BEST PRACTICE in NSW
EMPLOYER RESPONSIBILITIES

NSW INDUSTRIAL RELATIONS
• What's new for 2019.
• What is the NES - National Employment Standards.
• Employer Responsibilities and Employee Agreements.
• Unfair Dismissal – The dismissal process.
• Genuine independent contractor v’s sham contracting.
• What you need to know about transfer of Business
• Moving forward and best practice help.
• Best practice across the sector and NSW Industrial Relations Services
TIMELINE & WHAT’S NEW

FAIR WORK Act 2009

NES & Modern Awards
Anti Bullying Measures
Modern Award Review
New for 2019

**UPDATES TO AWARDS**

Casual Employment

- Awards provide a casual conversion provision to full time or part time.
- A copy of these provisions must be supplied to a casual within 12 months of engagement.
- Existing casuals as at 1 Oct 18 to be provided with a copy of the clause by 1 January 2019.

Family Friendly Work Arrangements

- Employee may request change in working arrangements.
- Applies where an employee has made a request under s.65 of the National Employment Standards (NES) of the Fair Work Act, the Right to Request Flexible Work Arrangements.
- Any request and response should be in writing.
New for 2019

UPDATES TO AWARDS

Leave to Deal with Family and Domestic Violence

- Effective 1 December 2018.

- An employee is entitled to 5 days’ unpaid leave as follows:
  
  - the leave is available in full at the start of each 12 month period of the employee’s employment.
  - the leave does not accumulate from year to year.
  - is available in full to full-time, part-time and casual employees.
New for 2019

UPDATES TO AWARDS

Leave to Deal with Family and Domestic Violence

- Employer and employee may agree that the employee may take more than 5 days’ unpaid leave.
- Does not count as service but does not break the employee’s continuity of service.
- Subject to confidentiality in handling information relating to the leave.
- Defines coverage to family members including person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.
New for 2019

UPDATES TO AWARDS

Payment on Termination of Employment

- Effective 1 November 2018.

- Employer must pay an employee no later than 7 days after the day on which the employee’s employment terminates, including:
  - Wages under the award for any complete or incomplete pay period up to the end of the day of termination; and
  - All other amounts that are due.

- Long service leave laws or entitlements, may require an employer to pay an employee on the day on which the employee’s employment terminates or shortly after.
1. HOURS OF WORK

- 38 Hours per week plus reasonable additional hours
FACTORS TO HELP DETERMINE REASONABLE ADDITIONAL HOURS

- Any risk to employees health and safety and the Employees personal circumstances.
- Needs of the business.
- Is the employee entitled to overtime or other benefits.
- Was reasonable notice given.
- Nature of employee role and the usual patterns of work in the industry.
- Whether additional hours are in accordance with averaging terms.
2. REQUESTS FOR FLEXIBLE WORK ARRANGEMENTS

- Employees with 12 months service have the right to request flexible working arrangements under various circumstances.
- Requests should be made in writing.
- Employer to be respond to the request in writing within 21 days.
3. PARENTAL LEAVE (Unpaid)

- Up to 12 months unpaid leave per employee with the right to request
- An additional 12 months unpaid leave.
4. ANNUAL LEAVE

4 weeks paid leave per year plus an additional week for shift workers.
5. PERSONAL / CARERS AND COMPASSIONATE LEAVE

- 10 days paid personal/carers
- 2 days unpaid carer’s (including casuals) as required
- 2 days paid compassionate leave (unpaid for casuals) as required
Because of personal illness, or personal injury affecting the employee and applies to all employees, other than casual employees.
• An employee may take paid or unpaid carer’s leave with F/T and P/T employees must use paid personal leave if available.

• Provide care and support to an immediate family member or a member of the employee’s household because of personal illness, or personal injury, or unexpected emergency.

• Reasonable notice and evidence requirements apply

CARERS LEAVE
COMPASSIONATE LEAVE

• 2 days compassionate leave for each occasion when a member of the employee’s immediate family or a member of the household and unpaid for casuals.

• Contracts or develops a personal illness that poses a serious threat to his or her life.

• Sustains a personal injury that poses a serious threat to his or her life.

• Dies.

