



AWARD & AGREEMENT FREE WAGES & CONDITIONS

Courtesy of the Fair work Ombudsman

Check if an employee is award free

To be covered by an award, an employee must:

- work in an industry or business covered by the award
- work in a job classification that is covered by the award
- not be in a job or industry that is excluded from the award.

If there is no award that covers the employee's job the employee is award free.

Get help figuring out what award applies go to the FWO's [Awards](#) page.

Example: When an employee is award and agreement free

Nerida is employed as senior regional manager of three Lucky Hotels in Melbourne. Thomas is employed as a hotel manager at Lucky Hotel in Carlton.

Lucky Hotel doesn't have a registered agreement.

The Hospitality Award covers hospitality employers and their employees who have jobs listed in the classification definitions of the award. The classifications cover some management staff, but not senior managers.

Thomas is covered by the Hospitality Award because the duties of his role are covered in the classification definitions.

Nerida isn't covered by the Hospitality Award. Even though it covers managers in the hospitality industry, it doesn't cover her particular job because it doesn't cover senior managers. She has checked that her job is not covered by any other award.

Nerida's role is, therefore, award and agreement free. Her entitlements come from her employment contract and the Fair Work Act 2009 (FW Act), including the NES.



Myth: all managers and professionals are award free

Many managers and professionals have not traditionally been covered by awards. This includes accountants and finance, marketing, legal, human resources, public relations and information technology specialists.

Check the industry definition and job classifications of each award carefully as some managers and professionals are covered by an award.

After checking relevant industry awards you should also check:

- [Professional Award](#)
- [Miscellaneous Award](#).

Myth: employees who sign a contract are not covered by an award

A contract cannot make employees worse off than their minimum legal entitlements. This means that the entitlements in the award that applies to them, and the entitlements in the NES, keep applying, even if they sign a contract that gives them less.

Example:

If an employee signs a contract that says they get 5 days of sick leave per year, they're still entitled to 10 days paid personal/carer's leave (which includes sick leave) from the National Employment Standards, plus any other entitlements they get from their award.

High income employees

Awards do not apply to high income employees. A high-income employee is an employee who:

- has accepted a written guarantee of annual earnings
- is guaranteed to earn an annual amount which is more than the high income threshold. The high-income threshold changes each year. From 1 July 2020, it is \$153,600.

A guarantee of annual earnings can be accepted before an employee starts with an employer.



To calculate an employee's earnings to see if they meet the threshold, include:

- the employee's wages
- the agreed value of non-monetary benefits.

When calculating an employee's earnings to see if they meet the threshold do not include:

- payments which cannot be calculated in advance such as:
 - commissions
 - incentive-based payments and bonuses
 - overtime (unless the overtime is guaranteed)
- reimbursements
- statutory superannuation contributions.

Pay

The pay rate of an award and agreement free employee:

- must be at least equal to the national minimum wage
- may be set by an employment contract.

From 1 July 2020 the national minimum wage for employees who are 21 years old and over is:

- \$19.84 per hour, or \$753.80 per week for full and part time workers
- \$24.80 an hour (this includes a casual loading of 25%) for casual workers.

Juniors

Award and agreement free junior employees get their pay rate from the Special National Minimum Wage 3, in the National Minimum Wage Order 2020. Other entitlements come from the Fair Work Act 2009 (FW Act), including the NES. The rates for junior employees are in the table below.



Age	Hourly rate
Under 16	\$7.30
16	\$9.38
17	\$11.47
18	\$13.55
19	\$16.37
20	\$19.38

Apprentices

Award and agreement free apprentices get their pay rate from the Special National Minimum Wage 4, in the [National Minimum Wage Order 2020](#). Other entitlements come from the FW Act, including the [NES](#).

The minimum rates for junior and adult apprentices are in the table below. An adult apprentice is someone who started an apprenticeship after they turned 21.

Year of apprenticeship	Junior apprentice hourly rate	Adult apprentice hourly rate
1	\$12.70	\$18.48
2	\$15.01	\$19.84
3	\$18.48	\$19.84
4	\$21.94	\$21.94

For information about school-based apprentices go to [Apprentice entitlements](#).



Trainees

Award and agreement free trainees get their pay rates from the Special National Minimum Wage 5. These rates are in Schedule C of the [National Minimum Wage Order 2020](#).

Employees with disability

There are 2 special national minimum wages for award and agreement free employees with disability.

For details see [Employees with disability pay rates](#).

Piece rates and commission payments

Award and agreement free employees can be paid piece rates or commission payments. They still need to be paid at least the national minimum wage.

For information about how to pay piece rates to an employee see [Piece rates and commission payments](#).

Hours of work, breaks and overtime

Full-time, part-time and casual employees have different patterns of hours. For all employees, hours of work which are not overtime are called [ordinary hours](#).

This section explains how ordinary hours are set for award and agreement free employees.

Agreed ordinary hours of work

The ordinary hours of work for an award and agreement free employee are:

- no more than an average of 38 hours per week
- otherwise open to agreement between the employer and employee.

