury service leave

Employees are entitled to be paid by their employer for a period of up to 10 days while they are absent from work during a period of jury service.

Payment for jury service leave is the employee's base rate of pay for ordinary hours of work.

Employers can require the employee to obtain payments for jury service leave from the applicable State/Territory or Commonwealth body and these payments will reduce the amount payable to the employee.

Notice requirements – jury service leave

Employers can request evidence that the employee has taken steps to obtain any available payments and evidence of the payments from the State/Territory or Commonwealth body for the first 10 days of the jury service leave. If this is not provided the employer does not have to make the payment for jury service leave.

Voluntary emergency management activities

Employees are entitled to unpaid leave to engage in voluntary activities which involve dealing with a natural disaster or emergency if they are voluntary members of the emergency management body and the body has requested them to attend. Emergency management bodies include fire fighting bodies, civil defence and rescue.

Notice requirements – community service leave

Employees must give employers notice of the need for community service leave as soon as possible and advise the employer of the expected length of the absence. Employers can also require employees to give them reasonable evidence of the need for the leave.

NOTE (9) LONG SERVICE LEAVE

State and territory laws provide for Long Service Leave.

For further information, visit www.thepeopleindairy.org.au

NOTE (10) PARENTAL LEAVE

The federal parental leave laws contained in the NES apply to all employers.

Parental leave involves unpaid maternity leave, paternity leave and adoption leave.

Parents cannot take parental leave at the same time except for a period of up to eight weeks in total. This period of concurrent leave may be taken in separate periods but unless the employer agrees, each period must not be shorter than 2 weeks.

The concurrent leave must not start before the date of birth of the child or the day of placement of the child if the leave is adoption leave unless the employer agrees.

The entitlement exists once an employee has worked for the employer for 12 months. It also applies to certain long-term casual employees.

The laws about parental leave are complex and there are specific requirements for notification. Employers should seek legal advice or advice from their local state farming organisation if an employee becomes eligible for parental leave. For further information visit www.thepeopleindairy.org.au

NOTE (11) REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS

The laws about requests for flexible working arrangements changed on 1 December 2018.

As of that date Clause 26B of the Pastoral Award provides additional requirements which apply to award employees.

The NES give employees the right to request a change to working arrangements in the following circumstances:

- If the employee is a parent, or has the responsibility for the care, of a child who is of school age or younger:
- The employee is a carer (within the meaning of the Carer Recognition Act 2012);
- The employee has a disability;
- The employee is 55 or older;
- The employee is experiencing violence from a member of the employee's family;
- The employee provides care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing violence from the member's family.

In addition, parents or those who have responsibility for the care of a child and who are returning from a period of parental leave or adoption leave may request to work part-time to assist the employee to care for the child.

Permanent employees can make a request for flexible working arrangements if they have

completed 12 months' continuous service with the employer.

Casual employees who have worked for the employer on a regular and systematic basis during a period of at least 12 months and who have a reasonable expectation of continuing work can also make a request for flexible working arrangements.

The request must be in writing and provide details of the change sought and reasons for the change.

If the employee is an award employee the employer and the employee must discuss the request and genuinely try to reach an agreement which will accommodate the employee's circumstances having regard to the following:

- the needs of the employee arising from their circumstances;
- the consequences for the employee if changes in working arrangements are not made; and
- any reasonable business grounds for refusing the request.

If the employee is award free the employer must consider the request.

Employers must respond to the request in writing within 21 days and give reasons if the request is refused.

A request may only be refused on *reasonable business grounds* which should be specified in the written response.

If the request is refused, award employees must also be provided with details of the reasons for the refusal and details of how the reasonable business grounds apply to them. In addition, the written response for award employees must state whether or not there are any changes in working arrangements that the employer can offer to the employee to better accommodate the employee's circumstances and if so these changes must be set out in the response.

If the employer and the award employee reach an agreement on a change in working arrangements that differs from that initially requested by the employee, the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

Reasonable Business Grounds are defined as follows:

Fair Work Act provides the following list of matters which may amount to reasonable business grounds but there may be others:

- That the new working arrangements would be too costly for the employer;
- That there is no capacity to change the working arrangements of other employees to

- accommodate the new working arrangements requested by the employee;
- That it would be impractical to change the working arrangements of other employees or recruit new employees to accommodate the new working arrangements requested by the employee;
 - That the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity;
 - That the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service;

Disputes about whether the employer has discussed the request with the award employee and responded to the request in the way required by clause 26B, can be dealt with under the dispute resolution clause in the Pastoral Award.

NOTE (12) FAMILY AND DOMESTIC VIOLENCE LEAVE

Family and Domestic Violence Leave is an award entitlement which applies as of 1 August 2018. See clause 26A of the Pastoral Award 2010.

Family and domestic violence is defined as:

Violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful

Family member is defined as:

- a spouse, de facto partner, child, parent, grandparent, grandchild, sibling of employee;
- a spouse, de facto partner, child, parent, grandparent, grandchild, sibling of employee's spouse or de facto partner;
- a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

NB: This includes former spouses or de facto partners.

Family and Domestic Violence Leave is unpaid leave of 5 days per year for domestic violence victims to deal with family and domestic violence.

Family and Domestic Violence Leave applies in full to all employees including part time and casual employees.

Family and Domestic Violence Leave does not accrue progressively or accumulate from year to year but is available in full at the commencement of each 12-month period of the employee's employment.

Family and domestic violence victims do not have to have exhausted other forms of leave before accessing Family and Domestic Violence Leave.

Notice and evidence requirements:

- Notice must be given to the employer as soon as practicable which can be after the leave has started.
- The employee must advise employer of the expected period of the leave.
- If required by the employer, the employee must provide evidence that would satisfy a reasonable person that the leave is taken for family and domestic violence reasons

eg a document from police/family violence support service/family court or a statutory declaration

Confidentiality requirement

Employers must ensure that any information provided by the employee with respect to Family and Domestic Violence Leave is treated confidentially.

NOTE (13) TERMINATION

It is very important to manage employee separation carefully whether the employee is leaving because of resignation, redundancy or dismissal. First, it minimises the risk of legal problems and secondly, it protects the reputation of both your business and you as an employer.

Employers should use fair procedures when terminating employees as replacing employees is expensive and claims for unfair or unlawful dismissal can be costly and time consuming to defend.

Termination of employment can lead to court action. Employers who are considering dismissing an employee should always obtain legal advice before doing so.

Further information can be found at www.thepeopleindairy.org.au

NOTE (14) NOTICE PERIODS

The National Employment Standards (NES) apply to all employment contracts as a minimum and the template enterprise agreement contains the NES terms.

The Pastoral Award 2010 contains the NES about notice of termination plus further terms about employee notice and the job search entitlement. The Pastoral Award 2010 applies to all national system employers in the dairy industry for all employees in the classifications set out in the award.

The NES & the Pastoral Award 2010

Notice Periods

Continuous service' is the time an employee has spent working for an employer without a break and this needs to be calculated so that the notice period can be worked out.

Unauthorised absences from work do not break continuous service but are not counted when calculating how long the notice period should be.

Exclusions from notice requirement

The following employees do not have to be given notice:

- employees employed for a specified period of time, for a specified task, or seasonal employees;
- employees whose employment is terminated because of serious misconduct;
- casual employees;
- trainees (other than apprentices) and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement.

Termination without notice

The Pastoral Award 2010 and the NES allow for termination without notice in cases of serious and wilful misconduct. The template contains a clause providing for termination without notice in these circumstances.

NOTE 14.1 EMPLOYEE NOTICE

Employees can only be required to give notice if it is a term of an award or enterprise agreement.

Pastoral Award 2010

Under the Pastoral Award 2010 employees must also give the same amount of notice as employers. However, employees do not have to give the additional week of notice based on the age of the employee and length of service.

If the employee fails to give notice and is over 18 years of age, the employer can deduct one week's pay from the employee's termination payments.

NOTE 14.2 JOB SEARCH ENTITLEMENT

Job search entitlement is an award entitlement.

Pastoral Award 2010

Under the Pastoral Award 2010 where an employer has given an employee notice of termination, the employee is entitled to take one day off without loss of pay to look for other work. The employee can take the day off at a time when it is convenient to the employee after consultation with the employer.

NOTE (15) ACCOMMODATION

Residential tenancies laws may apply to accommodation on farms where the accommodation is not a part of the wider lease of the farming property. These laws lay down notice periods for ending the tenancy, whether bonds can be required and how much can be charged as well as rules regarding repairs and inspection and agreements with specific terms. Breaches of these laws attract fines.

Deduction of rent

The Fair Work Act requires written authority from the employee if rental is deducted from wages or salary.

Visit www.thepeopleindairy.org.au to find a template '[Authority To Deduct](#)'.

New South Wales, South Australia, Tasmania and Western Australia

In New South Wales, South Australia, Tasmania and Western Australia, residential tenancy laws do not usually apply where the tenancy is not 'for value' or 'consideration' which means that no rent is paid for the accommodation. However, farmers should be aware that making accommodation a part of a formal workplace agreement where the accommodation is used as a part of the Better Off Overall Test may have the effect of making the tenancy 'for value' and residential tenancy laws may then apply.

Victoria

In Victoria, residential tenancy laws do not apply where the tenancy is a part of the employment contract. Employers should agree with employees on a fair period of notice which will apply in the event that the employment is terminated. The notice period should be long enough to enable the employee to find alternative accommodation but also recognise the needs of the employer if the property is needed for a new employee. As a minimum, three to four weeks is considered to be fair in these circumstances.

Queensland

The Queensland residential tenancies laws may apply to accommodation on farms where the accommodation is not a part of the wider commercial lease of the farming property. Whilst residential tenancy laws can protect both the tenant and the landlord, the notice periods for ending the tenancy (four weeks) can be problematic when accommodation has been part of a remuneration package and an employee leaves as a result of their employment being terminated either with notice but particularly when dismissed summarily for misconduct. In these circumstances the only avenue available to the employer is to make an application to the tenancy tribunal to have the lease terminated earlier on the ground of hardship.

Full time/permanent employment contract template (updated Feb 2019)

The Pastoral Award 2010 specifically requires employers to give full-time employees a written statement setting out their classification, applicable pay and terms of engagement.

- **Part-time employees** and the employer must agree in writing on the regular pattern of work specifying the hours to be worked each day, the days of the week when the employee will work and the daily starting and finishing times.

- **Casual employees** must be told that they are employed as a casual employee, the identity of the employer, their hours of work, classification level and pay rate. Employers are not required under the Pastoral Award 2010 to provide a written statement to casual employees but this is advisable.

