



IR UPDATE

WORKING HOURS

As members head into the busy season, AFRA has had enquiries about the hours employees can be required to work. The two main sources of obligations are the Fair Work Act's National Employment Standards (NES), and awards.

Members should also be aware of the Heavy Vehicle National Law fatigue management requirements. Drivers of fatigue regulated vehicles must comply with either Standard Hours or the appropriate accreditation scheme.

ORDINARY HOURS OF WORK

The NES maximum hours for full time employees are 38 hours plus reasonable additional hours. What is reasonable? The factors that the NES allows for include: any effect on health, the needs of the employer and employee, how much notice is given, whether there's any extra pay and the usual industry pattern of work.

CALCULATING PAY

Many modern awards allow some flexibility, usually involving averaging arrangements. One problem with the Road Transport and Distribution Award 2020 (RTD Award) is that this flexibility is tied to Rostered Days Off (RDOs). Ordinary hours can only be worked on the weekend if employees are on roster cycles with an RDO. That involves working eight hour days with one (paid) day off in every four weeks. Without RDOs, ordinary hours must be 7.6 per day Monday to Friday. That means averaging isn't possible.

One alternative is Time Off In Lieu (TOIL). TOIL is accrued and taken at the overtime rate. That means one and a half or two hours off for each

“ Ordinary hours can't start before 5:30am or after 6:30pm. You can move that by an hour, or more with a 30% loading on all ordinary hours, by agreement). Work outside these hours is overtime.”

hour worked. TOIL that isn't used must be paid out (at the rate that at which the overtime would have been paid).

RDOs

There are circumstances in which rosters don't have to have RDOs (you should know what they are and have some written evidence that you meet the requirements), but without RDOs, weekend work will always be overtime, even if the total worked for the week (including the weekend) is less than 38 hours and even if fewer than five weekdays were worked.

OVERTIME

Because casuals are engaged as required, it might seem difficult to work out what counts as overtime. However, the rules are reasonably straightforward. Anything over 38 hours in a week or eight hours in a day is overtime. However, rate calculations are complicated or at least potentially confusing for casuals. To calculate overtime, you calculate the non-casual overtime rate and add 10%, not 25%. This means 'double time' for example is not twice the ordinary rate. It can be confusing and sometimes difficult to explain. Fortunately, the Fair Work Ombudsman provides comprehensive wage guides which can help.

Overtime 'stands alone'. That means although the rate increases to double time after the first two hours, that's two hours each day, not each week.

REST BREAKS

Employees must be given ten hours rest after working overtime (and don't forget fatigue management requirements). If that means starting late the next day, they must still be paid for the hours they would normally have worked, and if for some reason, they do work without the ten hour break, they must be paid at double time until they get the break. They are also entitled to a paid 20 minute break before starting overtime (or as soon after that as practicable) and then every four hours, plus a meal allowance.

START AND FINISH

Ordinary hours can't start before 5:30am or after 6:30pm. You can move that by an hour, or more with a 30% loading on all ordinary hours, by agreement). Work outside these hours is overtime.

This is all quite complex, and awards differ, sometimes considerably. Help is available; call or email the AFRA Helpline 07 3366 0451 afrahelpline@bristowlegal.com.au ●