

Fair Work Act 2009

Frequently Asked Questions

These frequently asked questions were prepared by McCullough Robertson Lawyers, on behalf of CPA Australia, following the Fair Work Act series of webinars held in November 2009.

The FAQs focus on the changes which take effect on 1 January 2010 under the Commonwealth Government's *Fair Work Act 2009*.

1 Award coverage

Miscellaneous Award 2010

If accountants are covered by the Miscellaneous Award then, in relation to the 38 hour week, they are currently typically employed on a salary that compensates them for additional hours that are often required. Will they still be able to be employed on that basis?

- 1.1 The AIRC decision in relation to the Miscellaneous Award 2010 was released on 4 December 2009. In its decision the AIRC decided to amend the Miscellaneous Award to clarify the classes of employees excluded from coverage. The amended provision provides that the award does not cover classes of employees who, because of the nature or seniority of their role, have not traditionally been covered by awards including managerial employees and professional employees such as accountants and finance, marketing, legal, human resources, public relations and information technology specialists. Accountants will therefore remain award free.

2 Referral of powers

Does this mean that all employers e.g. sole business owners, partnerships, trusts etc. are now subject to the Fair Work Act?

- 2.1 All States excluding Western Australia have referred their powers for at least the private sector to the Commonwealth. This means that employers in all State and Territories (excluding Western Australia) will be covered by the national industrial relations system, regardless of the employer's business structure.

3 National Employment Standards

Does the Fair Work Information Statement have to be provided to existing employees as well as new employees and when was it introduced?

- 3.1 The National Employment Standards (**NES**) operate from 1 January 2010. The Fair Work Information Statement, which is one of the national employment standards, must be given to all new employees from 1 January 2010. A copy of the Fair Work Information Statement can be accessed by visiting <http://www.fairwork.gov.au/Pay-leave-and-conditions/Conditions-of-employment/Pages/Fair-Work-Information-Statement.aspx#obtaining%20copies%20of%20the%20statement>.

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- 3.2 Additionally, under the *Clerks – Private Sector Award 2010 (Clerks Award)*, the employers bound by the award must make both the award and the NES accessible to employees by either posting them on a noticeboard or making them available through electronic means, whichever is going to make the award and the NES most accessible to employees.

Does the definition of small business (fewer than 15 employees) include the owner/director who is also an employee?

- 3.3 When calculating the number of employees for the purpose of the 'small business employer' definition at a particular time, all the following factors are to be taken into account:
- (a) all employees employed by the employer at that time are to be counted
 - (b) a casual employee is not to be counted unless, at that time, he or she has been employed by the employer on a regular and systematic basis
 - (c) associated entities are taken to be one entity and
 - (d) the employee being terminated, and any other employees being terminated at that time are counted.

Are small businesses exempt from any of the 10 provisions under the NES?

- 3.4 Small business employers are exempted from paying redundancy pay as provided for by the NES. A small business employer for the purpose of determining redundancy pay is an employer who, at a particular time, employs fewer than 15 employees (this is based on a head count of employees as detailed above).

Are employers grouped together (for the purposes of the small business employer definition)?

- 3.5 For the purposes of the small business employer definition, employers are grouped together to include associated entities in the head count, for example where one entity controls another entity.

Does the NES apply to employees outside Australia?

- 3.6 The NES only applies to 'national system employers' and their employees. It will not apply to employees working exclusively outside Australia.

Do contracts for employees who are currently award free need to be amended to include reference to NES provisions e.g. community leave entitlements etc.

- 3.7 It is not necessary for contracts to be amended to include a reference to the NES provisions. The NES provisions will apply regardless of the terms and conditions contained with your employment contracts. If, however, you have contractual provisions that conflict with the NES provisions, it would be advisable to review these to ensure consistency with the NES.

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Is the 38 hour week limited to Monday – Friday or does it include weekends as well?

