



Maximum weekly hours and the National Employment Standards

Overview

Maximum weekly hours forms part of the National Employment Standards (NES). The NES apply to all employees covered by the national workplace relations system, regardless of any award, agreement or contract.

The NES establish the maximum weekly hours for employees, as well as the circumstances in which an employee may refuse a request or requirement to work additional hours if the hours are unreasonable.

They also set out arrangements for the averaging of hours of work under an award or agreement, or by agreement between an employer and an award/agreement-free employee.

What are the maximum weekly hours of work?

An employer must not request or require an employee to work more than the following hours of work in a week, unless the additional hours are reasonable:

- for a full-time employee, 38 hours or
- for an employee other than a full-time employee, the lesser of:
 - 38 hours
 - the employee's ordinary hours of work in a week.

The hours an employee works in a week must be taken to include any hours of leave or absence (paid or unpaid) that is authorised:

- by the employer or
- by or under a term of the employee's employment or
- by or under a Commonwealth, State or Territory law, or an instrument in force under such a law.

An employee may refuse to work additional hours if they are unreasonable.

What factors determine whether additional hours are reasonable?

In determining whether additional hours are reasonable or unreasonable, the following must be taken into account:

- 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
- any other relevant matter.

What averaging arrangements can apply to hours of work?

Averaging of hours of work under awards or agreements

An award or agreement may include provisions for the averaging of hours of work over a specified period that is greater than a week.

The average weekly hours over the period must not exceed:

- for a full-time employee, 38 hours or
- for an employee other than a full-time employee, the lesser of:
 - 38 hours
 - the employee's ordinary hours of work in a week.

An award or agreement can provide for average weekly hours that are greater than the hours above if those additional hours are considered reasonable.

In either case, hours worked in excess of the above average weekly hours will be treated as additional hours. The averaging provisions are relevant in determining whether the additional hours are reasonable or not.

Example

The award regulating Malcolm's employment includes averaging arrangements in relation to hours of work, so that full-time employees would ordinarily work 152 hours over four weeks (an average of 38 hours per week). Over a four week period, Malcolm's work pattern is as follows:

Week 1 – worked 21 hours
Week 2 – worked 60 hours
Week 3 – worked 38 hours
Week 4 – worked 33 hours

The averaging arrangement would be relevant in determining the reasonableness of the additional 22 hours that Malcolm was required to work in Week 2. Other factors such as Malcolm's family responsibilities, his health and safety, and the notice he was given of having to work the additional 22 hours would also be relevant.

Averaging of hours of work for award/ agreement free employees

Employers and award/agreement-free employees may agree in writing to an averaging arrangement to average their ordinary hours of work. However, the maximum averaging period is 26 weeks.

Again, the average weekly hours over the period must not exceed:

- for a full-time employee, 38 hours or
- for an employee other than a full-time employee, the lesser of:
 - 38 hours
 - the employee's ordinary hours of work in a week.

Alternatively, the agreement can provide for average weekly hours that are greater than the hours above if those additional hours are considered reasonable.

In either case, hours worked in excess of the above in a week will be treated as additional hours. The averaging arrangement agreed between the employer and employee will be relevant in determining whether the additional hours are reasonable or not.

Do I have to enter into an averaging arrangement?

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

Under the general workplace protections provisions of the *Fair Work Act 2009*, it is unlawful for an employer to force (or try to force) an employee to make (or not make) an averaging arrangement. Where identified, the Fair Work Ombudsman can initiate legal action against the employer.

For more information on general protections, please see our [Protections at work fact sheet](#).

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