

# AWARD EMPLOYMENT CONDITIONS FROM 1 JULY 2020

## Building and Construction General On-Site Award 2010

**Employers who are engaged in activities/work in the building and construction industry must be familiar with the Building and Construction General On-site Award 2010 (the Award). The Award sets out the minimum employment conditions for employees working in the industry.**

**This information sheet has been designed to provide employers with an overview of the minimum employment conditions for employees covered by the Award.**

## **1. The Award's conditions**

All employees (including apprentices) engaged in on-site building and construction activities/work are entitled to the minimum employment conditions outlined in the Award and applicable legislation.

These minimum employment conditions include:

- Engagement of employees;
- Hours of work;
- Overtime penalties;
- Fares/travel allowances;
- Inclement weather;
- Public Holidays;
- Notice on termination of employment;
- Redundancy pay;
- Personal/carer's (sick) leave;
- Compassionate leave;
- Long Service Leave; and
- Superannuation.

Whilst the Award and any applicable legislation sets out the minimum employment conditions, an employer must also be aware of obligations imposed by an Enterprise Agreement (EA) or an individual employment contract/letter of engagement. An employer must refer to these instruments (where applicable) to ensure that the minimum employment obligations are being met.

A copy of the Award should be kept at each workplace and be available to employees. An employer may request a copy of the Award by contacting the IR Team on (03) 9411 4555.

## 2. Engagement of Employees

At the time of engagement, an employer must specify an employee's terms of employment in writing. In particular, the Award requires employers to specify whether an employee will be:

- (a) a daily hire employee;
- (b) a full-time weekly hire employee;
- (c) a part-time weekly hire employee; or
- (d) a casual employee.

To meet this requirement, it is best practice for employers to provide a letter of engagement or employment contract to the employee. These written employment agreements set out the employment type, classification, rate of pay and other general conditions of employment. The MBV IR Team can assist members with template letters of engagement tailored to the Award. For further information, please contact the MBV IR Team on (03) 9411 4555.

As a requirement under the National Employment Standards (NES), the employer must also provide an employee with a Fair Work Information Statement at the time of engagement. The Fair Work Information Statement can be obtained from the Fair Work Ombudsman [website](#).

## 3. Hours of Work

The Award sets the span of ordinary hours between 7.00am and 6.00pm Monday to Friday.

Ordinary hours will be a maximum of 8 hours each day and in accordance with a nominal 38 hour working week. To align with a 38-hour working week, the Award's default position is that a Rostered Day Off (RDO) system will be implemented for employees.

Under such an RDO system, employees work 8 ordinary hours each day but are paid for 7.6 hours. The remaining 0.4 of an hour is not paid but accrues towards the RDO. After working 19 days, the employee has accrued enough time to take the 20th day as a RDO day (0.4 hours x 19 days = 7.6 hours).

Accordingly, the Award sets a 20-day four-week cycle to allow for the accrual and scheduling of RDOs.

The Award is flexible in how accrued RDOs are taken, provided both the employer and employees agree to the scheduling of RDOs in writing. One of such options includes implementing an RDO working day calendar. The MBV IR Team has produced an indicative 38 working day RDO calendar for 2020.

A copy of the MBV Indicative RDO Calendar for a 38 hour work week can be obtained from our [website](#), or by calling the MBV Assist Team on (03) 9411 4555.

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## 4. Overtime

Overtime penalty rates must be paid when an employee works:

- Beyond the employee's ordinary time of work; or
- Outside the span of ordinary hours.

The overtime entitlement is paid at time and a half (150%) for the first two hours and double time (200%) thereafter. Overtime penalties are calculated on the employee's ordinary time rate of pay.

Where an employee is expected to work overtime for two hours or more after the usual finishing time of work, the employee must be given an overtime crib break of 20 minutes. This break is to be taken after the usual finishing time of work. In the event such a break is not taken, the employee will be taken to have performed an additional 20 minutes of work and must be paid accordingly.