- 3.8 The Fair Work legislation does not restrict the maximum 38 hour week to Monday – Friday. You will need to look to the relevant Modern Award to determine whether there are any other conditions placed on the 38 hour week. The *Clerks Award* for example, provides for a roster system to operate on the basis that the weekly average of 38 ordinary hours is allowed over a period which exceeds 28 consecutive days but does not exceed twelve months. Further, an employee who works 38 hours Monday to Friday must be paid a minimum of three hours at overtime rates for work performed on a Saturday, provided that such employee is ready, willing and available to work such overtime.

We currently work a 40 hour week. Does this mean that we need to advise staff that they are only required to work 38 hours? Are we able to adjust their remuneration accordingly?

- 3.9 While the maximum ordinary hours of work for a full time employee is 38 hours per week, an employer may require an employee to work reasonable additional hours taking into account factors including any risks to work health and safety, the employee's personal circumstances and the needs of the enterprise. Because the 40 hours worked is greater than the standard hours under the NES, we recommend that you advise the employees of this but state that the employer is allowed to require them to work reasonable additional hours.

What about casual staff, is there a maximum number of working hours set per day or week? If a staff member is working casually as an accountant but also undertaking some business administration duties & has agreed with the employer about the hourly rate (which is higher than the award rate), will the staff member be able to receive overtime pay if they work more than 12 hours per day or be able to claim a meal allowance?

- 3.10 The Fair Work legislation does not provide for overtime or meal allowances as this is an area traditionally regulated by awards. The maximum number of hours will therefore be 38 plus reasonable additional hours.
- 3.11 As the staff member is an accountant and only performs some business administration duties on the side, it is unlikely that the Clerks Award will apply. This is because the Clerks Award only applies to employees 'principally or wholly' engaged in clerical work. Accordingly, there will be no entitlement to overtime or meal allowances.

Right to request

What is considered reasonable business grounds?

- 3.12 The phrase 'reasonable business grounds' is not defined. If a similar approach is taken to the interpretation of the term 'reasonable business grounds' compared to the reasoning used in, for example, redundancy situations or when transferring an employee to alternative duties, often such decisions involve similar 'reasonable' business considerations. Some minor inconvenience on the part of the employer is not going to be sufficient. Employers will need to be able to demonstrate significant disruption or cost or inconvenience.

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3.13 Relevant factors may include:

- (a) effect on the workplace, including costs, efficiency, productivity and customer service
- (b) capacity to organise work among current staff and
- (c) capacity to find replacement staff.

Can an employer cite a 'reduction in profit' as a reasonable business ground for refusing to grant a request from an employee?

3.14 An employer will need to provide written reasons of their reasonable business ground. Simply citing 'reduction in profit' is unlikely to be sufficient. It will be necessary for the employer to link the reasonable business ground to the particular request and provide some form of justification for their refusal.

What is an acceptable refusal under law?

3.15 Each case will turn on its own facts. What is acceptable for one employer might be completely unacceptable for another employer. As a guide, consideration should be given to the matters raised in paragraphs 3.12 and 0 above.

Is it OK to offer flexible working hours to a particular class of employee (e.g. administrator) and not to offer flexible hours to professional staff?

3.16 It is important that all individual cases are assessed on their own merits. If a professional employee requests flexible working arrangements then consideration should be given to such requests. The same consideration should be given to a request made by an administrative employee. There should not be a policy (whether formal or informal) of only offering flexible hours to one category of employees.

Does the right to request apply to all employees (including small business employees)?

3.17 The right to request flexible working arrangements applies to national system employees (including small business employees) who have:

- (a) more than 12 months service (or casuals with regular service with a reasonable prospect of continuing employment) and
- (b) responsibility for the care of a child under school age or a disabled child under 18 years.

Can an employee request this at any time during the year?

3.18 There are no restrictions on when a right to request flexible working arrangements can be made.

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Assuming a request to work from home is granted, is the employer legally required to meet the costs of the employee who elects to work from home? E.g. Internet facilities and connections.

3.19 There is no requirement for an employer to meet the costs of providing this type of arrangement. The legislation, however, provides that a request can only be refused on 'reasonable business grounds'. The employer should therefore demonstrate that it is unreasonable for it to bear the costs for the employee to work from home.