The contract of employment must not contain any terms or conditions for work which are inconsistent with or less favourable to the employee than the Pastoral Award 2010 and the National Employment Standards. If it does these terms and conditions will not be enforceable.

Suggested steps for preparing and using a contract template

For more information, contact your dairy adviser or visit www.thepeopleindairy.org.au

Step 1: Have all the paperwork ready that you'll need

Before you can complete the contract template, you must read the example contract and accompanying notes. The contract makes reference to both the Pastoral Award and the National Employment Standards, so you might like to have those handy. You'll need the Position Description to make sure the contract matches the job.

Step 2: Complete the contract by filling in the detail where indicated in red

This contract caters for both **full-time and permanent** employees - fill in the detail, where indicated in red. There is a separate contract for **casual workers** (the next document in your ESKi folder) available at: www.thepeopleindairy.org.au/engagement-reward/contracts-and-agreements.htm

Step 3: Attach the position description

A position description should include:

- the job title;
- a summary of the role and how it fits into the business;
- details of the tasks to be undertaken for the role;
- the reporting structures and working relationships that apply;
- levels of performance required

Step 4: Detail other benefits

Clause 19 allows you to detail other benefits, such as accommodation.

Step 5: Meet with the new employee and provide employment contract

Meeting face to face with your new employee to provide the contract and talk about the contents is a good opportunity for:

- you to explain the terms and conditions of employment
- the employee to ask questions, and
- you to describe your expectations for the job.

Step 6: Give your new employee time to consider the employment contract

You should give the person enough time to consider the contents of employment contract and seek their own advice (if they want it) before they accept the offer. When providing the contract you should give a date by when you'd like the person to let you know whether the offer is accepted. Also, it is good practice to give the employee your contact details in case they have more questions.

Step 7: Keep a copy of the signed contract and provide the employee with a copy

Once you have received the signed contract from the employee, return a copy to them. This ensures you both have a record of what has been agreed.

www.thepeopleindairy.org.au

EMPLOYMENT CONTRACT

(For Permanent Award Employees of National System Employers)

This is an employment contract

BETWEEN _____ **the Employer**

AND

_____ **the Employee**

1 Commencement Date

This employment contract commences on the _____

2 Probation (See Note 1)

- 2.1 Employment is subject to the satisfactory completion of a three-month probation period.
- 2.2 The purpose of the probation period is to enable the employer and the employee to assess their suitability and capability to work together.
- 2.3 During the probation period the employer or the employee has the right to terminate the employment with one week's notice for any reason and without any repercussions.

3 Award

The Pastoral Award 2010 and the federal industrial laws govern this employment contract.

4 Employment Category (See Note 2)

The employee is employed as a full-time permanent/part-time *[delete where not applicable]* _____ to undertake the duties as outlined in the attached position description. *[attach position description.]*

5 Employment Classification (See Note 4)

The employee is classified as a _____

6 Ordinary hours of work (See Note 3)

The ordinary hours of work are _____

7 Overtime/Additional hours (See Note 3)

- 7.1 The employee will be expected to work reasonable additional hours.
- 7.2 This contract anticipates that the employee will work _____

8 Remuneration (See Note 4)

- 8.1 The rate of pay is _____per hour/per week *[delete where not applicable]*.
- 8.2 The rate of pay for overtime is _____
- 8.3. The employer will pay the employee weekly/fortnightly *[delete where not applicable]* into a bank account/by cheque/in cash *[delete where not applicable]*.

9 Annual Leave (See Note 5)

[full-time employees]

- 9.1 The employee is entitled to four weeks paid annual leave for each completed year of service with the employer. Annual leave accrues throughout the year and from year to year.

OR

[part-time employees]

The employee) is entitled to annual leave of four weeks per year calculated on a pro-rata basis according to the number of hours worked each week. Annual leave accrues throughout the year and from year to year.

- 9.2 The employee is entitled to an annual leave loading of 17.5% for all annual leave taken or paid out upon termination of employment.

10 Personal/Carer's leave and Compassionate Leave (See Note 6)

"Immediate family" is defined as follows:

- a) A spouse, child, parent, grandparent, grandchild or sibling of the employee;
- b) A child, parent grandparent, grandchild or sibling of a spouse of the employee.

[full-time employees]

- 10.1 The employee is entitled to 10 days paid personal/carers' leave per year for personal injury or illness. Personal/carers' leave accrues throughout the year and from year to year.

OR

[part-time employees]

The employee is entitled to paid personal/carers' leave of 10 days per year calculated on a pro-rata basis according to the number of hours worked each week. Personal/carers' leave accrues throughout the year and from year to year.

- 10.2 The employee can use their personal/carers' leave as paid carers' leave for the purpose of caring for a member of the employee's immediate family or household who requires care or support because of personal injury, illness or an unexpected emergency.

- 10.3 The employee is entitled to two days unpaid personal/carer's leave per occasion for the purpose of caring for a member of their immediate family or household who requires care or support because of personal injury, illness or an unexpected emergency.
- 10.4 The employee is entitled to two days paid compassionate leave per occasion for the purpose of attending the funeral of a member of the employee's immediate family or a member of the employee's household or for spending time with a member of the employee's immediate family or a member of the employee's household who has a personal injury or illness which poses a serious threat to his or her life.
- 10.5 The employer may require medical evidence or a statutory declaration for any period of personal/carer's leave or compassionate leave.

11 Public Holidays (See Note 7)

[full time employees]

- 11.1 In accordance with the National Employment Standards, the employee is entitled to a day's paid leave for public holidays which fall on days when the employee would ordinarily work.

OR

[part time employees]

In accordance with the National Employment Standards, the employee is entitled to be paid for the hours they would ordinarily work on public holidays which fall on days when the employee would ordinarily work.

- 11.2 If the employee works on a public holiday he/she is entitled to be paid at double time.

12 Community Service Leave (See Note 8)

The employee is entitled to 10 days paid jury service leave or unpaid leave to attend a voluntary emergency management activity as provided for in the NES. The employee must provide evidence of the need for the leave if required to do so by the employer.

13 Long Service Leave (See Note 9)

The employee is entitled to long service leave as provided for in the National Employment Standards or state legislation.

14 Parental Leave (See Note 10)

The employee is entitled to Parental Leave in the form of Maternity, Paternity or Adoption Leave as provided for in the National Employment Standards.

15 Flexible Working Arrangements (See Note 11)

The employee is entitled to make a written request for flexible working arrangements once the employee has completed 12 months continuous service.

16 Family and Domestic Violence leave (See Note 12)

The employee is entitled to 5 days' unpaid leave per year to deal with family and domestic violence in accordance with clause 26A of the Pastoral Award 2010.

17 Superannuation

The employer will make superannuation contributions to a fund nominated by the employee. The superannuation contribution will be not less than that required under the *Superannuation Guarantee (Administration) Act*.

18 Termination (See Notes 13 & 14)

18.1 The following minimum notice periods apply to termination of employment:

| | Employee's period of continuous service with the employer at the end of the day the notice is given | Period |
|---|--|---------------|
| 1 | Not more than 1 year | 1 week |
| 2 | More than 1 year but not more than 3 years | 2 weeks |
| 3 | More than 3 years but not more than 5 years | 3 weeks |
| 4 | More than 5 years | 4 weeks |

18.2 If the employee is over 45 years of age and has worked at least two years of continuous service with the employer the period of notice will be increased by one week.

18.3 Payment in lieu of notice will be made if the appropriate notice period is not required to be worked.

18.4 The employee is required to give the employer the same amount of notice as a minimum. This does not include the extra week based on age of the employee. If the employee does not give the employer notice the employer can deduct one week's pay from the employee's termination payments.

18.5 If the employee has been given notice of termination he/she is entitled to up to one day off without loss of pay to look for work.

18.6 The period of notice to be given by the employer will not apply in the case of dismissal for serious misconduct that justifies instant dismissal, including conduct

which causes imminent and serious risk to the health or safety of a person or the reputation, viability or profitability of the employer’s business; attendance at work under the influence of alcohol or drugs; theft, fraud, assault in the course of employment or refusal to carry out a lawful and reasonable instruction.

19 Other Benefits

[Other benefits e.g. accommodation can be listed here.] (See Note 15)

SIGNED

..... **THE EMPLOYER**

..... **THE EMPLOYEE**

DATED

.....

NOTES TO THE FEDERAL EMPLOYMENT CONTRACT FOR PERMANENT EMPLOYEES

GENERAL – INTERPRETATION

National system employer

This template is for national system employers employing permanent full time or part time employees who are covered by the Pastoral Award 2010. There is a separate template for non award managers.

All employers in the private sector in New South Wales, Victoria, Tasmania, South Australia, Queensland, the Australian Capital Territory and the Northern Territory are called national system employers.

Businesses in Western Australia run by a company, including trusts with a company trustee, which employ workers as part of their business, are called national system employers.

Employers in Western Australia who run their business as a sole trader, partnership or trust which does not have a company trustee are called non national system employers. They should use the template for Western Australia which applies to managers as well as non managerial employees.

NOTE (1) PROBATION PERIODS

All new employees should be placed on a period of probation to enable both the employee and the employer to determine whether the employee is capable of doing the job and is suitable for the enterprise. Probation periods must be determined before work begins and cannot be extended. The length of the probation period must be reasonable in the circumstances and three months is generally accepted to be reasonable. If employers feel they need a longer period this must be justifiable based upon the special requirements of the job and the responsibilities which the employee will be required to undertake.

The federal industrial laws provide that employees of small businesses engaged for less than 12 months and employees of other businesses engaged for less than 6 months cannot bring an action for unfair dismissal.

NOTE (2) EMPLOYMENT CATEGORY

Full-time employees

Full-time employees are engaged on a permanent basis and the following entitlements usually apply: paid annual leave and personal leave (sick leave, carer's leave, compassionate leave/bereavement leave); parental leave and notice of termination. In addition, the Pastoral Award 2010 specifies payment for public holidays.

Part-time employees

Part-time employees are engaged for fixed hours every week and receive the same entitlements as full-time employees but on a pro-rata basis calculated on the proportion of the full-time rate.

The Pastoral Award 2010 provides that part-time employees must be engaged for a minimum of three consecutive hours, or 2 hours for full time secondary school students who are 18 years of age, or under, on any shift.

NOTE (3) HOURS OF WORK

Hours of work may be governed by an award or legislation. Most employees on dairy farms will be covered by the Pastoral Award 2010 (see below).

Managers

Some managers may be excluded from awards and therefore the federal industrial laws will govern their employment entitlements.

