



Australian Government

# WorkChoices

## Employees paid on commission prior to WorkChoices

Under the Australian Pay and Conditions Standard (the Standard) all employees who were guaranteed minimum wage rates under an award will have those rates guaranteed as 'Australian Pay and Classification Scales' (APCSs) either as a periodic rate of pay (i.e. an hourly rate) or a piece rate of pay (e.g. basic commission).

Under WorkChoices, the arrangements for existing employees who were paid on a commission only basis will continue largely unchanged.

Before WorkChoices	After WorkChoices
The employee was covered by an award that specifically provided for commission only pay (e.g. a percentage of sales)	The employee will be guaranteed that commission rate under the applicable APCS.
The employee was covered by an award that allows them to enter into an agreement to provide for commission only pay and they entered into such an agreement.	The employee will be guaranteed the commission rate specified in the agreement under the applicable APCS.
The employee was covered by an award that allows them to enter into an agreement to provide for basic weekly retainer plus commission and they entered into such an agreement.	<p>The employee will be guaranteed the hourly rate equal to the weekly retainer under the applicable APCS.</p> <p>The commission rate will be treated as an incentive based payment and retained as part of the agreement.</p>

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## WorkChoices and employees on commission

Before WorkChoices	After WorkChoices
The employee was award free and not subject to a state minimum wage	The employee will be guaranteed the Federal Minimum Wage (FMW) (currently set at \$12.75 per hour)
The employee was engaged under a certified agreement, Australian Workplace Agreement (AWA) or state agreement that specifically provides for commission only pay.	Pre-reform certified agreements, pre-reform AWAs and Preserved State Agreements are not subject to the Standard. Commission rates in those agreements will continue to apply until the agreement ends.

**Engaging employees on a commission only basis after WorkChoices commences**

WorkChoices gives employers the flexibility to engage staff on a commission basis, subject to the wage guarantee.

**After WorkChoices APCS guarantees particular commission**

If a new employee is covered by an APCS that guarantees that employee a basic commission rate (e.g. 5 per cent per sale), an employer will satisfy the wage guarantee if the employee is paid at least that commission rate.

**After WorkChoices APCS guarantees an hourly rate of pay or FMW applies**

- If a new employee is covered by an APCS that guarantees that employee a basic hourly rate – an employer will satisfy the wage guarantee if the commission paid equals the total number of hours worked at the applicable APCS rate.
- If a new employee is covered by the FMW – an employer will satisfy the wage guarantee

if the commission paid equals the total number of hours worked at the FMW rate.

Under the Workplace Relations Regulations 2006, an employer and employee may enter into a written agreement to provide that the wage guarantee can be satisfied over a period not exceeding 12 months. If the commission received during the agreed period does not satisfy the guaranteed hourly wage, an adjustment at the end of the agreed period is required.

**Example**

- Bob is a salesperson who is guaranteed \$15.00 per hour under an APCS (i.e. \$570 per week). He agrees to be paid on a commission only basis. Bob and his employer also agree that his guaranteed minimum wage can be satisfied at the end of each quarter. The agreement does not change the obligation to pay the guaranteed basic rate of pay for each hour worked.

In the first quarter, Bob receives a \$2500 commission in week 4, a \$3000 commission in week 9 and a \$2000 commission in week 11 – a total of \$7500. Bob worked a standard

38 hour week and is entitled to have been paid \$7410 (\$570 per week x 13 weeks). The commission payments received satisfy the wage guarantee at the end of the first quarter.

In the second quarter, Bob receives a \$2500 commission in week 14, a \$2500 commission in week 19 and a \$2000 commission in week 25 – a total of \$7000. Bob worked a standard 38 hour week and is entitled to have been paid \$7410. His employer is required to pay Bob an additional \$410 to satisfy the wage guarantee for the second quarter.

### **Leave entitlements for commission only staff**

The leave entitlements under the Standard apply to commission only employees.

It is common for agreements with commission only employees to include a 'loaded up' rate of pay to cover periods of leave. However, care should be taken to ensure that any such clause complies with the Standard by ensuring that:

- commission only employees are entitled to at least the amounts of leave provided by the Standard; and in particular, that loaded up rates do not in effect 'cash out' leave entitlements;
- the loaded up rate is sufficient to cover the requirements of the Standard about how much an employee is to be paid while taking annual leave and personal/carer's leave, which are tied to the employee's rate of pay at the time they take leave, rather than rate of pay when the leave was accrued.

WorkChoices is a new system of workplace relations legislation that covers up to 85 per cent of Australian employees. This series of fact sheets is available to assist workers and employers to understand their rights and obligations under the legislation.

For more information call the **WorkChoices Infoline** on **1300 363 264** or visit the **WorkChoices** website **[www.workchoices.gov.au](http://www.workchoices.gov.au)**



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