If an employee goes on maternity leave under the old regime and returns when the new regime is in place, will the employee have the right to request flexible work arrangements under the new regime? Are there any changes to the maternity leave provisions under the NES?

3.20 From 1 January 2010, the NES will increase parental leave from the current unpaid 52 weeks for the primary carer to:

- (a) up to 52 weeks' unpaid leave for each parent, three weeks of which can be taken together by the parents immediately after the birth (compared to the one week that can be taken concurrently at the moment). Otherwise unpaid parental leave must be taken separately and continuously so that their periods of leave join up and
- (b) the right to request an additional period of up to 52 weeks of unpaid leave for one parent who has already taken 12 months parental leave (although this is subject to the employer's right to refuse on the basis of 'reasonable business grounds') and
- (c) a right to be consulted while on parental leave about decisions made by the employer that 'will have a significant effect on the status, pay or location of the employee's pre-leave position'. In this case, the employer must take all reasonable steps to give the employee information about and an opportunity to discuss the effect of the decision on that position.

3.21 The right to request an extension will apply even if the employee is on maternity leave prior to 1 January 2010.

3.22 In addition to this the Government intends to introduce a paid parental leave scheme from 1 January 2011.

3.23 In relation to requesting flexible working arrangements, from 1 January 2010, the NES also provides for a new right to request flexible working arrangements. Employees who have:

- (a) more than 12 months service (or for casuals, regular service with a reasonable prospect of continuing employment) and
- (b) responsibility for the care of a child under school age or a disabled child under 18 years,

may request flexible work arrangements (note, the employee does not have to be returning from maternity leave). This request may only be refused on 'reasonable business grounds'.

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If the employee does not accept the employer's grounds for refusal is it up to the courts to decide?

- 3.24 Fair Work Australia will be able to review an employer's refusal of a request for flexible work arrangements where parties agree to it beforehand. There is no capacity, however, for a review of the substance of the employer's decision, that is, that it met the 'reasonable business grounds' test (this is specifically excluded), unless there is an express term in an enterprise agreement dispute resolution clause to that effect.

Annual Leave

What about leave loading?

- 3.25 Leave loading is an award condition. Under the *Clerks Award* for example, there is an entitlement to leave loading which is contained in clause 30.3.

Do you have to work for certain periods to be eligible to take annual leave and other leave?

- 3.26 The entitlement to annual leave is four weeks per year or five weeks for shift workers. The entitlement accrues on a pro rata basis and may be taken at any time after it has accrued.
- 3.27 The entitlement to personal/carer's leave is 10 days paid per year. This also accrues pro rata.
- 3.28 In relation to long service leave, an employee must work for certain periods before the entitlement will arise. Long service leave is governed by State legislation. In Queensland, for example, there is an entitlement to long service leave after 10 years continuous service (or a pro rata payment after 7 years in certain circumstances).
- 3.29 There is no minimum time period prescribed for an employee to receive unpaid carer's leave (two days per permissible occasion), compassionate leave (two days per permissible occasion) or community service leave.

Are casual employees entitled to leave? For example, if they work two days per week over a year what leave entitlements are provided?

- 3.30 Casual employees have no entitlement to paid annual leave or paid personal leave. Casuals are entitled to access unpaid carer's leave and unpaid compassionate leave (note employees other than casual employees will be paid for compassionate leave) and unpaid community service leave. Certain long term casuals may also have an entitlement to long service leave in accordance with State legislation.

Can an employee who works regular hours (e.g. two days per week) agree with the employer to work on a contract casual rate which is inclusive of annual leave?

- 3.31 There is nothing preventing an employer from providing an employee with a casual rate which is inclusive of an amount for annual leave. There is however, no entitlement for casual employees to be paid annual leave and therefore the risk in including this amount is that it makes the employment relationship look more like a permanent one. It would be preferable to pay a rate that compensates for the fact that that the employee is not receiving annual leave.

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Personal/Carer's Leave and Compassionate Leave

Is sick leave still applicable under the new National Employment Standards?