An overtime meal allowance must be also paid where an employee works an hour and a half of overtime after the usual finishing time. The current Award overtime meal allowance is \$15.38 per meal.

### **Saturday, Sunday and Public Holidays**

An employee scheduled to work on Saturday must be paid at the rate of time and a half (150%) for the first two hours and double time (200%) thereafter. All hours worked after 12 noon on a Saturday must be paid at the double time rate (200%).

All work performed on a Sunday must be paid at double time (200%).

An employee scheduled to work overtime on either a Saturday or Sunday shall be afforded a minimum of three hours work on Saturday and four hours work on Sunday.

All work performed on a public holiday will be paid at double time and a half (250%).

### **Time off in instead of overtime:**

An employee (other than a daily-hire or casual) may agree in writing to take time off instead of being paid for a particular amount of overtime worked. There are specific requirements that need to be followed to accommodate a time off instead of overtime pay arrangement.

Where there is no written agreement, employees must be paid for overtime in accordance with the minimum entitlements set out by the Award.

Please contact the MBV IR Team on (03) 9411 4555, if you require further information.



## 5. Travelling for work

### **Fares and Travel Pattern Allowance**

An employee must be paid the daily fares and travel pattern allowance of \$17.43 per day (a lesser amount for apprentices) for each day worked when the employee starts and finishes work on a construction site, or is required to perform prefabricated work in an open yard and is then required to erect or fix on-site.

Employees are not entitled to the allowance on any day they are:

- provided or offered transport free of charge from the employee's home to work and return; or
- provided with a fully maintained vehicle free of charge.

### **Travelling between construction sites during working hours**

An employee that is required to travel between construction sites during working hours will be paid for the time spent in travelling. In addition, if the employee uses their own vehicle, the employee must be paid an allowance at the rate of \$0.78 per kilometre.

### **Travelling from home to the job site outside ordinary hours**

Time spent travelling from an employee's home to their job and return outside ordinary hours will be unpaid unless the employer directs the employee to pick up and return other employees to their homes.

### **Payment for travel to distant work**

If an employee is required to travel to a construction site that is outside the metropolitan radial area in which the employee's usual place of residence is located **and** is more than 50km by road from the employee's usual place of residence, the employee will be entitled to:

- The Fares and Travel Pattern Allowance (i.e. \$17.43 per day);
- Payment for the time reasonably spent in travel at the employee's ordinary time rate; **and**
- \$0.47 per kilometre if the employee uses their own vehicle.

The time reasonably spent in travel is paid as an allowance and does not count as ordinary time worked. Time reasonably spent in travel is calculated to the next quarter hour and must amount to a minimum of 15 minutes each way, or 30 minutes per return journey.

The distant work payment is not payable when, at the commencement of employment, the employee's usual place of residence was more than 50km by road from the construction site on which the employee was initially engaged.



## 6. Inclement Weather

Employees are entitled to payment for ordinary time lost due to inclement weather

Inclement weather means the existence of rain or abnormal climatic conditions (whether hail, extreme cold, high wind, severe dust storm, extreme high temperature or the like or any combination of these conditions) where it is not reasonable or it is unsafe for employees to continue working in those conditions.

Payment for time lost for inclement weather is up to a maximum of 32 hours in any four-week period. The relevant four-week periods are set by the Award.

To be entitled to payment for inclement weather, the Award prescribes specific procedures that must be followed by employees. An employee's failure to adhere to these requirements may mean the employee is no longer entitled to payment under the inclement weather provisions of the Award.

For further information on the inclement weather procedure or the relevant four-week periods, you can download the MBV Inclement Weather publication from our [website](#).

## 7. Public Holidays

Where an employee (other than casual) has ordinary hours of work on a public holiday, the employee will be entitled to be absent from work without a deduction of pay.