Employers who wish to engage a manager should check that the duties they are performing and their responsibilities are significantly greater than the duties contained in the FLH7 and FLH8 classifications in the Pastoral Award 2010. If the duties match these descriptions then the manager should be engaged as an award employee.

If employers want to put in place hours of work which are more flexible than the award then they should enter into a formal enterprise agreement or an Individual Flexibility Agreement under the award.

Pastoral Award 2010

Ordinary hours

The term 'ordinary hours' means hours of work where overtime is not payable.

Under this award ordinary hours are 152 hours worked over a four-week period. Ordinary hours for casuals are the same as for full-time employees.

Ordinary hours for part-time employees covered by the Pastoral Award 2010 are any hours less than 38 and must be agreed in writing specifying the hours and days of the week that the employee will work and the actual starting and finishing times each day.

Overtime

Once the 152 hours have been worked overtime is paid at the rate of time and a half for all hours worked with double time being paid for any work done on Sundays. Feeding and watering stock on Sundays is paid at the rate of time and one half. This does not include milking.

For an explanation of how the 152 hours over 4 consecutive weeks works in practice, download the **Overtime vs Ordinary Hours fact sheet** at

www.thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=147571

Overtime for part-time employees

Overtime for part-time employees applies to all hours over the agreed part-time hours.

The National Employment Standards (NES) about reasonable additional hours also applies to award employees. (See below)

Time Off Instead of Overtime (previously time off in lieu – TOIL- or ‘banked hours’)

The Award provisions about TOIL changed substantially as of the first pay period on or after 27 November 2017. For further information visit:

www.thepeopleindairy.org.au/engagement-reward/pastoral-award.htm#hours

Federal Industrial Laws – The NES

The National Employment Standards (NES) apply to all employment contracts as a minimum for all national system employers.

Reasonable Additional Hours

The NES does not use the word ‘overtime’. Under the NES, employees may be asked to work reasonable additional hours. The employment contract can only express hours of work in excess of the maximum 38 hours per week as *reasonable additional hours*.

What is reasonable for additional hours is decided by weighing up a variety of factors including risks to occupational health and safety; operational requirements of the business; personal circumstances and family commitments; whether the employee has had notice of the likelihood of the need for additional hours; and whether the employee has previously indicated a willingness or capacity to work additional hours. Generally, this will be a process of balancing the needs of the enterprise with the employee’s needs.

NOTE (4) PAY RATES

National system employers

Employers bound by the Pastoral Award 2010 should consider the pay rates contained in this award.

Classifications – Pastoral Award 2010

The Pastoral Award 2010 creates five separate classifications for dairy farm employees with different rates of pay for each classification.

The classifications reflect the different experience and skills of employees. The classifications are as follows:

- dairy operator grade 1A (farm and livestock hand level 1 - FLH1)

- dairy operator grade 1B (farm and livestock hand level 3 - FLH3)
- dairy operator grade 2 (farm and livestock hand level 5 - FLH5)
- senior dairy operator grade 1 (farm and livestock hand level 7 - FLH7)
- senior dairy operator grade 2 (farm and livestock hand level 8 - FLH8)

Pay rates

As pay rates vary, no pay rates are included in this document.

Visit the following websites for more information:

Pastoral Award 2010 http://www.fwa.gov.au/documents/modern_awards/pdf/MA000035.pdf

When determining a pay rate employers and employees should consider not only wages and salary but also other benefits which may be provided by the business for the purpose of making the position more attractive to the employee and thus assisting in staff retention. Employers could consider other benefits such as accommodation and use of vehicles, provision of meat and milk, extra superannuation, and extra leave entitlements.

Frequency of payment

The Pastoral Award 2010 specifies that award employees must be paid weekly or fortnightly.

For more information on working out a remuneration package, including information on Fringe Benefits Tax, visit www.thepeopleindairy.org.au

NOTE (5) ANNUAL LEAVE

The National Employment Standards (NES) apply to all employment contracts as a minimum and the template employment contract contains the NES terms.

The Pastoral Award 2010 contains the NES about annual leave. The Pastoral Award 2010 applies to all national system employers in the dairy industry for all employees in the classifications set out in the award. (See note 4)

Whilst the NES is a minimum, employers may wish to consider offering extra annual leave as part of a package.

The NES & the Pastoral Award 2010

The National Employment Standards (NES) for annual leave is four weeks per year which accrues progressively throughout the year and from year to year.

Annual leave must be paid at a rate which is no less than the base rate of pay for ordinary hours the employee is paid at the time of taking the leave.

Cashing out of annual leave

Annual leave can only be cashed out by award employees if it is a term of an award or enterprise agreement.

As of 29 July 2016 employers and employees covered by the Pastoral Award 2010, can agree in writing to cash out annual leave. The maximum amount of annual leave that can be cashed out in any 12-month period is 2 weeks and employees must keep a minimum of 4 weeks' accrued leave. The Award provides a template written agreement in a Schedule at the end of the award. This agreement must be kept with the employee's employment records.

For a template agreement to cash out annual leave, visit

www.thepeopleindairy.org.au/engagement-reward/national-employment-standards.htm#annual

The Pastoral Award 2010 – Annual Leave Loading

The award also requires payment of a 17.5% annual leave loading for all annual leave. Annual leave loading must also be paid when annual leave is paid out on termination.

NOTE (6) PERSONAL/CARER'S LEAVE AND COMPASSIONATE LEAVE

The National Employment Standards (NES) apply to all employment contracts as a minimum and the template enterprise agreement contains the NES terms.

The Pastoral Award 2010 contains the NES about personal/carer's leave. The Pastoral Award 2010 applies to all national system employers in the dairy industry for all employees in the classifications set out in the award. (See note 4)

Whilst the NES is a minimum, employers may wish to consider offering extra personal/carer's leave as part of a package.

The NES & The Pastoral Award 2010

Personal/ Carer's Leave and Compassionate Leave

Under the NES, employees (other than casual employees) are entitled to 10 days paid personal/ carer's leave for each year of service.

Personal/carer's leave accrues on a pro rata basis throughout the year and from year to year and there is no cap on how much of this leave can be used for carer's leave. Personal/carer's leave and compassionate leave accrue on the basis of the employee's ordinary hours of work.

Personal leave can be taken if the employee is not fit for work due to personal illness or injury.

Payment for personal/carer's leave is at the employee's base rate of pay for ordinary hours of work.

Casual employment contract template (updated January 2019)

Casual employees must be told that they are employed as a casual employee, the identity of the employer, their hours of work, classification level and pay rate. Employers are not required under the Pastoral Award 2010 to provide a written statement to casual employees but this is advisable. The contract of employment must not contain any terms or conditions for work which are inconsistent with or less favorable to the employee than the Pastoral Award 2010 and the National Employment Standards. If it does, these terms and conditions will not be enforceable.

Suggested steps for preparing and using a contract template

For more information, contact your dairy adviser or visit www.thepeopleindairy.org.au

Step 1: Have all the paperwork ready that you'll need

Before you can complete the contract template, you must read the example contract and accompanying notes. The contract makes reference to both the Pastoral Award and the National Employment Standards, so you might like to have those handy. You will need the Position Description to make sure the contract matches the job. This contract caters for **casual employees** - fill in the detail, as indicated. There is a **separate contract** for **full & part time workers** at www.thepeopleindairy.org.au/engagement-reward/contracts-and-agreements.htm

Step 3: Attach the position description

A position description should include:

- the job title;
- a summary of the role and how it fits into the business;
- details of the tasks to be undertaken for the role;
- the reporting structures and working relationships that apply;
- levels of performance required.

Step 4: Detail other benefits

The template provides a section for you to detail other benefits, such as accommodation.

Step 5: Meet with the new employee and provide employment contract

Meeting face to face with your new employee to provide the contract and talk about the contents is a good opportunity for:

- you to explain the terms and conditions of employment
- the employee to ask questions, and
- you to describe your expectations for the job

Step 6: Give your new employee time to consider the employment contract

You should give the person enough time to consider the contents of employment contract and seek their own advice (if they want it) before they accept the offer. When providing the contract, you should give a date by when you would like the person to let you know whether the offer is accepted. Also, it is good practice to give the employee your contact details in case they have more questions.

Step 7: Keep a copy of the signed contract and provide the employee with a copy

Once you have received the signed contract from the employee, return a copy to them. This ensures you both have a record of what has been agreed.

EMPLOYMENT CONTRACT

(For casual employees of National System Employers) (Note 1)

This is an employment contract

BETWEEN _____ **the Employer**

AND

_____ **the Employee**

1 Commencement Date

This employment contract commences on the _____.

2 Award

The Pastoral Award 2010 and the federal industrial laws govern this employment contract.

3 Employment Category (Note 2)

The employee is employed as a casual _____ to undertake the duties as outlined in the attached position description. *[Position description attached.]*

4 Employment Classification (Note 4)

The employee is classified as a _____.

5 Ordinary hours of work (Note 3)

The ordinary hours of work are _____.

6 Overtime/Additional hours (Note 3)

6.1 The employee will be expected to work reasonable additional hours.

6.2 This contract anticipates that the employee will work _____ of overtime/additional hours.

7 Remuneration (Note 4)

7.1 The rate of pay is _____ per hour/per week *[delete where not applicable]*.

7.2 The rate of pay for overtime is _____.

7.3. The employer will pay the employee weekly/fortnightly-*[delete where not applicable]* into a bank account/by cheque/in cash *[delete where not applicable]*.

8 Annual Leave (Note 5)

The employee is not entitled to annual leave as the casual loading compensates him/her for annual leave.

9 Personal/Carer's leave and Compassionate Leave (Note 6)

"Immediate family" is defined as follows:

- a) A spouse, child, parent, grandparent, grandchild or sibling of the employee;
- b) A child, parent grandparent, grandchild or sibling of a spouse of the employee.

9.1 The employee is entitled to two days unpaid personal/carers' leave per occasion for the purpose of caring for a member of their immediate family or household who requires care or support because of personal injury, illness or an unexpected emergency.

9.2 The employee is entitled to two days unpaid compassionate leave per occasion for the purpose of attending the funeral of a member of the employee's immediate family or a member of the employee's household or for spending time with a member of the employee's immediate family or a member of the employee's household who has a personal injury or illness which poses a serious threat to his or her life.

9.3 The employer may require medical evidence or a statutory declaration for any period of personal/carers' leave or compassionate leave.

10 Public Holidays (Note 7)

10.1 In accordance with the National Employment Standards, the employee is entitled to paid leave for the hours they would ordinarily work on public holidays which fall on days when the employee is rostered to work.