- 3.32 Sick leave is known as personal/carer's leave under the NES. There is an entitlement to 10 days' personal/carer's leave.

Does the employee still need to provide medical certification for sick leave or is this now an optional requirement?

- 3.33 An employer may impose a requirement for an employee to produce a medical certificate. This should be included in the employment contract.
- 3.34 If required by the employer, the employee must provide evidence of the need to take personal leave, unpaid carer's leave and compassionate leave in accordance with the employee's entitlements under the NES. The employee must also give notice to the employer of the taking of paid personal leave, unpaid carer's leave and compassionate leave.

Does personal/carer's leave accrue if not used?

- 3.35 Personal/carer's leave is cumulative and will accrue if the full entitlement is not used each year.

If an employee needs to take care of a child is this able to be claimed under the personal/carer's leave category?

- 3.36 Yes, provided the child is a member of the employee's immediately family or household and is experiencing an illness or injury or an unexpected emergency.

Does personal/carer's leave include de facto partners?

- 3.37 An employee may take personal/carer's leave to care for a member of their immediate family that is experiencing illness or injury or an unexpected emergency. The definition of immediate family includes de facto partner.

Does compassionate leave include uncles and aunts?

- 3.38 An employee is entitled to two days of compassionate leave for each occasion when a member of the employee's immediate family or household:
- (a) contracts or develops a personal illness that poses a serious threat to his or her life or
 - (b) sustains a personal injury that poses a serious threat to his or her life or
 - (c) dies.

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- 3.39 There is no entitlement to take compassionate leave because of the death of an uncle or aunt. Uncles and aunts are not included in the definition of immediate family.

Community Service Leave

Regarding jury duty - employees would be paid by the Courts for this. Is the employer entitled to this payment or entitled to reduce the employee's pay so the employee is in the same financial position as he/she would have been otherwise?

- 3.40 An employer is entitled to reduce the payment of the employee's base rate of pay by the amount of jury service pay (excluding expense-related allowances) that the employee receives under a state, territory or Commonwealth law. An employer is only required to pay an employee for up to 10 days of jury service.

Long service leave

Can directors/shareholders who are also employees make agreements not to accrue long service leave i.e. in their shareholders' agreements?

- 3.41 Long service leave is a statutory entitlement that is governed by State legislation. It is not possible to contract out of this entitlement. In certain circumstances an employee and employer may be able to agree to cash out long service leave. In Queensland, for example, the *Industrial Relations Act 1999* (Qld) only permits the cashing out of long service leave in certain circumstances. These include where the right to do so is provided by an industrial instrument or where the employee has applied for an order from the Queensland Industrial Relations Commission (QIRC). The QIRC may only order that an employee's long service leave be cashed out:

- (a) on compassionate grounds or
- (b) on the basis of financial hardship.

Parental leave

How will you know if both parents take leave at the same time?

- 3.42 An employer may require an employee to sign a statutory declaration to swear to the amount and timing of their partner's parental leave.

Notice of termination & Redundancy pay

Does this mean that the employer has to make a redundancy payment to the employee, irrespective of whether the employer is a small business or a big business? Must it be a minimum of 16 weeks?

- 3.43 There is an exemption for small business employers from paying redundancy pay.

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- 3.44 In circumstances where an employer is required to pay redundancy pay, this will be determined in accordance with the following table:

| Employee's period of continuous service | Redundancy pay |
|---|----------------|
| 1 but less than 2 years | 4 weeks |
| 2 but less than 3 years | 6 weeks |
| 3 but less than 4 years | 7 weeks |
| 4 but less than 5 years | 8 weeks |
| 5 but less than 6 years | 10 weeks |
| 6 but less than 7 years | 11 weeks |
| 7 but less than 8 years | 13 weeks |
| 8 but less than 9 years | 14 weeks |
| 9 but less than 10 years | 16 weeks |
| 10 years | 12 weeks |

Does the NES address probationary periods (i.e. the usual three months) and the employer's right to terminate after three months?

