

Use of individual flexibility arrangements best practice guide



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This best practice guide is for managers and employers. It explains the advantages of taking a best practice approach to individual flexibility arrangements (IFAs). It includes:

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It also has practical tips and case studies to help you move your business towards best practice.

Working at best practice

Best practice employers understand the legal requirements and have proper processes in place for making IFAs. They also communicate openly with their employees about the availability and effect of IFAs.

Every workplace can enjoy the benefits of taking a best practice approach to IFAs. These may include:

- greater flexibility in the workplace
- certainty, simplicity and clarity around conditions of employment
- attracting and retaining skilled and valuable staff
- improving job satisfaction and productivity.

Individual flexibility arrangements

An IFA is a written agreement made with an individual employee to change the effect of certain terms in the employee's award or registered agreement. It is used to make alternative arrangements to meet the needs of the employer and the individual employee.

However, an IFA can't be used to reduce or remove an employee's entitlements and must leave an employee better off overall when compared to their award or registered agreement. There's also a limit to what terms and conditions an IFA can change.



PRACTICAL TIP: You may have heard the term ‘flexible working arrangements’ – this is a different kind of workplace flexibility that doesn’t affect award or agreement terms. Certain employees have a right to request flexible working arrangements. For more information, see our Flexible working arrangements best practice guide available at fairwork.gov.au/bestpracticeguides or complete our free Workplace flexibility online course at fairwork.gov.au/learning

All awards and registered agreements must include a clause about individual flexibility.

If the employee works under an award, you can use an IFA to vary:

- arrangements for when work is done, such as work hours
- overtime rates
- penalty rates
- allowances
- leave loading.

If the employee works under a registered agreement, you’ll need to check the flexibility term in the registered agreement to see if the proposed change is allowed. If the registered agreement doesn’t have a flexibility clause, the model clause automatically applies. For more information on model flexibility terms that can be included in registered agreements, visit the Commission’s website at fwc.gov.au/work-conditions/enterprise-agreements



CASE STUDY – flexibility

Fiona works for Mike. Her workplace is covered by an award that says ordinary hours are worked between 9am to 5pm.

The flexibility term in the award says that the employer and employee can agree to vary terms about when the work is performed.

Fiona wants to start and leave work early to attend afternoon classes for a course she wants to begin. She approaches Mike about this.

They discuss options and agree that Fiona can work her ordinary hours between 7am and 3pm. Mike and Fiona record this arrangement as an IFA.

The ordinary hours of work for the other employees will still be 9am to 5pm.

Legal requirements

Genuine agreement

An employer and employee must genuinely agree to an IFA. Employees can't be forced to make an IFA, and they can't be treated adversely or discriminated against for refusing to enter an IFA.

You can't make an IFA a condition of employment when hiring new employees.

Formal requirements

An IFA must:

- be in writing, and signed by you and the employee. If the employee is under 18 years of age, it must also be signed by their parent or guardian
- identify the terms of the award or registered agreement which the IFA will vary
- set out how the arrangement may be terminated by either the employee or the employer.

You must keep the signed IFA in the employee's employment file and give a copy to the employee.

Better off overall test

When making an IFA, the employer is responsible for ensuring their employee will be better off overall.

The better off overall test involves weighing up the advantages and disadvantages of the IFA to the employee. You should compare the employee's entitlements under the proposed IFA against their entitlements under their award or registered agreement.

When deciding if the employee is better off overall you should consider the following questions:

- Who initiated the request?
- What entitlements are being changed? (For example, hours, overtime, penalty rates, etc.)
- What is the value of these entitlements under the award or registered agreement?
- Does changing the employee's span of hours change their penalty rates?
- Is the employee better off financially? (For example, will they receive more on a flat rate of pay under the IFA than they would as separate entitlements under their award or registered agreement?)
- Are there any situations where the employee wouldn't be financially better off? (such as a roster cycle or after a certain amount of overtime.)
- Are there any other circumstances or characteristics unique to the employee that should be considered? (For example, factors such as the employee's family commitments, their health, whether they have a second job, study or other interests.)

Frequently asked questions

Does an IFA replace the award or registered agreement?

No. An IFA applies as if it was a term of the employee's award or registered agreement. The other terms and conditions of their award or registered agreement not covered by the IFA will still apply.

Can I make an IFA which covers a group of employees?

No. An IFA is an agreement with an individual. You'd need to have a separate IFA with each employee in the group, making sure that each individual consents, and is better off overall when compared to their award or registered agreement.

Can I make an IFA a condition of employment for new employees?

No. You cannot make an offer of employment conditional on entering an IFA and the employee must genuinely agree to it. Employees also have workplace protections in relation to making and terminating IFAs.