10.2 If the employee works on a public holiday he/she is entitled to be paid at double time.

11 Community Service Leave (Note 8)

11.1 The employee is entitled to unpaid community service leave to attend jury service or a voluntary emergency management activity as provided for in the NES.

11.2 The employee must provide evidence of the need for the leave if required to do so by the employer.

12 Long Service Leave (Note 9)

The employee is entitled to long service leave as provided for in the National Employment Standards or state legislation.

13 Parental Leave (Note 10)

The employee is entitled to Parental Leave in the form of Maternity, Paternity or Adoption Leave as provided for in the National Employment Standards.

14 Flexible Working Arrangements (Note 11)

The employee is entitled to make a written request for flexible working arrangements once the employee has completed 12 months continuous service.

15 Family and Domestic Violence leave (Note 12)

The employee is entitled to 5 days' unpaid leave per year to deal with family and domestic violence in accordance with clause 26A of the Pastoral Award 2010.

16 Superannuation

The employer will make superannuation contributions to a fund nominated by the employee. The superannuation contribution will be not less than that required under the *Superannuation Guarantee (Administration) Act*.

17 Other Benefits

[Other benefits e.g. accommodation can be listed here.] (See Note 15)

SIGNED

.....**THE EMPLOYER**

.....**THE EMPLOYEE**

DATED

.....

NOTES TO THE FEDERAL EMPLOYMENT CONTRACT FOR CASUAL EMPLOYEES

GENERAL – INTERPRETATION –

NOTE (1)

National system employer

This template is for national system employers employing casual employees.

All employers in the private sector in New South Wales, Victoria, Tasmania, South Australia, Queensland, the Australian Capital Territory and the Northern Territory are called national system employers.

Businesses in Western Australia run by a company, including trusts with a company trustee, which employ workers as part of their business, are also called national system employers.

Employers in Western Australia who run their business as a sole trader, partnership or trust which does not have a company trustee are called non national system employers. They should use the template for Western Australia.

NOTE (2) EMPLOYMENT CATEGORY

Casual employees

Casual employees are employees who do not have regular or systematic hours of work or an expectation of continuing work. A typical casual employee is employed on a daily basis when the need arises. Casual employees are usually paid a loading to compensate them for lack of entitlements such as annual leave, personal leave and the lack of continuity of work.

The Pastoral Award 2010 has a casual loading of 25% (See Note 3 below).

Employees who work similar hours each week which are known in advance should be hired as part-time employees and paid the various entitlements calculated on a pro-rata basis.

Casual employees may be entitled to overtime and payment for weekend work and public holidays depending upon the award.

Unfair termination laws have for some time recognised the concept of regular casual employees.

Employers should be aware that the federal industrial laws allow all casual employees engaged on a regular and systematic basis with a reasonable expectation of continuing employment to bring an action for unfair dismissal. They are also entitled to parental leave.

Notice periods do not usually apply to casual employees and this continues under the federal industrial laws which exempt employers of both short-term casuals and casuals engaged on a regular and systematic basis from the requirement to give notice.

NOTE (3) HOURS OF WORK

Hours of work may be governed by an award or legislation. Most employees on dairy farms will be covered by the Pastoral Award 2010. However, note that managers are excluded from awards and therefore the federal industrial laws will govern their employment entitlements.

If employers want to put in place hours of work which are more flexible than the award then they should enter into a formal enterprise agreement or an Individual Flexibility Agreement under the award.

The term 'ordinary hours' means hours of work where overtime is not payable.

Pastoral Award 2010

Ordinary hours

Under this award ordinary hours (see definition of ordinary hours above) are 152 hours worked over a four-week period. Ordinary hours for casual employees are the same as for full-time employees.

Minimum engagement

The Pastoral Award 2010 provides that casual employees are entitled to be paid for a minimum of 3 hours' work, or 2 hours for full time secondary school students who are 18 years of age or under.

Overtime

Once the 152 hours have been worked overtime is paid at the rate of time and a half for all hours worked with double time being paid for any work done on Sundays. Feeding and watering stock on Sundays is paid at the rate of time and one half. This does not include milking.

The National Employment Standards (NES) about reasonable additional hours also applies to award employees. (See below)

Time Off Instead of Overtime (previously time off in lieu – TOIL- or 'banked hours')

The Award provisions about TOIL changed substantially as of the first pay period on or after 27 November 2017. For more information, visit:

www.thepeopleindairy.org.au/engagement-reward/pastoral-award.htm#hours

Federal Industrial Laws – The NES

The National Employment Standards (NES) apply to all employment contracts as a minimum for all national system employers.

Some of the entitlements in the NES do not apply to casual employees as the casual loading compensates them for these entitlements.

They are as follows:

- Annual leave
- Some aspects of personal/carer's leave;
- Payment for attending jury service
- Notice of termination and redundancy benefits

Ordinary hours

Under the NES, ordinary hours of work for full-time non-award employees are 38 hours per week but these hours can be averaged over a 26-week period by written agreement between the employer and the employee. This only applies to non award employees such as managers. See above for hours of work for award employees.

Overtime

The NES does not use the word 'overtime'. Under the NES, employees may be asked to work reasonable additional hours. The employment contract can only express hours of work in excess of the maximum 38 hours per week as *reasonable additional hours*.

What is reasonable for additional hours is decided by weighing up a variety of factors including risks to occupational health and safety; operational requirements of the business; personal circumstances and family commitments; whether the employee has had notice of the likelihood of the need for additional hours; and whether the employee has previously indicated a willingness or capacity to work additional hours. Generally this will be a process of balancing the needs of the enterprise with the employee's needs.

The NES does not specify any extra payment for overtime for non award employees such as managers.

NOTE (4) PAY RATES

National system employers

The national minimum wage applies to all common law employment contracts for all award free employees of national system employers.

If the employee is not covered by an award, for instance a manager, the national minimum wage still applies to every hour worked and the salary paid must reflect this.

Employers bound by the Pastoral Award 2010 should consider the pay rates contained in this award.

Classifications – Pastoral Award 2010

The Pastoral Award 2010 creates five separate classifications for dairy farm employees with different rates of pay for each classification.

The classifications reflect the different experience and skills of employees.

The classifications are as follows:

- Dairy operator grade 1A
- Dairy operator grade 1B
- Dairy operator grade 2
- Senior Dairy operator grade 1
- Senior Dairy operator grade 2

Pay rates

As pay rates vary no pay rates are included in this document.

Go to the following websites for more information:

Pastoral Award 2010

http://www.fwa.gov.au/documents/modern_awards/pdf/MA000035.pdf

National minimum wage

<http://www.fwa.gov.au/index.cfm?pagename=minlatest>

When determining a pay rate employers and employees should consider not only wages and salary but also other benefits which may be provided by the business for the purpose of making the position more attractive to the employee and thus assisting in staff retention. Employers could consider other benefits such as accommodation and use of vehicles, provision of meat and milk, extra superannuation, and extra leave entitlements.

For more information on working out a remuneration package, including information on Fringe Benefits Tax, go to the Employment and Reward section of www.thepeopleindairy.org.au.

NOTE (5) ANNUAL LEAVE

Casual employees are not entitled to annual leave under the NES as the casual loading contains a component which compensates them for not receiving this entitlement.

NOTE (6) PERSONAL/CARER'S LEAVE AND COMPASSIONATE LEAVE

Only some aspects of the NES provisions apply to casual employees.

Carer's leave

Casual employees are entitled to 2 days of unpaid carer's leave per occasion.

Compassionate leave

Casual employees are entitled to 2 days unpaid compassionate leave per occasion.

Compassionate leave can be taken on 2 consecutive days, 2 separate days or any other period as agreed between the employer and the employee.

Compassionate leave is available for employees to spend time with a member of their immediate family or household who has developed personal illness or injury or after the death of a member of their immediate family or household.

Notice and evidence requirements

When taking personal/carer's leave and compassionate leave, employees must do the following or they are not entitled to take the leave:

- notify their employer as soon as is reasonably practicable (which can be a time after the leave has started);
- state the period, or expected period, of the absence
- if required by the employer—provide evidence that would satisfy a reasonable person of their entitlement to take the leave. (this can be a medical certificate or statutory declaration)

NOTE (7) PUBLIC HOLIDAYS**The NES & the Pastoral Award 2010**

The NES provides for employees to be absent from work on specified public holidays and this applies to both award and non award employees.

Payment is the employee's base rate of pay for ordinary hours of work.

Casual employees are not entitled to pay for public holidays unless they were rostered for work on that day.

The following days are public holidays for the NES:

- 1 January (New Year's Day)
- 26 January (Australia Day)
- Good Friday
- Easter Monday
- 25 April (Anzac Day)
- Queen's birthday holiday
- 25 December (Christmas Day)
- 26 December (Boxing Day)

If a State or Territory substitutes another day or declares an additional day, the employee is entitled to be absent on that day. If a day is substituted then this day becomes the public holiday for the purpose of working out entitlements and not the other day.

Substitution of other days

The Pastoral Award 2010 allows for employers and individual employees or employers and the majority of employees to agree to substitute an alternative day for the public holiday.

Award free employees can agree with employers to substitute public holidays.

Enterprise Agreements can also provide for substitution of public holidays.

Requests to work on public holidays

An employer may request an employee to work on a public holiday if the request is reasonable.

The request may be refused if it is unreasonable or the employee's refusal is reasonable. The NES provides list of factors to be taken into account when determining the reasonableness of a request or refusal.

Payment for working on public holidays

Payment for working on a public holiday is an award entitlement which does not apply to non award employees such as managers.

The Pastoral Award 2010

Work done on public holidays by farm and livestock hands is paid at the rate of double time.

NOTE (8) COMMUNITY SERVICE LEAVE

The NES provides an entitlement to leave for all employees required to attend jury service and for those who engage in a voluntary emergency management activity.

Jury service leave

Casual employees are not entitled to be paid by their employer for attending jury service as the casual loading compensates them for this entitlement.

Voluntary emergency management activities

Employees are entitled to unpaid leave to engage in voluntary activities which involve dealing with a natural disaster or emergency if they are voluntary members of the emergency management body and the body has requested them to attend. Emergency management bodies include fire fighting bodies, civil defence and rescue.

Notice requirements – community service leave

Employees must give employers notice of the need for community service leave as soon as possible and advise the employer of the expected length of the absence. Employers can also require employees to give them reasonable evidence of the need for the leave.

NOTE (9) LONG SERVICE LEAVE

State and territory laws provide for long service leave.

For further information go to go to the Engagement and Reward section of www.thepeopleindairy.org.au

NOTE (10) PARENTAL LEAVE

The federal parental leave laws contained in the NES apply to all employers.

Parental leave involves unpaid maternity leave, paternity leave and adoption leave.