- 3.45 Strictly speaking, there is no right to terminate after a probationary period. Historically employees who had not yet completed their probationary period were excluded from bringing an unfair dismissal claim.
- 3.46 Under the new regime, to be eligible to bring an unfair dismissal claim, the employee must have completed the minimum employment period of at least 6 months (or 12 months if the employer is a small business employer).

If you make someone redundant, do you then pay them an extra four days for the time off to look for work?

- 3.47 Under the *Clerks Award*, an employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking employment. Therefore for an employee entitled to four weeks' notice, they will be entitled to four days time off without loss of pay. This four days is not additional to the notice period.

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Information statement

Is the Information Statement available now?

- 3.48 The information statement is now available. A copy of the Fair Work Information Statement can be accessed by visiting <http://www.fairwork.gov.au/Pay-leave-and-conditions/Conditions-of-employment/Pages/Fair-Work-Information-Statement.aspx#obtaining%20copies%20of%20the%20statement>.

4 Transitional arrangements for modern awards

Does the increase in rates, which commences from 1 July 2010, apply to new employees as well?

- 4.1 The transitional provisions contained in certain modern awards apply to employers who immediately prior to 1 January 2010 were obliged to pay different award rates. The transitional provisions are therefore not restricted to only existing employees.

While some existing employees may be moving up or down in wages over the five year transition period, do new employees have to commence on the new rates immediately or do they have to have the same tiered rates as existing employees?

- 4.2 There is nothing preventing an employer paying the new modern award rates for new employees, however, the transitional provisions (as they are currently drafted) allow employers to phase in the rates for new and existing employees.

What happens if there are changes to the award issued rates over that five year transition period?

- 4.3 Any increases from future annual wage reviews will need to be applied from the first pay period on or after 1 July of each year.

If the new rate is less than what is currently being paid can we adjust our rates down using the formula provided? Alternatively, can we opt to retain our current higher rate?

- 4.4 The pre-existing rates continue to apply to your employee until the first full pay period on or after 1 July 2010 in 20 per cent instalments.
- 4.5 If there is a difference between your employee's wage rate in the modern award and the pre-modern award wage rate, the increase or decrease will be introduced progressively in five annual instalments. This means that if the new modern award rate is less than the current rate, the formula (as set out below) can be used to phase in to the lesser rate.

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Formula – wages if rates now lower

Pre 1.7.2010 = NAPSA rates

From 1.7.2010 = New rates - 80% x (new rate–current rate)

From 1.7.2011 = New rates - 60% x (new rate–current rate)

From 1.7.2012 = New rates - 40% x (new rate–current rate)

From 1.7.2013 = New rates - 20% x (new rate–current rate)

Formula – wages if rates now higher

Pre 1.7.2010 = Existing NAPSA rates

From 1.7.2010 = New rates + 80% x (New rate–current rate)

From 1.7.2011 = New rates + 60% x (New rate–current rate)

From 1.7.2012 = New rates + 40% x (New rate–current rate)

From 1.7.2013 = New rates + 20% x (New rate–current rate)

- 4.6 Additionally, the monetary obligations imposed on employers by a modern award can be absorbed into over award payments.

How can we obtain information about increases in the rates? Is there a way to keep up-to-date on these award rates, such as by subscribing to online emails?

- 4.7 Currently it is possible to sign up to updates that have been made to pay scales by visiting <http://pssupdates.fairwork.gov.au/>. Presumably when modern awards commence a similar system will be introduced. At this stage the best thing to do is to monitor the FWA website (www.fwa.gov.au) and the AIRC website (www.airc.gov.au).

If you opt to adopt the percentage increase instead of the full amount, what happens when the rates actually increase with CPI during the five year transition period?

- 4.8 As mentioned above, any increases from future annual wage reviews will still have to be factored in during the transition period. The transitional amount must be set off against the increase.

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Concerning the mandatory model flexibility clause, can rest and meal break provisions be varied?