• Reasonable notice and evidence requirements apply.
IMMEDIATE FAMILY MEMBER

No definition of “member of employee’s household” but includes grandchildren.
NOTICE AND EVIDENCE
6. COMMUNITY SERVICE LEAVE

EMERGENCY MANAGEMENT

• Community Service leave is unpaid.
• No limit on the amount of leave.
• Engages in the activity on a voluntary basis.
• An employer may request evidence.
Employer required to make up the difference between court payment and employees daily wage.

Capped at 10 days on selection.

Applies to F/T, P/T employees while casuals are unpaid.

6. COMMUNITY SERVICE LEAVE
JURY SERVICE

www.courts.justice.nsw.gov.au
7. LONG SERVICE LEAVE
(1955 ACT)

- Applies to most employees within NSW, regardless if they are classified as Fulltime, Part time or Casual.
- Entitlement is 2 months at 10 years of continuous service and a further entitlement of 1 month 4.33 weeks after each additional 5 years.
- As leave or paid on termination of employment.
- Pro-rata payment for certain circumstances.
OUR NEW LOOK WEBSITE

www.industrialrelations.nsw.gov.au

- Call us on 13 16 28.
- FAQ’s
- Our new look calculator

Long Service Leave Calculator NSW

This calculator will assist you to calculate an employee's accumulated entitlement as per the Long Service Leave Act 1955 in New South Wales all employees who have been employed a minimum of 5 years may have some entitlement to Long Service Leave. This calculator will help you determine whether an employee has an entitlement and what that entitlement may be.

Period of employment

Start Date

End Date

Leave without pay

Please enter the periods you were absent from work where you were not paid (such as parental leave)

From

To

Long service leave already taken (whole weeks)

[Slider]

Calculate
8. PUBLIC HOLIDAYS

- A paid day off for gazetted State and Local Public Holidays except where reasonably requested to work.
9. NOTICE OF TERMINATION AND REDUNDANCY

- An employee (other than a casual) is entitled to redundancy pay when their employment is terminated:
  - At the employer’s initiative because the employer no longer requires the job done by the employee to be done by anyone
  - Because of insolvency or bankruptcy of the employer

- Employer must have at least 15 or more employees employed for severance pay to apply.

- Severance payment is calculated on the employee’s base rate of pay for ordinary hours worked and their length of service (no payment for <12 months).
## TERMINATION WITH NOTICE OR PAYMENT IN LIEU

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<th>Employee’s period of continuous service with employer</th>
<th>Period</th>
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<td>Not more than 1 year</td>
<td>1 week</td>
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<tr>
<td>More than 1 year but not more than 3 years</td>
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<tr>
<td>More than 3 years but not more than 5 years</td>
<td>3 weeks</td>
</tr>
<tr>
<td>More than 5 years</td>
<td>4 weeks</td>
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</table>

Note: Increase the period of notice by 1 week if the employee is over 45 and has completed at least 2 years continuous service.
Redundancy pay is based on employees ordinary hours worked at the base rate of pay.

<table>
<thead>
<tr>
<th>Years</th>
<th>Employee’s period of continuous service with the employer on termination</th>
<th>Redundancy pay period</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>At least 1 year but less than 2 years</td>
<td>4 weeks</td>
</tr>
<tr>
<td>2</td>
<td>At least 2 years but less than 3 years</td>
<td>6 weeks</td>
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<tr>
<td>3</td>
<td>At least 3 years but less than 4 years</td>
<td>7 weeks</td>
</tr>
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<td>4</td>
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<td>8 weeks</td>
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<td>5</td>
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<td>6</td>
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<td>11 weeks</td>
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<td>7</td>
<td>At least 7 years but less than 8 years</td>
<td>13 weeks</td>
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<tr>
<td>8</td>
<td>At least 8 years but less than 9 years</td>
<td>14 weeks</td>
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<tr>
<td>9</td>
<td>At least 9 years but less than 10 years</td>
<td>16 weeks</td>
</tr>
<tr>
<td>10</td>
<td>At least 10 years</td>
<td>12 weeks</td>
</tr>
</tbody>
</table>
10. FAIR WORK INFORMATION STATEMENT

To be provided by employer to new employees.
Modern Awards

- Awards are Industry and occupation awards.
- Provide conditions equal to or more beneficial than.
- Not all employees are covered by an award.
- Employer may have multiple modern awards applying to their workplace.
- Copy of Award and National Employment Standards (NES) must be available for employees.
AWARD FREE EMPLOYEES

• Currently the national full time adult minimum wage of $740.80 per week, calculated on the basis of a 38 hours week or $19.49 per hour part time.