Parents cannot take parental leave at the same time except for a period of up to eight weeks in total. This period of concurrent leave may be taken in separate periods but unless the employer agrees, each period must not be shorter than 2 weeks.

The concurrent leave must not start before the date of birth of the child or the day of placement of the child if the leave is adoption leave unless the employer agrees.

The entitlement exists once an employee has worked for the employer for 12 months. It also applies to certain long-term casual employees.

The laws about parental leave are complex and there are specific requirements for notification. Employers should seek legal advice or advice from their local state farming organisation if an employee becomes eligible for parental leave. For further information go to the Engagement and Reward section of The People in Dairy website www.thepeopleindairy.org.au.

NOTE (11) REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS

The laws about requests for flexible working arrangements changed on 1 December 2018.

As of that date Clause 26B of the Pastoral Award provides additional requirements which apply to award employees.

The NES give employees the right to request a change to working arrangements in the following circumstances:

- If the employee is a parent, or has the responsibility for the care, of a child who is of school age or younger;
- The employee is a carer (within the meaning of the Carer Recognition Act 2012);
- The employee has a disability;
- The employee is 55 or older;
- The employee is experiencing violence from a member of the employee's family;
- The employee provides care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing violence from the member's family.

In addition, parents or those who have responsibility for the care of a child and who are returning from a period of parental leave or adoption leave may request to work part-time to assist the employee to care for the child.

Permanent employees can make a request for flexible working arrangements if they have completed 12 months' continuous service with the employer.

Casual employees who have worked for the employer on a regular and systematic basis during a period of at least 12 months and who have a reasonable expectation of continuing work can also make a request for flexible working arrangements.

The request must be in writing and provide details of the change sought and reasons for the change.

If the employee is an award employee the employer and the employee must discuss the request and genuinely try to reach an agreement which will accommodate the employee's circumstances having regard to the following:

- the needs of the employee arising from their circumstances;

- the consequences for the employee if changes in working arrangements are not made; and
- any reasonable business grounds for refusing the request.

If the employee is award free the employer must consider the request.

Employers must respond to the request in writing within 21 days and give reasons if the request is refused.

A request may only be refused on *reasonable business grounds* which should be specified in the written response.

If the request is refused, award employees must also be provided with details of the reasons for the refusal and details of how the reasonable business grounds apply to them. In addition, the written response for award employees must state whether or not there are any changes in working arrangements that the employer can offer to the employee to better accommodate the employee's circumstances and if so these changes must be set out in the response.

If the employer and the award employee reach an agreement on a change in working arrangements that differs from that initially requested by the employee, the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

Reasonable Business Grounds are defined as follows:

Fair Work Act provides the following list of matters which may amount to reasonable business grounds but there may be others:

- That the new working arrangements would be too costly for the employer;
- That there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;
- That it would be impractical to change the working arrangements of other employees or recruit new employees to accommodate the new working arrangements requested by the employee;
- That the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity;
- That the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service;

Disputes about whether the employer has discussed the request with the award employee and responded to the request in the way required by clause 26B, can be dealt with under the dispute resolution clause in the Pastoral Award.

NOTE (12) FAMILY AND DOMESTIC VIOLENCE LEAVE

Family and Domestic Violence Leave is an award entitlement which applies as of 1 August 2018. See clause 26A of the Pastoral Award 2010.

Family and domestic violence is defined as:

Violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful

Family member is defined as:

- a spouse, de facto partner, child, parent, grandparent, grandchild, sibling of employee;
- a spouse, de facto partner, child, parent, grandparent, grandchild, sibling of employee's spouse or de facto partner;
- a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

NB: This includes former spouses or de facto partners.

Family and Domestic Violence Leave is unpaid leave of 5 days per year for domestic violence victims to deal with family and domestic violence.

Family and Domestic Violence Leave applies in full to all employees including part time and casual employees.

Family and Domestic Violence Leave does not accrue progressively or accumulate from year to year but is available in full at the commencement of each 12-month period of the employee's employment.

Family and domestic violence victims do not have to have exhausted other forms of leave before accessing Family and Domestic Violence Leave.

Notice and evidence requirements:

- Notice must be given to the employer as soon as practicable which can be after the leave has started.
- The employee must advise employer of the expected period of the leave.

- If required by the employer, the employee must provide evidence that would satisfy a reasonable person that the leave is taken for family and domestic violence reasons

eg a document from police/family violence support service/family court or a statutory declaration

Confidentiality requirement

Employers must ensure that any information provided by the employee with respect to family and domestic violence leave is treated confidentially.

NOTE (13) TERMINATION

It is very important to manage employee separation carefully whether the employee is leaving because of resignation, redundancy or dismissal. First, it minimises the risk of legal problems and secondly, it protects the reputation of both your business and you as an employer.

Employers should use fair procedures when terminating employees as replacing employees is expensive and claims for unfair or unlawful dismissal can be costly and time consuming to defend.

Termination of employment can lead to court action. Employers who are considering dismissing an employee should always obtain legal advice before doing so.

Further information can be found on the website www.thepeopleindairy.org.au under Engagement and Reward.

NOTE (14) NOTICE PERIODS

Casual employees are not entitled to notice of termination as the casual loading compensates them for this entitlement.

NOTE (15) ACCOMMODATION

Residential tenancies laws may apply to accommodation on farms where the accommodation is not a part of the wider lease of the farming property. These laws lay down notice periods for ending the tenancy, whether bonds can be required and how much can be charged as well as rules regarding repairs and inspection and agreements with specific terms. Breaches of these laws attract fines.

Deduction of rent

The Fair Work Act requires written authority from the employee if rental is deducted from wages or salary.

Go to the Engagement and Reward section of www.thepeopleindairy.org.au to find a template '[Authority To Deduct](#)'.

New South Wales, South Australia, Tasmania and Western Australia

In New South Wales, South Australia, Tasmania and Western Australia, residential tenancy laws do not usually apply where the tenancy is not 'for value' or 'consideration' which means that no rent is paid for the accommodation. However, farmers should be aware that making accommodation a part of a formal workplace agreement where the accommodation is used as a part of the Better Off Overall Test may have the effect of making the tenancy 'for value' and residential tenancy laws may then apply.

Victoria

In Victoria, residential tenancy laws do not apply where the tenancy is a part of the employment contract. Employers should agree with employees on a fair period of notice which will apply in the event that the employment is terminated. The notice period should be long enough to enable the employee to find alternative accommodation but also recognise the needs of the employer if the property is needed for a new employee. As a minimum, three to four weeks is considered to be fair in these circumstances.

Queensland

The Queensland residential tenancies laws may apply to accommodation on farms where the accommodation is not a part of the wider commercial lease of the farming property. Whilst residential tenancy laws can protect both the tenant and the landlord, the notice periods for ending the tenancy (four weeks) can be problematic when accommodation has been part of a remuneration package and an employee leaves as a result of their employment being terminated either with notice but particularly when dismissed summarily for misconduct. In these circumstances the only avenue available to the employer is to make an application to the tenancy tribunal to have the lease terminated earlier on the ground of hardship.

FAQ: How do I tackle pay rates?



Updated: from 1 July 2018



Step 1 – what is the employee's classification?

All employees should be given a classification which accurately reflects their skills and experience and the work they do. As a minimum, wages paid to the employee should meet award rates of pay which apply to their classification. The Pastoral Award 2010 applies to dairy employees. There are 5 employee classifications for dairy in the Award, which are summarised in the table overleaf.

Step 2 – find the minimum hourly rate – (you must pay this rate or above)

As of 1 July 2014, transitional pay rates no longer apply.

Reminder: as of 1 July 2014, the pay rates in the Pastoral Award 2010 apply to all [national system employers](#) across Australia, regardless of award coverage prior to 1 January 2010.

The minimum hourly rates for each employee classification are listed in the table below which apply from the **first pay period on or after 1 July 2018**.

| Employee classification | Hourly rate | Weekly rate |
|-------------------------|-------------|-------------|
| F H 1 | \$18.93 | \$719.20 |
| F H3 | \$19.75 | \$750.60 |
| F H | \$20.58 | \$782.00 |
| F H | \$22.04 | \$837.40 |
| F H8 | \$23.68 | \$899.70 |

Step 3 – is the employee full time, part time or casual?

Under the Pastoral Award 2010 ordinary hours are 152 hours worked over a four-week period. Ordinary hours for casuals are the same as for full-time employees. All part-time and casual employees are entitled to a minimum payment of 3 hours' work. A casual worker must be paid at the hourly rate plus 25%.

The minimum engagement period for full time secondary school students aged 18 years or younger is 2 hours.

Can I pay a flat hourly rate?

Once you have worked out the relevant minimum amounts of pay required by law and any other benefits which you may be able to provide, you can begin to work out a package.

Sometimes it may be more straightforward to pay a flat rate of pay taking into account overtime and penalty rates. As this is a variation to the award, the employer and employee must formalise the pay rate as part of an Individual Flexibility Agreement (IFA) or an enterprise agreement.

IFA's and enterprise agreements must pass the Better Off Overall Test (BOOT) to ensure the employee is better off overall compared to the award.

www.thepeopleindairy.org.au

Templates & Tools

Use the **flat rate calculator (Excel spreadsheet)** to work out the hourly flat rate that takes into account overtime & penalty rates. Visit www.thepeopleindairy.org.au/eski/ifa.htm

Further Reading

National Training Wage Schedule
www.thepeopleindairy.org.au/engagement-reward/pay-rates.htm

National Employment Standards
www.thepeopleindairy.org.au/engagement-reward/national-employment-standards.htm

Stepping Stones provides information on the different types of careers and explores the different pathways available for people looking to start and/or progress their dairy career further available at www.thepeopleindairy.com.au/steppingstones

Other topics

Pay rates, Working out a package and the Pastoral Award 2010 are available at www.thepeopleindairy.org.au/engagement-reward/pay-rates.htm

Record keeping
www.thepeopleindairy.org.au/engagement-reward/record-keeping.htm

For more information visit www.thepeopleindairy.org.au

This leaflet is a guide only and professional advice should be sought about your specific circumstances.

