

Guarantee of Annual Earnings

A Guarantee of Annual Earnings (GAE) is a written undertaking given by an employer to an employee. GAEs are made in accordance with Part 2-9, Division 3 of the *Fair Work Act 2009* (Cth).

Employees who are covered by a modern award, and who have agreed to a written GAE that is in excess of the high income threshold, relinquish their rights to entitlements provided under a modern award (such as penalty rates, overtime payments, and specific requirements regarding rest and meal breaks etc.) for the period stipulated in the GAE.

An undertaking will qualify as a GAE if:

- > the employee is covered by a modern award;
- > the undertaking is in writing and provides payment of earnings in excess of the high-income threshold during a period of 12 months or more;
- > the employee agrees to accept the undertaking, and agrees with the amount of the earnings;
- > the undertaking is given no later than 14 days after commencing employment, or no later than 14 days after the employer and employee agree to vary the terms and conditions of employment; and
- > an enterprise agreement does not apply to the employee's employment at the time the GAE commences.

Effects of a GAE

Employees who accept a GAE *are eligible* to lodge unfair dismissal claims. This is in direct contrast to employees who earn over the high income threshold and who are *not* covered by a modern award or enterprise agreement; such employees are *not eligible* to lodge unfair dismissal claims

Employer Obligations

At or before the time of providing a GAE undertaking to an employee, an employer must notify the employee, in writing, that accepting a GAE means entitlements provided in the modern award will not apply to them while they are paid in excess of the high-income threshold.

What constitutes 'earnings' in a GAE undertaking?

Earnings include wages and the agreed monetary value of non-monetary benefits. Earnings do not include payments that cannot be determined in advance (for example, bonuses or reimbursements) or compulsory superannuation contributions required under statute.

What happens if an employee earns in excess of the high-income threshold, but a GAE has not been provided?

If an employee's earnings are in excess of the high-income threshold, but an employer has not provided a GAE undertaking that those earnings are guaranteed for a set period, modern award entitlements will still apply to that employee. Whilst the monetary obligations (for example, penalty rates and overtime payments etc.) imposed on employers by awards may be absorbed into over-award payments, in the absence of a GAE, an employer will still be obligated to comply with the non-monetary provisions of a modern award (for example, terms relating to breaks, and the obligation to consult with

employees, in writing, regarding major workplace change etc.).

What is the high income threshold?

Currently the high income threshold is **\$153,600 per annum**. This amount will remain the high income threshold for the duration of the 2019-2020 financial year. The high income threshold is indexed annually from 1 July each year.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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