- 4.9 The award flexibility clause only allows an employer and an individual employee to agree to vary the application of certain terms of the award to meet the genuine individual needs of the employer and the individual employee. The only terms the employer and the individual employee may agree to vary the application of are those concerning:
- (a) arrangements for when work is performed
 - (b) overtime rates
 - (c) penalty rates
 - (d) allowances and
 - (e) leave loading.
- 4.10 Accordingly, rest and meal break provisions cannot be varied.

Where can we find these awards?

- 4.11 Modern awards can be found by visiting the following link:
<http://www.airc.gov.au/awardmod/fullbench/awards.htm>.

If graduate accountants don't have a basic award rate then what is acceptable under the law? Is there a wage limit which would place the employer in breach of the law? What award should be used since the clerical award is not appropriate for professional staff?

- 4.12 Where there is no applicable modern award, employers are to satisfy the Federal Minimum Wage. This can be accessed by visiting <http://www.fwa.gov.au/index.cfm?pagename=minlatest#what>.
- 4.13 As a guide you may wish to take a look at the *Legal Services Award 2010* which provides pay rates for Graduate Lawyers. This can be accessed by visiting <http://www.airc.gov.au/awardmod/fullbench/awards.htm>.

Are employees who are paid above the modern award still covered under the modern award?

- 4.14 Modern awards will still cover employees even if they are paid above the award rate. There is a limited ability to vary the application of the modern award by using the award flexibility provision (discussed above). Additionally, limited awards (including the *Clerks Award*) provide for an annualised salary to be paid which enables an employer to pay an annualised salary in satisfaction of certain award entitlements, namely, minimum weekly wages, allowances, overtime, penalty rates and annual leave loading.

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Are modern awards intended to cover all employees? In the meantime, what will the coverage be for non-award covered employees? Will NAPSAs continue?

- 4.15 Modern awards are not intended to cover employees who because of the nature or seniority of their roles have traditionally not been covered by awards.
- 4.16 Subject to the phase in provisions discussed above, modern awards will replace NAPSAs from 1 January 2010. However, where an employee who was previously covered by a NAPSA does not fall within the coverage of any modern award, the NAPSA will continue to apply to that employee until the sunset date of 1 January 2014. After the sunset date, the employee will be award free.

Is there a guide showing the old awards and a comparison with the new award coverage?

- 4.17 The writer is not aware of any simple comparison that is available. The task will simply involve comparing the relevant current pay scales to the rates contained within the applicable modern award.

Clerks (Private Sector) Award 2010

We are a company employer which pays above the published award rates – what do we need to do in regards to documentation or payments, if anything? We have used the previous CPA Australia employment contracts.

- 4.18 The CPA employment contracts are still available and have been updated for the new legislation.

Are there any provisions in relation to uniforms – both the supply of and the laundering of?

- 4.19 Different awards contain different provisions in relation to uniform and laundry. In the *Clerks Award* there is a clause which provides that where an employee is required to wear and launder a uniform any cost of the uniform must be reimbursed and the employee must be paid \$3.55 for laundry expenses per week.
- 4.20 The *Clerks Award* also provides for reimbursements where employees engage in work damaging to clothing or where employees are constantly required to work under conditions which are wet and damaging to footwear.

Will this award replace state-based Clerks awards?

- 4.21 The moderns are designed to replace all State based awards (with the exception of non-constitutional corporation employers in Western Australia).

If a full-time salaried employee receives \$100 per day then the casual staff member should receive \$125 per day. Is that correct?

- 4.22 Yes. Under the *Clerks Award*, a casual is paid the base rate plus 25 per cent loading.

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Has this award been finalised?

- 4.23 In a recent statement ([2009] AIRCFB 980), the Australian Industrial Relations Commission (**AIRC**) identified that residual variations in modern awards will not be completed by the end of this year. This means that modern awards will not be finalised until the new year. The AIRC has foreshadowed some variations, in addition to typographical variations, that will be made to the modern awards early in the new year. These are:
- (a) the variation of transitional provisions in the priority and stage 2 modern awards to incorporate changes made in the model provisions (the *Clerks Award* was in the priority stage)
 - (b) the variation of priority, stage 2 and stage 3 modern awards to include the national training wage and labour hire/group training provisions decided in the AIRC's recent decision on stage 4 awards in the award modernisation process and
 - (c) variation of the priority awards to include the model supported wage and school based apprentice provision later decided upon.
- 4.24 Importantly, it is the AIRC's intention that these variations will be retrospective, in that they will take effect from 1 January 2010.

