

EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

SENATE LEGISLATION COMMITTEE - QUESTIONS ON NOTICE 2007-08 ADDITIONAL ESTIMATES HEARING

Outcome 9

DEEWR Question No. EW111_08

The Chair (Senator Marshall) and Senator Fielding asked on 21 February 2008, EEWR Proof Hansard page 30-32.

Question

National Employment Standards and Forward with Fairness

In the National Employment Standards, you could add penalty rates and meal breaks with the awards also adding to those items? Yes or No?

The sorts of people whom I have described may not be covered by an award under the new legislation?

Answer

Consistent with the Government's *Forward with Fairness* policy the National Employment Standards (NES) do not include penalty rates or meal breaks as to introduce a single formula for these entitlements would reduce flexibility for both employees and employers. Penalty rates and meal breaks will however be protected through modern awards and in this way form part of the safety net of pay and conditions for employees. The NES will be finalised following comments received on the Exposure Draft of the NES which was released on 14 February 2008.

There is no currently available data that precisely estimates either the number or characteristics of award-free employees in the federal system. However, based on departmental analysis the present number of award-free employees earning less than \$100,000 is likely to be minimal, somewhere in the order of tens of thousands of employees.

This analysis is based on an examination of Australian Bureau of Statistics data from August 2006 and the report called *Australia@Work: The Benchmark Report* by the Workplace Research Centre. The Benchmark Report provides data on the number of employees by self-reported instrument type. One category is of employees who self identify as having no agreements. Revised data¹ for Table 3.4 of the report show that 381,863 employees (4.8 per cent) of the 7,965,046 employees in 2007 were on no agreements. As these employees responded that they are not covered by an award or workplace agreement, this could indicate the number of award free employees. With respect to employees or persons that earn more than \$100,000, the ABS data indicates that approximately 554,000 earn more than \$100,000 per annum.

In addition, the Australian Industrial Relations Commission, through the creation of modern awards, will be able to extend award coverage to currently award free areas that are similar in nature to work historically regulated by awards (for example not to managerial employees).

¹ The number of participants in the study was originally reported incorrectly in The Benchmark Report as 8,343. The authors of the report have advised the department that the correct sample size is 8,342 and that the population weights have been adjusted accordingly. This change has resulted in slight changes to the population estimates. Instead of an employee population N=8,045,192 it is now N=7,965,047.

This is explicitly stated in paragraph 2(a) of the Award modernisation request which states that the creation of modern awards is not intended to:

preclude the extension of modern award coverage to new industries or new occupations where the work performed by employees in those industries or occupations is of a similar nature to work that has historically been regulated by awards (including State awards) in Australia.