Classifications

| Pastoral Award 2010 classification | Job category | Indicative Training level |
|--|---|---------------------------|
| Farm and livestock hand level 1 (FLH1) Dairy operator grade 1A with less than 12 months' experience in the industry who: <ul style="list-style-type: none"> uses their knowledge and skills to perform set procedures such as milking and attending to livestock, haymaking, fencing. | Assistant Farm Hand (workers under supervision) This category is for people who are involved in a general range of farming tasks and working under supervision. | Certificate II |
| Farm and livestock hand level 3 (FLH3) Dairy operator grade 1B with 12 months' experience in the industry who: <ul style="list-style-type: none"> uses their knowledge and skills to perform set procedures such as milking and attending to livestock, haymaking, fencing. | Farm Hand (workers under limited supervision) This category is for people who are skilled or unskilled in a range of farming operations and work either independently or as part of a team. | Certificate III |
| Farm and livestock hand level 5 (FLH5) An employee at this level includes: Dairy operator grade 2 who: <ul style="list-style-type: none"> has two years experience in the industry; uses their knowledge and skills to multiple operations involving basic levels of problem solving and decision making; and has an appreciation of the overall processes involved in a dairy farm. | Senior farm hand This category is for skilled people working either independently or as part of a team. | Certificate IV |
| Farm and livestock hand level 7 (FLH7) An employee at this level includes: Senior dairy operator grade 1 who: <ul style="list-style-type: none"> uses their knowledge and skills to coordinate the operation of a farm process or area of expertise e.g. milking and animal attendance, pasture and farm maintenance, breeding programs and artificial insemination area. | Production Manager (implements policy and sets tactics) People in this role have significant responsibilities in managing the production activities on a dairy farm. Dairy farm production managers demonstrate broad industry knowledge and advanced technical skills. | Diploma |
| Farm and livestock hand level 8 (FLH8) An employee at this level includes: Senior dairy operator grade 2 who: <ul style="list-style-type: none"> under the direction of the owner or manager uses their expertise and skills in order to supervise and maintain the operation of a dairy farm. | Senior Production Manager (farm supervisor) (supervises staff and reports to management) People in roles of this category have responsibility for staff and various production activities on the farm. A supervisor is expected to carry out some business management activities like monitoring OH&S in the workplace, preparing operating budgets and supervising work routines of others. A senior production manager uses industry knowledge and may be asked to solve a range of problems. | Diploma |
| Award-free business manager | Business Manager (sets policy) People in roles in this category have significant responsibility for ensuring the dairy enterprise is managed successfully. They are expected to demonstrate extensive industry knowledge, technical skills and business management principles in order to perform this complex role. | Advanced diploma |

FAQ: Backpackers

Backpackers - what do i have to pay them?

Backpackers can provide short term staff at times of the year when extra help is needed. Many of the current crop of backpackers are escaping from recession in Ireland and Europe, and are often highly educated, enthusiastic and reliable workers.

Backpackers are entitled to the same minimum standards as any other employee, including correct pay rates for their classification, superannuation, overtime and penalty rates. It is important they are employed correctly, as the Fair Work Ombudsman DO prosecute and people who do not follow the rules give the industry a bad name.

Recruiting backpackers

One farmer who is very successful at recruiting backpackers advises doing up a flyer highlighting the tourist destinations in your area and sending it to backpackers' hostels in your local area, major cities and centres. Ask departing workers to pass the flyer onto their friends. You could also advertise online - suggested sites are available at www.thepeopleindairy.com.au/eski/employing_someone.htm

It's a good idea to do as much as the recruiting as possible by email, rather than answering constant call enquires.

The challenges

Language can be a barrier, but nothing that can't be got around. Before hiring backpackers, talk to them over the phone and get an idea of their level of English. To get the job, they should have at least some basic English – so they can understand you and you can understand them.

Although demonstration is often the best training, have your farm procedures written out in a variety of languages. A tip is to ask all backpackers to rewrite your procedures in their language.

The other main challenge is paperwork. It is the employer's responsibility to ensure people from overseas hold a valid working visa.

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You should ask backpackers to provide hard copies of their working visa, tax file number, superannuation, Australian bank account and drivers licence. If they don't know what you are talking about in terms of tax and super, they haven't worked in Australia before. That means you'll have to help them get a bank account, explain about super, etc. It's much easier for you if they already have this paper work set up.

Most backpackers only want short term work, and that can fit with seasonal workload. You can also help out with their visa because it can be extended if they work in agriculture for at least three months. It gives them an incentive to stay and it's worth your time in training them if they stay that long.

Often backpackers come in pairs, so it's good to structure their work requirements around that. Give them some time off together, and some apart. And putting them on split shifts gives them time off in the middle of the day to go to explore the area, or sleep.

Accommodation must be addressed. If there isn't appropriate accommodation nearby, the farmer must be able to house staff and there are a number of options. It is best to provide accommodation for backpackers separate from the family home. One option is to provide cabins, each with a bedroom, ensuite, lounge and kitchen. They pay rent, provide their own food and do their own cooking. You supply the basic furniture, appliances, water gas and electricity. They bring their own phone and internet access.

Backpackers generally entertain themselves but it can be nice tell them what's happening in the area, such as major events and point them to websites with local tourist information.

Under the Fair Work Act, your legal responsibilities when hiring a backpacker are the same as for any other employee

FAQ: Backpackers

Backpackers – know your workplace rights!

All people working in Australia, including foreign workers, are entitled to basic rights and protections and rights in the workplace. There are 10 basic minimum entitlements known as the National Employment Standards (NES) - visit www.thepeopleindairy.org.au/engagement-reward/national-employment-standards.htm

The Fair Work Ombudsman provides education, information and advice for employees and has produced a Fact Sheet entitled **Foreign workers – Know your workplace rights!** For more information, visit the Fair Work website www.fairwork.gov.au or call their infoline: **13 13 94**.

You can also read more at www.thepeopleindairy.org.au/employees/coming_from_overseas.htm

Checking prospective employee's entitlement to work in Australia

Work rights can be checked by asking to see a person's passport or other evidence of Australian citizenship, such as a birth certificate or certificate of citizenship, as well as appropriate photo identification.

The free **Visa Entitlement Verification Online (VEVO)** service is the safest and easiest way to check work entitlements of all new workers from overseas, providing you with current visa information: [www.border.gov.au/Busi/visas-and-migration/visa-entitlement-verification-online-\(vevo\)](http://www.border.gov.au/Busi/visas-and-migration/visa-entitlement-verification-online-(vevo))

Read more, including how often to check visas at www.thepeopleindairy.org.au/engagement-reward/hiringfromoverseas

Visa requirements for backpackers (updated November 2018)

Backpackers in Australia can be a source of short-term, seasonal labour for dairy farmers but Australian employers need to make sure backpackers they employ have the appropriate visa. It is the employer's responsibility to ensure the paperwork is in order and to pay award wages.

Employers are responsible for checking every worker from overseas has a valid Australian visa with work rights. The free **Visa Entitlement Verification Online (VEVO)** service is the safest and easiest way to check work entitlements of all new workers from overseas, providing you with current visa information: [www.border.gov.au/Busi/visas-and-migration/visa-entitlement-verification-online-\(vevo\)](http://www.border.gov.au/Busi/visas-and-migration/visa-entitlement-verification-online-(vevo)) The working holiday maker program is a cultural exchange program which allows visa holders to supplement their holiday funds through short-term work. Working holiday maker visa holders working in the dairy industry can work full-time for a period of 12 months with one employer.

Working holiday visa holders who performed 'specified work', in an eligible regional Australian area for a minimum of three months (88 days) while on their first working holiday (subclass 417) visa may be eligible for a second working holiday visa. 'Specified work' can include working on a dairy farm.

Holders of a second working holiday visa may return to work for a further twelve months for an employer with whom they worked on their first working holiday visa. This means if you employed a working holiday visa holder for twelve months on their first working holiday visa and they successfully obtained a second working holiday visa, they would be able to return to your employ for another twelve months.

FAQ: Part time vs casual workers

What is the difference between part time and casual workers?

Employees may be engaged as permanent full-time, permanent part-time, casual or seasonal employees. It is important to understand the difference between these different categories as the various entitlements and responsibilities are different for each category.

Failure to categorise the employee correctly and therefore to adhere to legal and award requirements can lead to misunderstandings and possibly legal action for underpayment of entitlements and prosecution for breach of the award.

What is the definition of a part-time employee?

Part-time employees are employed for fixed hours every week and have the same entitlements as full-time employees calculated on a pro-rata basis depending on the number of hours worked. Part-time employees are also entitled to notice of termination and to redundancy pay. If public holidays fall on days usually worked, the employee is entitled to payment for that holiday. See over the page for overtime rates.

What is the definition of a casual employee?

Casual employees are employees who do not have regular or systematic hours of work or an expectation of continuing work. A typical casual employee is employed on a daily basis when the need arises.

Casual employees are paid a loading to compensate them for lack of entitlements such as annual leave, personal leave and the lack of continuity of work. Casual employees are not entitled to notice of termination or redundancy. If casual employees are rostered to work on public holidays, they are entitled to payment for that holiday.

What is the loading for casual workers?

Under the [Pastoral Award 2010](#) - 25%. For WA state employers - 20%

What is casual conversion? (Updated Oct 2018)

Clause 10.5 of the Pastoral Award 2010 provides for some regular casual employees to request that their employment be converted from casual to permanent. Visit www.thepeopleindairy.org.au/engagement-reward/employees for more information.

www.thepeopleindairy.org.au

Templates & Tools

Download the **Flat Rate calculator** to work out the hourly flat rate that takes into account overtime and penalty rates. Visit www.thepeopleindairy.com.au/eski/ifa.htm

Further reading

National Employment Standards at www.thepeopleindairy.org.au/engagement-reward/national-employment-standards.htm

Individual Flexibility Agreements at www.thepeopleindairy.com.au/eski/ifa.htm

Other topics and pages

Pay rates, Working out a package and the Pastoral Award 2010 are available at www.thepeopleindairy.org.au/engagement-reward/pay-rates.htm

Record keeping at

www.thepeopleindairy.org.au/engagement-reward/record-keeping.htm

FAQ: Part time vs casual workers

Do I have to pay a minimum of 3 hours each shift or 3 hours in total for the day?

For part-time employees the award specifies that the employer must roster the employee for a minimum of 3 hours on any shift.

For casual employees, the award specifies that on each occasion the casual attends for work they are entitled to a minimum payment of 3 hours' work. This means that if the employee is doing two milkings per day each milking must be paid at a minimum of 3 hours. You can't add them together to make up the 3-hour minimum.

The minimum engagement period for full time secondary school students aged 18 years or younger is 2 hours.

Do I have to pay casuals and part timers overtime & penalty rates for work on weekends and public holidays?

Under the [Pastoral Award 2010](#) ordinary hours are 152 hours worked over a four-week period. All hours worked over the 152 hours are paid at overtime rates. Ordinary hours for casuals are the same as for full-time employees.

