



Australian Government

WorkChoices

The Australian Fair Pay and Conditions Standard guarantee

The Australian Fair Pay and Conditions Standard (the Standard) provides that a person cannot be required or requested to work more than 38 ordinary hours per week, plus reasonable additional hours.

The Workplace Relations Act allows for an employer and employee to agree in writing that the employee's hours of work are to be averaged over a period of no more than 12 months (e.g. 152 hours over 4 weeks). That agreement must be through an award, workplace agreement or by other means (e.g. contract of employment).

How the Standard interacts with awards

A majority of federal awards already include a 38 hour week.

If a pre-WorkChoices award provided for 38 ordinary hours of work or less per week, that maximum number hours will continue to apply, as it is consistent with the Standard.

Current awards which provide for more than 38 ordinary hours of work per week will be reviewed by the Award Review Taskforce and varied by the Australian Industrial Relations Commission (AIRC) to comply with the Standard within three years of WorkChoices commencing.

How the Standard interacts with pre-reform federal or state agreement and notional agreements preserving state awards

The Standard does not apply to pre-reform federal or state agreements.



WorkChoices and ordinary hours

To ensure consistency with federal awards, the hours guarantee does not apply to notional agreements preserving state awards (NAPSAs), as these are transitional instruments that apply for three years.

Reasonable additional hours

The Standard provides that an employer may request or require an employee to work 38 ordinary hours per week and reasonable additional hours. In determining whether the additional hours an employee is requested or required to work are 'reasonable', a range of factors must be taken into account, including (but not limited to):

- any risk to the employee's health and safety;
- the employee's personal circumstances including family responsibilities;
- the operational requirements of the workplace or enterprise;
- whether any of the additional hours are on a public holiday;
- the employee's hours of work in the four weeks prior to the request; and
- the notice (if any) given by the employer of the additional hours and by the employee of his or her intention to refuse it.

This approach reflects the AIRC's 'reasonable hours' test case decision.

Payment for hours worked

Employees must receive at least the relevant minimum or classification hourly wage as set by the Australian Fair Pay Commission for each hour they are requested or required to work and actually work, including any additional hours.

Penalty rates for hours worked in excess of 38 hours will remain part of awards and existing agreements. Penalty rates in awards can only be modified or removed by an express provision in a new workplace agreement.

For more information about the Standard, see the 'WorkChoices and the Australian Fair Pay and Conditions Standard' fact sheet.

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**

For more information call the
WorkChoices Infoline on **1300 363 264**
or visit the **WorkChoices** website
www.workchoices.gov.au