What happens if an IFA doesn't meet all the formal requirements or the employee isn't better off overall?

It still operates as an IFA. This ensures that employees keep any benefits to which they are entitled to under the IFA. However, an employee can terminate an IFA if they believe they are being disadvantaged. The employee may be able to take action for compensation and the employer may also face penalties in that case, as this is a breach of the flexibility clause in their award or registered agreement.

Using best practice to support IFAs in the workplace

Best practice doesn't look the same for all employers. The way to achieve best practice will vary because of things like the number of employees, industry and the business environment.

Below are initiatives and suggestions that can help you move your business towards best practice.

Develop a policy

Developing an IFA policy shows that your business values flexibility and is open to meeting the needs of individual employees. A policy can also help your managers and employees understand how IFAs work and give your business an advantage to attract and retain staff. When developing your IFA policy, consider both the legal requirements and the needs of your business. This will help ensure a consistent and fair approach that works for both you and your employees.

Your IFA policy should:

- explain what terms and conditions can be altered by an IFA
- detail the process for requesting and negotiating an IFA
- set expectations and considerations when negotiating an IFA (for example, the needs of the business, the employee's individual circumstances and the better off overall test)
- encourage managers and employees to consider a range of options to address individual circumstances
- complement other flexibility policies and help employees achieve genuine work-life balance
- include information about how and when IFAs will be reviewed
- detail how and when IFAs may be terminated.



PRACTICAL TIP: A useful way to provide guidance for your managers and employees is to include a question and answer section at the end of your policy.

Train managers and employees

Best practice employers give their managers and employees training about how IFAs can be used in their business. Educating staff will help build an understanding of the options available under an IFA.

As a minimum, any training should cover the requirements in the Fair Work Act and the relevant award or registered agreement. It should also include information about the form, content and operation of IFAs.

The Fair Work Ombudsman has information you can provide your managers to help them understand IFAs. Visit [fairwork.gov.au/individual-flexibility-agreements](https://www.fairwork.gov.au/individual-flexibility-agreements)

Meet to discuss options

IFAs are intended to be beneficial for both the employee and employer. Best practice employers meet with their employees to discuss individual circumstances that meet the needs of both the business and the employee. That means you both must understand what each other's needs are so you can reach a genuine agreement.

As part of these discussions, consider giving employees information that will help them understand your business. This might include patterns of customer traffic, business performance trends, details of upcoming work or information about projects and staffing needs. However, you don't need to provide confidential or commercially sensitive information about your business.

When meeting with an employee to discuss an IFA, it's best to:

- organise a mutually convenient time and place. Choose somewhere that is private with minimal distractions, and allow enough time to have a meaningful discussion
- start by having both parties explain their interests and needs. Why is the IFA wanted?
- work together to think of different options that could meet both parties' needs, and consider all options
- share relevant information. For example, if an employee is asking to work a different span of hours, you could share information about operating times, customer needs and applicable penalty rates
- explain to the employee how the proposed IFA would work and consider if they are better off overall
- answer any questions and give the employee time to think about the proposed IFA
- encourage the employee to seek advice or discuss the proposed IFA with a support person if they wish
- schedule further meetings as necessary if further time is needed to consider the available options.

Help your employee understand

It's your responsibility to make sure your employee genuinely agrees to an IFA.

You can help your employee understand how the proposed IFA will work by:

- taking time to explain the factors you've considered in your better off overall assessment
- creating a mock pay slip so your employee can compare what they'll get under the IFA and what they're currently receiving
- giving them any calculations you have prepared
- including a trial or review period within the IFA.

Employers should look for, and address, factors which could affect an employee's understanding of an IFA. This might include their level of education, age, level of experience, knowledge of English or any cultural differences.

If you have concerns about an employee's understanding, consider:

- inviting the employee to bring a support person to discussions to help explain the terms and effects of the IFA
- arranging for an interpreter to attend discussions
- translating a copy of the proposed IFA and the award or registered agreement clause it would vary.



CASE STUDY – Employer initiated IFA

Jack runs a small landscaping business. His 3 full-time employees are covered by the Gardening and Landscaping Services Award (Award) and work varying additional hours each week. These additional hours attract different overtime rates under the Award (150% of the ordinary rate for the first 2 hours of overtime and 200% after that).

Jack would like to simplify his payroll by paying his employees a flat hourly rate of pay.

He checks the individual flexibility arrangements clause in the award to find out how to initiate an IFA. He also confirms the Award doesn't have rules about annualised wage arrangements.

Jack approaches each of the employees separately to discuss the proposed IFAs. He explains that they will still be paid for each hour worked, but all hours will be paid at the same flat hourly rate, which is higher than the ordinary rate, to compensate for the overtime rates which they would no longer receive.