Once the 152 hours have been worked, overtime is at the rate of time and a half for all hours worked, with double time being paid for any work done on Sundays. Feeding and watering stock on Sundays is paid at the rate of time and one half. Milking is not regarded as 'feeding and watering stock'.

Overtime for casual employees is calculated the same way as for permanent employees. That is, overtime is not payable until 152 hours have been worked in a 4-week period regardless of the day the work is performed. For more information, refer to the **Overtime and Ordinary Hours fact sheet** in your ESKi folder (Payroll section).

Part-time employees must be paid overtime rates for all work performed in excess of the agreed part-time hours.

All public holidays are paid at double time. State employers in WA do not pay penalty rates for overtime.

Do I have to pay overtime if I pay a flat hourly rate?

In some circumstances it may be more straightforward to work out a package for employees, which includes a flat rate of pay taking into account overtime and penalty rates. As this is a variation to the award, the employer and employee must formalise the pay rate as part of an [Individual Flexibility Agreement \(IFA\)](#) or an enterprise agreement.

Individual Flexibility Agreements and enterprise agreements must pass the Better Off Overall Test (BOOT) to ensure that the employee is better off overall compared with the award.

The flat rate calculator will help you to work out an hourly flat rate that takes into account overtime and penalty rates.

Employees who work similar hours each week

Employees who work similar hours each week, which are known in advance, should be hired as permanent employees, either full time or part time and paid their various entitlements.

Read more about employees at www.thepeopleindairy.com.au/engagement-reward/employees.htm

What is the Pastoral Award 2010?

An award is an enforceable document containing minimum terms and conditions of employment in addition to any legislated minimum terms.

The Fair Work Commission has responsibility for making and varying awards in the national workplace relations system.

As of 1 January 2010, the only federal award which applies to the dairy industry is federal **Pastoral Award 2010** (which is in the back of the ESKi folder).

Read more about the Pastoral Award at www.thepeopleindairy.com.au/engagement-reward/pastoral-award.htm

What are employees' leave entitlements?

Annual leave

All full-time employees are entitled to four weeks paid annual leave each year. Part-time employees accrue paid annual leave on a pro rata (proportional) basis. The Pastoral Award 2010 (which covers dairy employees) provides for a 17.5% annual leave loading to be paid to award employees when taking annual leave and upon termination if any annual leave is paid out.

Leave loading is a payment of 17.5% in addition to the base rate of pay to compensate employees for the loss of overtime pay while they are on annual leave. Check clause 23.12 of the Pastoral Award 2010 for conditions .

Casual employees are not entitled to annual leave as the casual loading is calculated to include a component to compensate them for loss of annual leave entitlements.

Can employees cash out their annual leave?

As of 29 July 2016, employers and employees covered by the Pastoral Award 2010 can agree in writing to cash out annual leave. Check clause 23.12 of the Pastoral Award 2010 for conditions.

Each agreement to cash out annual leave must be in writing and the payment must be for the full amount that the employee would have been paid if the employee had taken the leave. A separate agreement is required each time annual leave is cashed out.

Schedule F in the Pastoral Award 2010 has a template you can use if an employee wishes to cash out annual leave - see the back of this folder.

Employees who are not covered by an award or enterprise agreement (such as managers) may agree in writing with their employer to cash out annual leave.

Can an employee request annual leave at the busiest time of year?

The information you are looking for is contained in the National Employment Standards. The National Employment Standards state, at clause 88:

Taking paid annual leave:

- Paid annual leave may be taken at times agreed between an employee and his or her employer.
- The employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

Resources in this section

- Application for Leave form
- Leave record templates

The Pastoral Award 2010 and the National Employment Standards are bulky documents which, for your convenience, are located at the back of this ESKi folder.

Can I make an employee take leave?

Terms about excessive leave in the Pastoral Award 2010 changed as of **29 July 2017**.

Accrued annual leave is regarded as 'excessive' if more than eight weeks' annual leave has accrued. If employees have accrued excessive annual leave, the employer and the employee can discuss ways to reduce or eliminate the amount of leave owing.

If the employer and the employee cannot agree on the taking of leave, clauses 23.6, 23.7 and 23.8 of the Pastoral Award 2010 provide a procedure for the employer to direct the employee to take the excessive leave and a procedure for the employee to require the employer to grant the excessive leave.

These provisions only apply if there is an excessive leave balance (more than eight weeks' leave accrued). Read more at www.thepeopleindairy.org.au/engagement-reward/pastoral-award.htm

How much sick leave do I have to pay?

Sick leave is now called personal leave. Under the National Employment Standards full-time employees (other than casuals) are entitled to 10 days paid personal/carer's leave for each year of service.

Personal/carer's leave accrues on the basis of the employee's ordinary hours of work progressively throughout the year and from year to year and there is no cap on how much of this leave can be used for carer's leave. Personal leave can be taken if the employee is not fit for work due to personal illness or injury, and generally a doctor's certificate should be provided.

Carer's leave can be taken to provide care or support for a member of the employee's household or immediate family due to personal illness or injury or an unexpected emergency. Payment for personal/carer's leave is at the employee's base rate of pay for ordinary hours of work. Unpaid carer's leave may also be taken if personal leave has been used up.

What are the other leave entitlements?

Long service leave

The long service leave laws vary from state to state. Note that as 1 November 2018, long service leave entitlements changed in Victoria - visit www.thepeopleindairy.org.au/engagement-reward/Vic-state-industrial-laws.htm

Unpaid leave

- Parental and adoption leave of 12 months (unpaid), with a right to request an additional 12 months.
- Community service leave, for activities dealing with certain emergencies or natural disasters.

Family and domestic violence leave

Family and domestic violence leave is an award entitlement which **applies as of 1 August 2018**, and from 12 December 2018 as part of the National Employment Standards with apply to all employees.

Family and domestic violence means:

- Violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

Family member means:

- spouse, de facto partner, child, parent, grandparent, grandchild, sibling of employee;
- spouse, de facto partner, child, parent, grandparent, grandchild, sibling of employee's spouse or de facto partner;
- person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.
- This includes former spouses or de facto partners.

Family and domestic violence leave is unpaid leave of 5 days per year for domestic violence victims to deal with family and domestic violence.

Family and domestic violence leave **applies in full to all employees** including part time and casual employees.

Family and domestic violence leave does not accrue progressively or accumulate from year to year but is available in full at the commencement of each 12-month period of the employee's employment.

Family and domestic violence victims do not have to have exhausted other forms of leave before accessing family and domestic violence leave.

Notice and evidence requirements

- Notice must be given to the employer as soon as practicable which can be after the leave has started.
- The employee must advise employer of the expected period of the leave.
- If required by the employer, the employee must provide evidence that would satisfy a reasonable person that the leave is taken for family and domestic violence reasons e.g. a document from police/family violence support service/family court or a statutory declaration.

Confidentiality requirement

Employers must ensure that any information provided by the employee with respect to family and domestic violence leave is treated confidentially.

BY LAW

You must keep written time and wages records for your employees for 7 years

Learn more

Visit the ESKi at:
www.thepeopleindairy.org.au/eski



Which leave gets paid out on termination?

Accrued annual leave must be paid out on termination. You don't have to pay out accrued personal/carer's leave. Long service leave may have to be paid out on termination see www.thepeopleindairy.org.au/pastoralaward for more information.

Record keeping

Under the Fair Work Act employers have to keep written time and wages records for their employees for 7 years, including records of leave taken and leave balances. Maintaining employee leave records can take up a lot of time. If you employ a number of staff, talk to your accountant or bookkeeper about investing in a computerised accounts package such as MYOB or Quickbooks.

Leave checklist

- ☐ Do you have processes in place for employees to apply for annual, personal, compassionate, parental, community service and long service leave? See **Application for Leave form**
- ☐ Do you maintain accurate records of employee leave entitlements? See **Leave record templates**

INDIVIDUAL FLEXIBILITY AGREEMENT

Dated the <insert day> day of <insert month> <insert year>

BETWEEN:

<insert employer name> [the employer]

AND

<insert employee name> [the employee] **(See Note 1)**

1. This Individual Flexibility Agreement is made under the Pastoral Award 2010.
2. This Individual Flexibility Agreement begins to operate on the <insert date agreement begins>
3. The employer and the employee hereby agree that the Pastoral Award 2010 is varied as follows: **(See Note 2)**

<You must detail each award term which has been varied and how it has been varied.>

<You must detail how the employee is Better off Overall as a result of the variation to each award term.>

Sample clauses to implement a flat rate of pay. (See Note 2)

- 3.1 *Clause 23.4 (which deals with annual leave loading), clause 31 (which deals with overtime) and clause 32 (which deals with payment for public holidays) of the award are varied as follows:*
- 3.2 *In place of payment for annual leave loading, overtime and payment for working public holidays, the employee will be paid a flat hourly rate of pay of <insert \$ amount> for all hours worked.*
- 3.3 *The employee is Better Off Overall than the award because under the award the employee would have received a total of <insert \$ amount> per week/month/year ~~<delete where not applicable>~~. See attached spreadsheet.*
- 3.4 *The weekly hours of work will be <insert total weekly hours> which is made up of 152 hours over 4 weeks of ordinary time (as defined in the Pastoral Award 2010) at \$<insert \$ rate for ordinary hours> and <insert number of overtime hours> at \$<insert \$ rate for overtime hours>. **(See Note 2 re superannuation)***
4. This Individual Flexibility Agreement can be terminated in the following ways:
 - i) if the employer and the employee agree in writing to its termination this Individual Flexibility Agreement will be terminated as of the date of the agreement.

- ii) by either the employer or the employee giving 13 weeks' written notice of termination to the other person. At the end of the notice period this Individual Flexibility Agreement will cease to operate.
5. The employer and the employee have genuinely agreed to enter into this Individual Flexibility Agreement to meet the genuine individual needs of both parties and without any coercion or duress. **(See Note 3)**

SIGNATURES (See note 4)

The Employer

Date _____

Signed _____

Name in full (printed) _____

Position _____

Employer address _____

The Employee

Signed _____

Name in full (printed) _____

Employee address _____

Parent or Guardian (if the employee is under 18 years of age)

Signed _____

Name in full (printed) _____

Parent or Guardian's address _____

NOTES TO THE INDIVIDUAL FLEXIBILITY AGREEMENT

GENERAL NOTES

All of the clauses in this agreement are compulsory.

They should all be completed where applicable and none should be removed.

If the employer wishes to enter into an IFA with an employee they must put the request in writing.

A [template letter of request](#) is on the website.

It is suggested that at this stage a draft of the proposed IFA be given to the employee.

NOTE 1

An IFA can also only be made after the employee has commenced employment and is entitled to the minimum award conditions contained in the relevant modern award.

