

FOR EMPLOYEES ON ANNUALISED SALARIES - DECEMBER 2021

<insert business name>

EMPLOYMENT CONTRACT

*(For Permanent Award Employees of National System Employers on an Annualised Salary)*

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 Pastoral Award 2020 and the federal industrial laws govern this employment contract.

4 Employment Category (See Note 2)

The employee is employed as a full-time permanent <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 by Annualised Salary (See Note 4)

8.1 The rate of pay is <insert pay rate> per year which will be paid in 26 fortnightly instalments/52 weekly instalments. *[delete where not applicable]*.

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

8.3 The entitlements contained in the following clauses of the Pastoral Award 2020 are included in the annualised salary *[delete where not applicable]*:

a) Clause 32 which deals with minimum wages;

b) Clause 34 which deals with ordinary hours of work and rostering

c) Clause 35 which deals with overtime;

d) Clause 35.5 which deals with payment for public holidays;

e) Clause 20.5 which deals with annual leave loading.

8.4 The average 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 2020) at *$<*insert $ rate for ordinary hours>and <insert number of overtime hours> *at $<*insert Award $ rate for overtime hours>.

The attached spreadsheet details how the annualised salary has been calculated. <attach completed spreadsheet >

8.5 it is anticipated that the outer limit of ordinary hours and overtime hours which will be worked in any pay period or roster cycle without being entitled to additional payment will be <insert outer limit of ordinary/overtime/additional hours anticipated to be worked >

8.6 This agreement to pay an annualised salary may be terminated by either the employer or the employee giving 12 months’ notice or by agreement at any time between the employer and the employee.

9 Annual Leave (See Note 5)

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.

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. This entitlement is included in the annualised salary. <delete if not included in the salary>

**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.

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

10.2 The employee can use their personal/carer’s leave as paid carer’s 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)**

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.

11.2 If the employee works on a public holiday he/she is entitled to be paid at double time. This entitlement is included in the annualised salary. <delete if not included in the salary>

**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 24 of the Pastoral Award 2020.

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; sexual harassment, 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)**

**20 Annualised salary calculator**

*Paste or attach a copy of the Annualised Salary Calculator here along with the signing clauses*

SIGNATURES

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 FEDERAL EMPLOYMENT CONTRACT FOR PERMANENT EMPLOYEES – ANNUALISED SALARY**

*Remove these notes before you give this contract to the employee.*

GENERAL – Interpretation

National system employer

This template is for national system employers employing permanent full time employees on an annualised salary who are covered by the Pastoral Award 2020. 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 2020 specifies payment for public holidays.

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 2020 (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 2020. 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 2020

Ordinary hours

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

Under the Pastoral Award 2020 ordinary hours are 152 hours worked over a four-week period. Ordinary hours for casuals are the same as for full-time employees.

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](http://www.thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=147571)

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

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 2020 should consider the pay rates contained in this award.

Classifications – Pastoral Award 2020

The Pastoral Award 2020 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 2020 <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 2020 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](http://www.thepeopleindairy.org.au)

**Annualised salary**

This contract formalises payment of an annualised salary which is permissible for employees covered by the Pastoral Award 2020 as of the first full pay period commencing on or after 1 March 2020

Employers and employees can now agree in writing for the employee to be paid an annualised wage or a salary instead of being paid an hourly rate.

The relevant section is clause 17 of the Pastoral Award 2020.

The annualised salary must take into account “ordinary hours” anticipated to be worked and “overtime” anticipated to be worked.

The annualised wage can take into account any or all of the following:

* Minimum wages;
* Hours of work and rostering;
* Allowances and special allowances;
* Overtime rates;
* Penalty rates;
* Annual leave loading;
* Payment for public holidays.

It is suggested that the spreadsheet which can be found on the Pastoral Award page of the People in Dairy website be used to calculate the annual salary.

**The written agreement**

The written agreement must specify the following:

* The annualised wage that is payable.
* Which provisions of the Award are included in the annualised salary.
* The method of calculating the annualised salary specifying each separate component of the annualised wage and any overtime or penalty assumptions used in the calculation.
* The outer limit of the ordinary hours which attract penalty rates in a pay period or roster cycle.
* The outer limit of the overtime hours which will be worked in a pay period or roster cycle without being entitled to an extra payment (see below).

Thus, keeping accurate time records is essential.

A copy of the agreement must be given to the employee and the employer must keep a copy as a time and wages record.

If in any pay period or roster cycle the employee works in excess of the hours specified the employee must be paid for these hours in addition to the annualised salary. Time off instead of overtime (previously TOIL) may be used for any additional overtime worked provided the employer and employee enter into the required formal agreement. (See clause 35.6 of the Pastoral Award 2020)

An agreement for an annualised salary can be terminated by either party by giving 12 months’ notice or at any time by agreement between the employer and the employee. (note that this refers to the agreement only and the employee would remain employed but would fall back to coverage by the award)

Entitlements such as annual leave and personal/carer’s leave are calculated on the award base rate not the loaded rate. See clause 17.3 of the Pastoral Award 2020

*No disadvantage*

The annualised salary must be no less than the amount the employee would have received under the award for the work performed over the year of the Agreement – or less if the employment is terminated before a year.

This is similar to the BOOT test for an IFA

The flat rate calculator can be used to calculate the salary to ensure that the employee is not disadvantaged.

Every 12 months or on termination of the employment the employer must do a tally of the hours worked and the amounts paid to ensure that there is no shortfall. If there is a shortfall the employer must pay this to the employee within 14 days,

*Record keeping*

Records must be kept of the following:

* Starting and finishing times
* Any unpaid breaks taken

These records must be signed by the employee each pay period or roster cycle.

*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 the contract** then superannuation need only be paid on these hours not on all of the hours worked.

This is because the annualised salary 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 Clause 8.4 must be in the contract. 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 (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 2020 contains the NES about annual leave. The Pastoral Award 2020 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 2020

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 2020, 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](http://www.thepeopleindairy.org.au/engagement-reward/national-employment-standards.htm#annual)

The Pastoral Award 2020 – 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.

Annual leave loading may be included in the calculation for the annualised salary and if this is the case will not be paid when annual leave is taken or paid out.

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 2020 contains the NES about personal/carer’s leave. The Pastoral Award 2020 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 2020

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 2020 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 2020

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.

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 2020 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 2020

Work done on public holidays by farm and livestock hands is paid at the rate of double time. Public holiday pay may be included in the calculation for the annualised salary and if this is the case will not be paid when public holidays are worked.

**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](http://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](http://www.thepeopleindairy.org.au)

NOTE (11) REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS

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

Section 65 of the Fair Work Act 2009 provides for Requests for Flexible Working Arrangements as part of the NES.

Clause 6 of the Pastoral Award 2020 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 6, can be dealt with under the dispute resolution clause in the Pastoral Award (Clause 28).

**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 24 of the Pastoral Award 2020.

*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](http://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 2020 contains the NES about notice of termination plus further terms about employee notice and the job search entitlement. The Pastoral Award 2020 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 2020

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 2020 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 2020

Under the Pastoral Award 2020 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.

Employers must give written notice but employees may give verbal notice.

If the employee fails to give notice and is over 18 years of age, the employer can deduct up to 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 2020

Under the Pastoral Award 2020 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](http://www.thepeopleindairy.org.au) to find a template ‘[Authority To Deduct’](http://www.thepeopleindairy.org.au/engagement-reward/record-keeping.htm#payment).

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.