Would bookkeepers fall under this new clerical award?

- 4.25 Bookkeepers will be covered by the *Clerks Award*. Each classification in the *Clerks Award* contains a list of indicative duties. Some of the duties listed include reconciliation of accounts to balance, reporting to management on accounts/financials and administering salary and payroll requirements. You should review the classifications within the *Clerks Award* to determine which level is applicable to your employees.

5 General

Do you still have the option of individual common law contracts? I understand they would have to be equal to the NES and award entitlements?

- 5.1 Individual common law agreements remain available. It is not necessary to replicate the NES and modern award terms and conditions, however, it is necessary to ensure there are no terms that are inconsistent or more detrimental than any terms and conditions contained within the NES or applicable modern award.

Is there a generic employment contract to cover these awards?

- 5.2 CPA has template employment agreements available for your use. These can be accessed at www.cpaaustralia.com.au/981_27995.

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6 General

Can workplace agreements be implemented under the new structure? If so, is there an approval process?

- 6.1 Workplace agreements are available under the new Fair Work legislation. Workplace agreements were discussed in detail in a previous webinar. For information about the new approval process visit: <http://www.fwa.gov.au/index.cfm?pagename=agreementsapproval>.

Can salaries be expressed as an all inclusive figure or is it salary plus superannuation?

- 6.2 There is no restriction on a salary being expressed as an all inclusive figure including superannuation. It is important, however, not to mislead your employees in relation to their salary. Many employees when they are presented with a salary often expect the amount to be exclusive of superannuation. You should ensure the accurate amount is effectively communicated to your employees.

For a business that has been running for a long time (e.g. 30 years), and there is a mutual agreement between the employer and the employees concerning working hours and breaks, does that agreement remain in place under the new laws? For example, the agreement is that the accountant only takes a lunch break, no other break. Would that still apply?

- 6.3 As there is no modern award regulating the accountancy industry and the Fair Work Act does not provide for breaks, the arrangements could still continue for accountants. For award employees however, award conditions will prevail.

What are the guidelines in relation to the 'reasonable additional hours' allowed in addition to the maximum of 38 ordinary hours per week?

- 6.4 In determining whether additional hours are reasonable or unreasonable, the following must be taken into account:
- any risk to employee health and safety from working the additional hours
 - the employee's personal circumstances, including family responsibilities
 - the needs of the workplace or enterprise in which the employee is employed
 - 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 of any request or requirement to work the additional hours
 - any notice given by the employee of his or her intention to refuse to work the additional hours

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- (g) the usual patterns of work in the industry, or the part of an industry, in which the employee works
- (h) the nature of the employee's role, and the employee's level of responsibility
- (i) whether the additional hours are in accordance with averaging terms included in a modern award or enterprise agreement that applies to the employee, or with an averaging arrangement agreed to by the employer and employee and
- (j) any other relevant matter.

Where can we find the new rates for specific awards? E.g. retail award

- 6.5 The rates of pay are now contained within each modern award. As an example, a link to the retail award is set out below http://www.airc.gov.au/awardmod/awards/general_retail_3.pdf.

Does a 'modern awards guide' exist for accounting practice employers to use with their various grades of employees?

- 6.6 Employers should access the CPA employment manual relevant to their practice for further information which can be located at www.cpaaustralia.com.au/981_27995.

So for small business employers there is nothing of major impact until 1 July 2010 is that correct? Just preparing for the introduction of the new rates?

- 6.7 This is incorrect. Although new rates will commence phasing in from 1 July 2010, the remaining modern award terms and conditions will commence on 1 January 2010. In addition to this the National Employment Standards will commence operating on 1 January 2010.