

EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

SENATE LEGISLATION COMMITTEE - QUESTIONS ON NOTICE 2008-09 BUDGET ESTIMATES HEARING

Outcome **WORKPLACE AUTHORITY**

Question No. **EW505_09**

Senator Abetz provided in writing.

Question

No Disadvantage Test – Policy Guide

Refer to Clause 2.2.11 (Hours of Work) – Ordinarily a worker that works outside their normal span of hours or beyond 38 hours a week is entitled to overtime and/or penalty rates depending on when they work. Doesn't clause 2.2.11 of the Workplace Authority NDT Policy Guide remove the obligation for employers to pay penalty rates or overtime where there is a preferred hour's arrangement?

Answer

The Workplace Authority has provided the following response:

Clause 2.2.11 of the NDT Policy Guide provides that where an employee genuinely prefers to work hours that might under the reference instrument attract penalty rates or overtime payments, these 'preferred hours' could be assessed under the no-disadvantage test as ordinary hours. For example an employee who normally works Monday to Friday may wish to have Wednesday afternoon's off for family commitments and negotiate to make up the hours on Saturday.

In the application of the NDT, preferred hours clauses may only be considered as a benefit where:

- The employment is not offered on the basis of working the preferred hours; and
- The agreement allows for reversion to standard working arrangements on request from the employee at any time.

Preferred hours arrangements will not be applied to casual employees, trainees, apprentices, juniors or other employees that the Workplace Authority Director considers to be in a disadvantaged bargaining position.