NATIONAL EMPLOYMENT STANDARDS – MAXIMUM WEEKLY HOURS

Maximum Weekly Hours form part of the 'safety net' of the National Employment Standards (NES), which came into effect on 1 January 2010. The Maximum Weekly Hours entitlement in the NES is the maximum entitlement available to all employees in the national workplace relations system, regardless of the applicable industrial instrument or contract of employment.

If an industrial instrument (award, agreement and employment contract) is applicable to an employee and the terms of the instrument are less than those offered by the NES, the NES entitlements will prevail. Significant penalties for breaching the NES can apply to both corporations and individuals.

This fact sheet will explain what the maximum weekly hours are and will provide information on when reasonable additional hours and reasonable refusal for those additional hours can apply.

Maximum Weekly Hours

An employer must not request or require a full-time employee to work more than 38 hours per week. For an employee other than a full-time employee, an employer must not request or require the employee to work more than their ordinary hours of work in a week or 38 hours (whichever is lesser).

The hours an employee works in a week must include any hours of leave or absence (paid or unpaid) that is authorised by the employer, is a term of the employee's employment, or is a State, Territory or Federal law.

Despite the maximum hours limit, an employer may require an employee to work additional hours if the request is reasonable. Employers must consider the below when determining whether additional hours are reasonable:

- any risk to employee health and safety;
- the employee's personal circumstances, including family responsibilities;
- the needs of the workplace or enterprise;
- whether the employee is entitled to receive overtime payments, penalty rates or other compensation for (or a level of remuneration that reflects an expectation of) working additional hours;
- any notice given by the employer to work the additional hours;
- any notice given by the employee of his or her intention to refuse to work the additional hours;
- the usual patterns of work in the industry;
- the nature of the employee's role and the employee's level of responsibility;
- whether the additional hours are in accordance with averaging provisions included in an award or agreement that is applicable to the employee, or an averaging arrangement agreed to by an employer and an award/agreement-free employee; and/or
- any other relevant matter.

Averaging Arrangements for Hours (in Awards and Agreements)

In some awards or agreements there may be the provision for 'averaging hours of work'. This means that with employee agreement, the employer can arrange for the employee (full-time) to work an average of 38 hours per week in a given period, e.g. 152 hours in four weeks. The maximum number of hours that can be averaged over a period is 38 hours for full-time employees; or for non-full-time employees 38 hours or the employee's ordinary hours of work in a week (whichever is lesser).

The excess hours worked above the average weekly hours will still be relevant in determining whether the additional hours are reasonable or not. Determining whether the excess hours are reasonable will depend on the reasons provided on the previous page, e.g. any risk to employee health and safety; the employee's personal circumstances including family responsibilities etc.

Averaging Arrangements of Hours (Award/Agreement - Free Employees)

Award/agreement-free employees and their employers can agree to an averaging hours arrangement but the maximum averaging period is 26 weeks. The maximum number of hours that can be averaged over a period is 38 hours for full-time employees; or for non-full-time employees, 38 hours or the employee's ordinary hours of work in a week (whichever is lesser).

The excess hours per week will still need to be determined as reasonable.

Averaging Arrangements (Award/Agreement covered Employees)

There is no requirement for an employer and employee to enter into an averaging arrangement.

It is unlawful for an employer to force (or try to force) an employee to make an averaging arrangement as this is a workplace right and protected by provisions in the *Fair Work Act 2009*, general protections.

The Fair Work Ombudsman (FWO) can investigate allegations of contraventions of the general protections provisions. Where identified, the FWO can initiate legal action for significant penalties.

Frequently Asked Questions

What are the maximum weekly hours?

38 hours per week.

Can I ask employees to work more than 38 hours a week?

Yes. However, you must observe the requirements as outlined in this document.

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.**