• Effective from the first full pay period to commence on or after 1 July 19.

• Adult means an employee 21 years and over.

• A casual loading of 25 per cent for award/agreement free employees.
• **FULL TIME** - Employee engaged to work 38 hours per week or an average of up to 4 weeks.

• **PART TIME** - Employee who is engaged to work less than 38 hours per week and by Written agreement prior on the regular pattern of work.
  - Number of hours including days of the week with starting and ceasing times.
  - Terms may be varied by written agreement.

• **CASUAL** - May work up to 38 hours per week and is paid a casual loading of 25%.
  - Entitled to shift penalties and overtime.
  - Minimum engagement depending on awards or industry.
  - Casual conversion provision add to Awards as at 1/10/2018.

• Overtime provisions may apply.
• Check Award conditions.
Must pass boot test and be approved by Fair Work Commission
Seek productivity improvements or flexibilities that provide improvements to the workplace

EA CAN BE A SINGLE, MULTI OR GREENFIELDS AGREEMENT
SALARIED ARRANGEMENT - COMMON LAW EMPLOYMENT CONTRACT

• Letter of offer should include:
  • Salary conditions
  • Entitlements are included in the salary
  • Recommended that it is reviewed annually
HIGH INCOME EMPLOYEE INDEXED 1 JULY ANNUALLY

• A high income employee can be excluded from having a modern award, NAPSA or federal award apply to them
• High income = greater than $148,700 p.a.
• Pro-rata for part-time employees
• Includes guaranteed salary, agreed value of non-monetary benefits and salary-sacrifice amounts
GENUINE INDEPENDENT CONTRACTOR IS NOT AN EMPLOYEE

EMPLOYEE OR INDEPENDENT CONTRACTOR
The person was dismissed and that dismissal was harsh, unjust or unreasonable.

- Employment is terminated at the initiative of the employer.
- Resigned but were forced to do so due to the employer’s conduct.
- The dismissal was not a case of genuine redundancy.
Employee may only make claim if they have completed minimum employment period of:

- 6 months if 15 or more employees employed, or
- 12 months if less than 15 employees (Small Business Fair Dismissal Code) and they are:
  - covered by a award or EA, or
  - earning < high-income threshold($148,700)
- 21 days to lodge the application
Provides a model process to assist dealing with termination of employment issues

Evidence of compliance can include

- Completed checklist see www.fairwork.gov.au
- Copies of written warnings
- A statement of termination
- Signed witness statements
WHEN DOES A TRANSFER OF BUSINESS OCCUR?

• Connection exists between the old and new employer by Transfer of ownership or assets, Outsourcing of the transferring work, Insourcing and Associated entities for purposes of Corporations Act 2001.
• Create a to do list
• Review current policies and procedures
• Develop a culture that educates the team
• Train to inform Managers, Team Leaders and Supervisors
• Create best practice in your organisation
• Research to ensure you decipher fact to fiction
• Follow website’s and links to keep up to date

MOVING FORWARD
PCU PROACTIVE COMPLIANCE UNIT

- **Workshop Program** across NSW.

- Monthly on-line **Live And Recorded Webinar** program.

- **Employer Workplace Health Checks**, one hour one on one assistance with monitoring and reviewing requirements for record keeping obligations under Long Service Leave Act 1955 legislation.
Indigenous people

Aboriginal Community Engagement Unit

Subscribe to the ACE newsletter Two Rivers

Book an appointment by calling on 1300 361 968 or (02) 9228 5985, or aceu@industrialrelations.nsw.gov.au
Useful websites and documents

NSW Industrial Relations - 13 16 28
www.industrialrelations.nsw.gov.au

Fair Work Ombudsman - 13 13 94
Fact Sheets, templates, pay tools and other resources for employers
www.fairwork.gov.au

Fair Work Commission
wards, Fair Work Act 2009, Enterprise Agreements & Unfair Dismissals
www.fwc.gov.au

Long Service Corporation - 131 441
Portable Long Service Leave scheme for the Building and Construction industry and the Contract Cleaning Industry

SafeWork NSW - 131050
www.safework.nsw.gov.au

Anti Discrimination Board of NSW - (02) 9268 5544
www.antidiscrimination.justice.nsw.gov.au