If an employee is not full-time and usually works less hours than the hours they have agreed to, their ordinary weekly hours are the lesser of:

- 38 hours
- the employee's usual weekly hours of work.



When there are no agreed ordinary hours of work

If there is no agreement, the ordinary weekly hours are:

- full-time employees – 38 hours
- all other employees – their usual weekly hours of work or 38 hours (whichever is less).

If an employee doesn't have usual weekly hours and isn't a full-time employee work out their ordinary weekly hours by:

- adding up the total hours the employee has worked in the past 4 weeks
- dividing by 4.

If the employee has worked for less than 4 weeks:

- add up the total hours the employee has worked
- divide by the number of completed weeks.

Averaging of hours

An averaging of hours arrangement means that the actual hours worked each week can be different and can include additional hours, provided the additional hours are reasonable.

Find out what factors need to be considered when deciding whether additional hours are reasonable in [When overtime applies](#).

Example: Averaging of hours over 4 weeks

Mai agrees with her employer to work an average of 20 ordinary hours each week over a period of 4 weeks.

She actually works:

- 15 hours in week 1
- 25 hours in week 2
- 10 hours in week 3
- 30 hours in week 4

$15 + 25 + 10 + 30 / 4 \text{ weeks} = 20 \text{ hours per week on average.}$



An averaging of hours arrangement must:

- be agreed to by the employer and employee
- be in writing
- average the hours over no more than 26 weeks
- agree that the employee's average weekly hours will be no more than:

- full-time employees – 38 hours
- all other employees – their usual weekly hours of work or 38 hours (whichever is less).

When overtime applies

Award and agreement free employees do not get a higher pay rate when they work overtime hours, unless their employment contract says so.

Meal and rest breaks

Award and agreement free employees do not have any set meal and rest breaks. Meal and rest breaks may be provided for in:

- an employment contract
- workplace health and safety legislation.

Workplace health and safety legislation generally says that an employer must provide a safe work environment for employees. This may include giving employees meal and rest breaks.

Check [Safework Australia](#) for guidance on taking breaks to manage the risk of fatigue at work.

Public holidays

An employer and an award and agreement free employee can agree that the employee will work on a public holiday and take another paid day off instead.

Learn more about working on [Public holidays](#).



Leave

Annual leave

Full-time and part-time award and agreement free employees get 4 weeks annual leave each year.

Annual leave for shiftworkers

Shiftworkers (other than casuals) get 5 weeks of paid annual leave each year.

An award and agreement free employee is a shiftworker if the employee:

- is employed in a business where shifts are continuously rostered 24 hours a day, 7 days a week
- is regularly rostered to work those shifts
- regularly works on Sundays and public holidays.

Taking annual leave

An employer and an award and agreement free employee may agree on when and how paid annual leave may be taken by the employee. They can agree, for example, that:

- it may be taken before it has been accrued
- it must be taken within a fixed period of time after it is accrued
- a certain period of notice must be given before taking leave
- extra time on leave can be taken for the same overall pay, eg. 4 weeks leave at half-pay instead of 2 weeks leave at full pay.

Often these agreements are set out in company policies or an employment contract.

Direction to take annual leave

An employer can require an award and agreement free employee to take paid annual leave if the requirement is reasonable. Examples when it may be reasonable include:

- the employee's leave balance is excessive
- the employer's business is being shut down temporarily (eg. between Christmas and New Year).



Cashing out annual leave

An award and agreement free employee can make an agreement with their employer to get an extra payment instead of taking leave (called 'cashing out') if the:

- agreement is in writing
- employer pays the employee the same amount the employee would get if they had taken the leave
- employee has at least 4 weeks left in their leave balance after the rest is cashed out.

Other leave

Learn more about other Leave, including personal, maternity, parental, compassionate and community service leave.

Ending employment

Notice

An award and agreement free employee doesn't have to give notice to an employer before resigning. An employment contract may require an employee to give notice.

Find out how much notice an employer needs to give to an employee and what must be included in an employee's final pay on our Notice and final pay page.

Redundancy

When calculating the amount of redundancy pay, an award and agreement free employee's service before 1 January 2010 will only be counted if the employment contract provided for redundancy pay before then.



An employer has to pay out at least the following minimum redundancy pay.

Period of continuous service	Redundancy pay
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks

Redundancy pay is paid at the employee's base pay rate for their ordinary hours of work, but doesn't include:

- incentive-based payments and bonuses
- loadings
- monetary allowances
- overtime or penalty rates
- any other separately identifiable amounts.

Any outstanding entitlements also need to be paid out including annual leave and long service leave that the employee hasn't taken.

To find out when an employee must be paid redundancy pay, visit our [Redundancy](#) page.



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- Source reference:
 - Fair Work Act 2009 s.20 (Ordinary hours), s.328 - 333 (High income employees), s.64 (Averaging of hours), ss.87(3) (Annual leave for shiftworkers), s.94 (Cashing out and taking paid annual leave) s.117 (Requirement for notice of termination or payment in lieu), s.119 (Redundancy pay) 
 - Fair Work Regulations 2009 r.1.11 (meaning of ordinary hours) 

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