This means an employer cannot ask a prospective employee to agree to an IFA as a condition of employment.

NOTE 2

This clause must detail each award term which has been varied and how it has been varied.

IFAs can only vary the following award terms:

- arrangements for when work is performed such as working hours;
- overtime rates;
- penalty rates;
- allowances, and
- leave loading.

In addition, the clause must detail how the employee is Better off Overall as a result of the variation to each award term.

What is the Better Off Overall Test?

The Better Off Overall Test compares the agreement with the relevant award. The agreement will pass the Better Off Overall Test if on balance the employee is better off than they would have been if no agreement had been entered into and they remained subject to the award

In most cases this will amount to a comparison of the financial rewards the employee receives before and after the enterprise agreement is entered into.

The following is a step-by-step process you could use to work out if the agreement passes the Better Off Overall test.

There is a spreadsheet on the website ([Flat Pay Rate Calculator](#)) which performs this calculation for you.

Better Off Overall TEST CALCULATOR

1. Calculate the minimum amount due under the award

- Assess the total hours needed to be worked over a given period (say 4 weeks if using the Pastoral Award 2010 which provides for 152 hours over a 4 week period before any overtime is payable).
- Work out the total rate of pay for this period of time taking into account any overtime and penalty rates which will be payable.
- Multiply by 12 months if hours of work will be regular over that time. If hours will not be regular break the calculation down into the various periods when hours will be regular.
- Add in the value to the employee of double time pay for any public holidays which are usually worked.
- Add in the value of annual leave loadings if you wish to include these.
- This will give you the minimum annual amount you will need to pay employees in each classification to meet the Better Off Overall Test.

2. Divide the total amount by the total number of hours to be worked over the year.

3. The final amount is the hourly rate you will enter into the agreement for that employee.

What about superannuation?

Superannuation is payable on Ordinary Time Earnings (OTE) which are defined in the taxation laws.

Overtime is NOT defined as Ordinary Time Earnings but if you pay a flat rate of pay which incorporates overtime and the overtime is not distinctly identifiable then superannuation must be paid on the full amount.

If, however the payment includes an amount that is “expressly referable” to overtime hours as remuneration for overtime worked then the payment for overtime will not be OTE. (Superannuation Guarantee Ruling SGR 2009/2)

The ATO has issued an administratively binding advice which is on the ATO website. The reference number is 1012597896867.

While this advice is specific to the employer who sought the advice it is useful to ascertain how the ATO might interpret the situation. If you want absolute certainty then you should seek your own private ruling from the ATO.

The advice states that if the hours which are **ordinary time hours** are **clearly specified in an IFA** then superannuation need only be paid on these hours not on all of the hours worked.

This is because the IFA does not alter the hours which are ordinary hours of work but rather varies the rate of pay for the overtime hours and those hours.

if you wish to pay superannuation on the 38 hours worked not the hours inclusive of overtime then Sample *Clause 3.4* should be included in the IFA. It has been drafted to comply with SGR 2009/2 and the ATO Advice to ensure that the overtime hours are ‘expressly referable’. The spreadsheet which you will attach to the IFA will also identify the overtime hours.

NOTE 3

An employee or employer must not be forced to enter into an IFA and a person must not be treated adversely or discriminated against for refusing to agree to an IFA.

It is the employer’s responsibility to ensure that an employee has genuinely agreed to an IFA.

Employers should be careful not to make false or misleading statements about the effect of the IFA or penalties could apply. Statements made carelessly may also attract penalties if the employee is misled, even if this was not intended.

It is the employer’s responsibility to ensure that an employee has genuinely agreed to an IFA. This means that the employer should take steps to ensure that the employee fully understands the effect of the agreement as compared to the award entitlements. It is a good idea to have a copy of the award available for the employee to look at.

When making an IFA, an employer should keep in mind any language or cultural differences that might affect the employee’s understanding of the terms of the IFA or their choice to agree to an IFA.

If any employees have limited literacy, employers will need to be especially careful to make sure they understand the effect on them of each clause of the proposed agreement.

NOTE 4

Unlike enterprise agreements, IFAs do not need to be approved by the Fair Work Commission.

It is the employer's responsibility to ensure that the IFA is made correctly, and meets all of the requirements of the FW Act.

An IFA must be in writing and signed by the employer and employee. If the employee is under 18 years of age, it must also be signed by the employee's parent or guardian.

Once an IFA has been made, it is the employer's responsibility to ensure that a copy of the IFA is given to the employee.

The employer must also keep a copy with the employee's employment records.

If a worker's no good, can I make them redundant?

Redundancy must be genuine, or it will be considered to be an unfair dismissal. Among other things, genuine redundancy requires that the job is no longer required to be done by **anybody**.

I'm downsizing – how do I make an employee redundant?

A job becomes redundant when an employer decides that the job the employee has been doing is no longer needed or that fewer employees are needed to do that type of job because of the operational requirements of the employer's business.

Redundancies usually occur in farming where a farmer is retiring, cutting staff to save costs or introducing new machinery or technology.

Under the federal industrial laws which commenced on 1 July 2009, a redundancy may also be regarded as an unfair dismissal if the employer could have redeployed the employee elsewhere in the business.

It may also be recorded as an unfair dismissal if the employer has not consulted with the affected employees, as required by the Pastoral Award (clause 8.1). Redundancy entitlements include:

- Notice of termination and redundancy pay – amount and duration depending on years of service and age
- Paid leave to look for work.

How much notice must I give?

Notice periods are calculated according to the length of the employee's continuous service. These periods are a minimum only and longer notice periods can be given. Employers and employees are required to give written notice.

| Employee's period of continuous service with the employer at the end of the day notice is given | Notice period |
|---|---------------|
| Not more than 1 year | 1 week |
| More than 1 year but not more than 3 years | 2 weeks |
| More than 3 years but not more than 5 years | 3 weeks |
| More than 5 years | 4 weeks |

If the employee is over 45 years old and has completed at least two years of continuous service with the employer at the end of the day on which the notice is given, the employee is entitled to an extra week's notice.

The Pastoral Award 2010 provides for employees to give the same amount of notice as employers. Notice by employers and employees must be in writing. Note that employees do not have to give the additional week of notice based on the age of the employee and length of service.

If they fail to give notice, employers can deduct money from the employee's termination payments. The deduction must be 'reasonable in the circumstances'. Read more about notice in the Termination section at www.thepeopleindairy.org.au/engagement-reward/termination.htm

Learn more

Visit the ESKi at:
www.thepeopleindairy.org.au/eski



Termination checklist

- ☐ Did you know that a position can only be declared redundant if the job is no longer required to be done by anybody?
- ☐ Did you know that employees must be given an opportunity to improve their performance?

What is the Pastoral Award 2010?

Awards are legal documents setting out minimum rates of pay and conditions of employment which apply to employees in a particular industry or occupation. Laws and awards override employment contracts. An employer and employee cannot agree to 'contract out' of an award; that is, offer pay or conditions lower than those in the award.

As of 1 January 2010 the federal Pastoral Award 2010 covers employees in the dairy industry.

Clause 5 of the Pastoral Award requires that employers must ensure that copies of the award and the National Employment Standards are available to all employers covered by the award on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

The Award is quite bulky, as it also covers other Pastoral industries. The sections relevant to dairying are:

- Part 1 – Application and Operation
- Part 2 – Consultation and Dispute Resolution
- Part 3 – General Employment Conditions
- Part 4 – Broadacre Farming and Livestock Operations

To make it easier, the relevant sections and award classifications have been highlighted in yellow

- Schedule B – Supported Wage System
- Schedule C – National Training Wage
- Schedule D – Part-day Public holidays
- Schedule E – Agreement to Take Annual Leave in Advance
- Schedule F – Agreement to Cash Out Annual Leave
- Schedule G – Agreement for time off instead of payment for overtime

Resources in this section

- Pastoral Award 2010
- National Employment Standards



You must ensure that copies of **The Pastoral Award 2010** and the **National Employment Standards** are available to all employees covered by the award on a noticeboard that is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible. Copies are available at: www.thepeopleindairy.org.au/eski

Tip

For quick and easy access and ease of use,
download the Pastoral Award 2010 at:
www.thepeopleindairy.org.au/eski



Note: in Parts 1, 2, 3 and the Schedules listed, the headings have been highlighted. Information in these sections covers all Pastoral industries, including dairy. The table of contents is highlighted to indicate this.

Part 4 contains specific information regarding classifications and pay rates relevant to dairy. Clause 28 deals with minimum wages, which is the lowest amount which can legally be paid to an employee. These minimum wage rates are reviewed each year by the Fair Work Commission. This is called the 'annual wage review'.

Any changes to minimum wages start to apply from 1 July annually.

Subscribe to People Matters at www.thepeopleindairy.org.au/subscribe and ensure you receive regular wage updates via e-mail.

Learn more

To find the latest pay rates, check out the ESKi at:
www.thepeopleindairy.org.au/eski



Employers must ensure that copies of The Pastoral Award 2010 and the National Employment Standards are available to all employers covered by the award on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

What are the National Employment Standards?

The National Employment Standards (also known as the NES) are a safety net of 10 minimum conditions, set out by law, for all employees.

Some of these conditions also apply to casual employees.
These are:

- A maximum standard working work of 38 hours for full-time employees, plus 'reasonable' additional hours.
- A right to request family friendly flexible working arrangements for employees with caring responsibilities, parents or guardians of children that are school age or younger, employees with disability, employees who are 55 years or older, and employees who are experiencing family violence or who are caring for or supporting a family or household member who is experiencing family violence.
- Parental and adoption leave of 12 months (unpaid), with a right to request an additional 12 months.
- Four weeks paid annual leave each year.
- Ten days paid personal/carer's leave each year, two days paid compassionate leave for each permissible occasion; and two days unpaid carer's leave (once the ten paid days are used up) for each permissible occasion; and five days unpaid domestic violence leave (in a 12 month period).
- Community service leave for jury service or activities dealing with emergencies or natural disasters. This leave is unpaid except for jury service.
- Long service leave.
- Public holidays and the entitlement to be paid for ordinary hours on those days.
- Notice of termination and redundancy pay.
- The right for new employees to receive the **Fair Work Information Statement** (see **The Law Section**).

Some of these conditions also apply to casual employees.

BY LAW

You must ensure that copies of the **Pastoral Award 2010** and the **National Employment Standards** are available to all employees covered by the award on a noticeboard that is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible. Copies are available at:

www.thepeopleindairy.org.au/eski

Tip

For quick and easy access and ease of use, download the NES at:

www.thepeopleindairy.org.au/eski