For 2020, the public holidays gazetted in Victoria are as follows:

- New Year's Day Monday, 1 January
- Australia Day Monday, 27 January
- Labour Day Monday, 9 March
- Good Friday Friday, 10 April
- Easter Saturday Saturday, 11 April
- Easter Sunday Sunday, 12 April
- Easter Monday Monday, 13 April
- Anzac Day Saturday, 25 April
- Queen's Birthday Monday, 8 June
- Grand Final Eve Friday, 25 September
- Melbourne Cup Day Tuesday, 3 November
- Christmas Day Friday, 25 December
- Boxing Day Saturday, 26 December
- Boxing Day (substitute) Monday 28 December

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## 8. Termination of Employment

Employees are entitled to notice of termination, except for reasons of serious misconduct that warrant summary dismissal.

### **Notice for daily hire employees:**

Under the Award, on-site workers may be engaged as daily hire employees. A daily hire employee can be terminated by the employer by giving one day's notice, or by the payment of one day in lieu of the required notice.

### **Notice for weekly hire employees:**

Weekly hire employees must be given notice in accordance with the NES. The amount of notice a weekly hire employee receives depends on their length of continuous service in accordance with the following table:

<b>Period of continuous service</b>	<b>Period of notice</b>
One year or less	One week
Over one year and up to three years	Two weeks
Over three years and up to five years	Three weeks
Over five years	Four weeks

In addition, an employee over 45 years of age at the time of giving notice with not less than two years continuous service shall be entitled to an additional weeks' notice.

The notice of termination required to be given by an employee is the same as that required of an employer except that the employee does not have to give additional notice based on the age of the employee. If an employee who is at least 18 years of age fails to give notice, the employer has the right to deduct from wages due to the employee an amount that is no more than one week's pay.

### **Notice for casual employees:**

Casual employees are not entitled to notice on termination under the Award or NES.

### **Considering terminating an employee?**

Employers should be aware that termination of employment can be a complex and difficult issue. Often certain steps must be followed in order to minimise the risks of unfair dismissal or general protection claims being lodged with the Fair Work Commission.

If you are considering terminating an employee for underperformance or misconduct, you should contact the MBV IR Team on (03) 9411 4555.



## 9. Redundancy

The Award contains an industry specific redundancy scheme that takes the place of the redundancy provisions provided for in the NES.

Under clause 17 of the Award, a **redundancy** is defined as a situation **where an employee ceases to be employed** by an employer to whom this Award applies, **other than for reasons of misconduct or refusal of duty**.

This industry specific redundancy scheme is applicable to all employers. Unlike the NES, there is no small business exemption to paying redundancy to employees under the Award.

The redundancy payable to eligible employees is calculated as follows:

<b>Period of continuous service with an employer</b>	<b>Redundancy/severance pay</b>
1 year or more but less than 2 years	2.4 weeks' pay plus for all service in excess of 1 year, 1.75 hours pay per completed week of service up to a maximum of 4.8 weeks' pay
2 years or more but less than 3 years	4.8 weeks' pay plus, for all service in excess of 2 years, 1.6 hours pay per completed week of service up to a maximum of 7 weeks' pay
3 years or more than but less than 4 years	7 weeks' pay plus, for all service in excess of 3 years, 0.73 hours pay per completed week of service up to a maximum of 8 weeks' pay
4 years or more	8 weeks' pay

Provided that an employee employed for less than 12 months will be entitled to a redundancy/severance payment of 1.75 hours per week of service if, and only if, redundancy is occasioned otherwise than by the employee.

Time served as an apprentice is only recognised for the purpose of redundancy pay where they complete their apprenticeship and remain in employment with that employer for a further twelve (12) months.

### Offsetting redundancy obligations:

The Award enables employers to offset their redundancy obligations by making contributions into a redundancy pay scheme. Where an employer makes such contributions, the liability to pay redundancy pay may be reduced to nil. In the event of a shortfall, any difference must be made up by the employer.