Jack gives each employee a written proposal and a copy of his calculations that show they won't be paid less under the proposed IFA. Jack asks the employees to consider the proposed IFA and the calculations he has given them and organises another meeting for the following week.

After considering the information, each of the employees agrees to the change. Jack records the agreement he reaches with each employee in separate IFAs and provides them with a copy of their IFAs.

Consider different approaches and options

As a best practice employer, you should be open to, and genuinely consider, workable options suggested by your employees.

It's possible an employee will suggest an arrangement that hasn't previously been used in your business. Consider all suggestions as they may be practical and mutually beneficial.

Regular reviews

Over time, an IFA might no longer be practical or appropriate for you or your employee. This may be because the employee's needs or the requirements of the business have changed. Alternatively, it may be because entitlements under their award or registered agreement have changed.

It is therefore important that you review IFAs regularly (at least annually) to ensure the entitlements of the employee under the IFA don't fall below their award or registered agreement. This is important when circumstances change, for example when:

- an employee is promoted to a new classification
- a junior employee has a birthday
- the pay rates under awards are reviewed (this occurs annually in July)
- wage increases take effect under a registered agreement.

Best practice employers will schedule regular discussions with an employee to make sure their IFA is operating in a way that meets everyone's needs. Depending on the nature of the IFA, these meetings may be monthly, bi-annually, annually or as needed.

Terminating an IFA

The needs of your business and employee may change meaning an IFA is no longer suitable. If this occurs, discuss the issue with your employee and look for alternative arrangements.

If an alternative arrangement is proposed:

- explain how the new arrangement would work
- give the employee time to think about the new arrangement
- record any variation in writing and make sure it otherwise complies with the requirements for making an IFA
- keep the variation on file and give a copy to the employee.

If you can't agree on a suitable alternative arrangement, the IFA can be terminated.

If you and the employee agree to terminate the IFA, discuss if measures need to be put in place before the termination will take effect (for example, changing rosters or arranging childcare) and the agreed date the IFA will end.

If one party won't agree to terminate an IFA when requested, the other party can terminate it by providing notice. An IFA made under an award requires the party terminating it to provide the other party 13 weeks written notice. An IFA made under a registered agreement requires the amount of notice stated in the registered agreement (which can't be longer than 28 days).

IFAs made under an award prior to 4 December 2013 can be ended with 28 days' notice.

A copy of the termination notice must be kept as part of your employment records.



Best practice checklist

A best practice workplace involves more than just understanding and complying with the law. This checklist will help you work towards best practice when using IFAs in your business:

- ☐ **award or registered agreement** – look at the flexibility term of your award or registered agreement to check what terms can be varied
- ☐ **policy** – develop an IFA policy that suits your business – this will help ensure a consistent and fair approach for all employees
- ☐ **requests** – let employees know they can request an IFA and how to do it. Let managers know how to respond to a request and how to record an IFA
- ☐ **discuss** – when an IFA is proposed, meet with the employee to discuss both of your needs. At this meeting:
 - genuinely consider any ideas raised by the employee and answer their questions
 - work with them to come up with options. If needed, take time to consider arrangement(s)
 - make sure these options pass the better off overall test
 - explain the effect of the proposed IFA to the employee
 - encourage them to take some time to consider the proposed IFA, discuss it with a support person and seek advice
 - set up another meeting to further discuss the proposed IFA
- ☐ **understanding** – help the employee understand a proposed IFA. Take appropriate steps to assist the employee for example, offering a support person or translator if appropriate
- ☐ **review** – schedule an IFA review date with your employee. Review the IFA against the award or registered agreement every year to ensure it meets the better off overall test.

Where to get more information

- Learn more about IFAs and other types of flexibility at our Flexibility in the workplace page at fairwork.gov.au/flexibility
- Access our free online training for employers and managers. Available courses cover best practice approaches to difficult conversations in the workplace, hiring employees, managing employees, managing performance, diversity and discrimination, workplace flexibility and record-keeping and pay slips. Complete our free online courses at fairwork.gov.au/learning
- Transform your business from compliant to best practice with our practical easy to follow guides. These resources are designed to help you create a happier, fairer and more productive workplace. Find all our Best practice guides at fairwork.gov.au/bestpracticeguides

CONTACT US

Fair Work online: fairwork.gov.au

Fair Work Infoline: **13 13 94**

Need language help?

Contact the Translating and Interpreting Service (TIS) on **13 14 50**

Help for people who are deaf or have hearing or speech difficulties

You can contact us through the National Relay Service (NRS).

Select your [preferred access option](#) and give our phone number: **13 13 94**

The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this fact sheet is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

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