



Australian Government

The workplace relations system. Know where you stand.

Australia's workplace relations system has a set of rules and obligations that all employers are required, by law, to comply with.

No one can be forced to sign an agreement.

Any agreement signed by an employee aged under 18 must also be signed by a parent or guardian.

Other obligations include:

- Minimum wages
- Working hours
- Four weeks paid annual leave
- Ten days paid sick leave
- One year unpaid maternity leave.

The Workplace Authority

The Workplace Authority, previously known as the Office of the Employment Advocate, will check agreements against a Fairness Test to make sure you get a fair deal. If an agreement doesn't pass the Fairness Test, it will need to be changed so that it is fair and the employer will have to make up any back pay.

The Workplace Ombudsman

The Workplace Ombudsman, previously known as the Office of Workplace Services, will investigate and prosecute employers who break the law. The Workplace Ombudsman will provide additional protection for employees and will take on a greater role in ensuring that employers comply with their legal obligations.

If you need information about the Fairness Test or for advice or assistance on workplace relations please phone the Workplace Infoline 1300 363 264 or visit the Workplace website workplace.gov.au.

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The Fairness Test

The Fairness Test applies to employees covered by an Australian Workplace Agreement and earning under \$75 000 a year who have had protected award conditions removed or changed in an agreement. This includes the following award conditions:

- Penalty rates
- Shift and overtime loadings
- Monetary allowances
- Annual leave loadings
- Public holidays
- Rest breaks and
- Incentive based payments and bonuses.

The Fairness Test also applies to all collective agreements which remove or change protected award conditions.

Employees must receive fair compensation for changes to these conditions and payments.

In most cases this will mean a higher rate of pay.

In establishing what is fair compensation, like the old no-disadvantage test, the Workplace Authority will consider the work obligations of the employee, for instance, whether the employee would be required to work shift work or at weekends.

The Fairness Test applies to all workplace agreements lodged on or after Monday 7 May 2007. Agreements made before this date will not change.

As an additional protection for workers, employers will not be able to dismiss an employee because their agreement does not meet the Fairness Test. An employer must also not force an existing employee to agree to remove or vary a protected award condition.

Who will conduct the Fairness Test?

The Fairness Test will be conducted by the Workplace Authority. The Workplace Authority is the number one contact point for people to receive straightforward information and advice on workplace relations, including agreements.

Employers are encouraged to request a Fairness Test pre-lodgement review of their workplace agreements. This will assist people to make fair and clear agreements from the start.

Where an agreement fails the Fairness Test, back pay must be paid to the employee.

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Frequently asked questions regarding the Fairness Test

What is the Fairness Test?

The Fairness Test ensures that employees receive fair compensation if their Australian Workplace Agreement (AWA) or collective agreement removes or modifies protected award conditions, such as penalty rates and overtime loadings.

How will the Fairness Test work?

The Fairness Test will involve consideration of both the monetary and non-monetary compensation when protected award conditions are changed. In most cases, this will mean a higher rate of pay.

In determining whether an agreement provides fair compensation to an employee or employees, the Workplace Authority will consider the work obligations of the employee. For example, whether the employee is required to work shift work or at weekends, and the specific employment and personal circumstances of the employee, including the employee's family responsibilities.

In appropriate circumstances, factors such as the industry, location, economic circumstances of the business will also be considered.

The Workplace Authority offers a pre-lodgement review of proposed agreements against the Fairness Test. This will assist people to make fair and clear agreements from the start and help them to know where they stand in regard to entitlements and obligations.

How can employers comply with the Fairness Test?

If you are intending to negotiate an agreement with an employee or employees which modifies or removes one or more of the protected award conditions, you will need to ensure the agreement provides fair compensation in lieu of the modified or removed protected award conditions. If there is any doubt about whether the agreement will pass the Fairness Test, it would be appropriate to provide full monetary compensation for the removal or modification of protected award conditions.

How and when will the Fairness Test be conducted?

An agreement operates as soon as it is lodged with the Workplace Authority. The Workplace Authority will conduct the Fairness Test as soon as possible following lodgement.

The employer, employees, or any organisations bound by the agreement will receive written notification of when the agreement passes the Fairness Test. If there are any problems, the Workplace Authority will contact the parties to the agreement and provide advice on how the agreement can be made fair. If no action is taken in 14 days, or if the Workplace Authority is still not satisfied that the agreement is fair, the agreement will cease to operate. The employer will be required to make up any back pay to the employee.

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What applies if my agreement fails the Fairness Test and ceases to operate?

Employees will be covered by the workplace arrangements that would have applied before the agreement was made. This could be an award, an earlier collective agreement or AWA.

Can employers force employees to sign a workplace agreement?

No. Employers cannot force existing employees to accept a workplace agreement. There will now be even stronger protections for employees. The law will be amended to:

- Ensure that an employer must not force an existing employee to agree to remove or vary a protected award condition.
- Ensure that an employer cannot dismiss an employee because the agreement does not meet the Fairness Test.
- Clarify that where there is a change in ownership of a business, an employer who takes over the business cannot require an employee to sign an AWA as a condition of continued employment.

The Workplace Ombudsman will take action against employers who try to force employees (including employees who continue employment when a business is transferred) to sign agreements.