## 10. Annual Leave

Annual leave entitlements are provided for in the NES.

Under the NES, an employee (other than casual) is entitled to a minimum of four weeks annual leave per year of service. This annual leave entitlement accrues progressively through a year of service and may accumulate from year to year.

In addition to the NES entitlement to annual leave, employees are entitled to a 17.5% annual leave loading under the Award. The Award prescribes a specific method for the calculation of annual leave at clause 38.2(b). This loading is paid on annual leave entitlements owing at termination.

Annual leave must be taken at a mutually agreed time by the employer and employee.

An employer can direct an employee to take annual leave during a Christmas/New Year close-down by giving two months' notice to the affected employees. Employers may also direct employees to take annual leave if they have excessive annual leave accrual and certain criteria are met.

## 11. Personal/Carer's leave

Personal/carers (commonly referred to as sick leave) is provided for in the NES.

Under the NES, an employee (other than casual) is entitled to 10 days of paid personal/carers leave per year of service. This personal/carers leave entitlement accrues progressively during a year of service and may accumulate from year to year.

An employee may take paid personal/carers leave:

- if they are unfit for work because of their own personal illness or injury; or
- to provide care or support to a member of their immediate family or household, because of a personal illness, injury or unexpected emergency affecting the member.

A member of the employee's immediate family means a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of an employee; or a child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner.

Where an employee accesses the personal/carers leave entitlement, the employer may request supporting documentation to satisfy a reasonable person that the employee has the entitlement to utilise such leave.



### 12. Compassionate leave

Under the NES, an employee (other than a casual) is entitled to a minimum of two days paid compassionate leave where a member of their immediate family or household:

- Contracts or develops a life-threatening illness;
- Sustains a life-threatening injury; or
- dies.

Compassionate leave may be taken per permissible occasion. The two days per permissible occasion may be taken together or separately.

A casual employee may also take compassionate leave. Periods of compassionate leave taken by a casual employee are unpaid.

### 13. Long Service Leave

Due to the project-based nature of on-site work, there is a portable long service leave scheme for the building and construction industry.

This portable long service leave scheme is administered by CoINVEST.

Employers are required to register all employees (including directors who work 'on the tools') that fall within the scope of CoINVEST's coverage. This requirement applies to both residential and commercial sectors. For further information on CoINVEST coverage, you can access the CoINVEST [website](#).

Employers are required to provide quarterly reports to CoINVEST and confirm an employee's service and remuneration. Employers are required to pay a long service leave contribution amount of 2.7 percent of the employee's total gross wage reported (this includes site allowances but excludes overtime, living away from home allowance, fares and travel allowance and leave loading).

Contributions are not required for apprentices, but their service (days worked) must still be reported through the CoINVEST Workers Service Return system.

The CoINVEST scheme has been enacted by the *Construction Industry Long Service Leave Act 1997* (Vic). It is a legal requirement to comply with the scheme. A failure to register your business or make contributions for employees may expose you to significant penalties.

For further information, please contact the MBV IR team on (03) 9411 4555.



## **14. Superannuation**

An employer is required to make superannuation contribution in accordance with the *Superannuation Guarantee (Administration) Act 1992* (Cth).

Generally, an employer must make superannuation guarantee contributions if the employee is:

- 18 years or older and are paid \$450 or more (before tax) in a calendar month;
- Under 18 years, being paid \$450 or more (before tax) in a calendar month and work more than 30 hours in a week.

Currently, an employer must contribute 9.5% of an employee's Ordinary Time Earnings (OTE) into their nominated superannuation account.

For further information on what constitutes OTE, members can refer to the ATO [website](#) or speak to an Accountant or Tax Advisor.

**Whilst all care has been taken in the preparation of this Award Employment Conditions publication, no responsibility or liability is accepted by Master Builders Victoria for the accuracy of the information.**

