

Maximum weekly hours

Overview

Maximum weekly hours form part of the National Employment Standards (NES). The NES apply to all employees covered by the national workplace relations system, regardless of any award, agreement or contract.

The NES establish the maximum weekly hours for employees, as well as the circumstances in which an employee may refuse a request or requirement to work additional hours if the hours are unreasonable.

They also set out arrangements for the averaging of hours of work under an award or agreement, or by agreement between an employer and an award/agreement-free employee.

What are the maximum weekly hours of work?

An employer must not request or require an employee to work more than the following hours of work in a week, unless the additional hours are reasonable:

- for a full-time employee, 38 hours (unless their award or enterprise agreement specifies different hours) or
- for an employee other than a full-time employee, the lesser of:
 - 38 hours
 - the employee's agreed ordinary hours of work in a week.

The hours an employee works in a week must be taken to include any hours of leave or absence (paid or unpaid under the NES) that is authorised:

- by the employer or
- by or under a term of the employee's employment or
- by or under a Commonwealth, State or Territory law, or an instrument in force under such a law.

An employee may refuse to work additional hours if they are unreasonable.

What factors determine whether additional hours are reasonable?

In determining whether additional hours are reasonable or unreasonable, the following must be taken into account:

- any risk to employee health and safety
- the employee's personal circumstances, including family responsibilities
- the needs of the workplace or enterprise
- 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 to work the additional hours
- any notice given by the employee of their intention to refuse to work the additional hours
- the usual patterns of work in the industry
- the nature of the employee's role and the employee's level of responsibility
- whether the additional hours are in accordance with averaging provisions included in an award or agreement that is applicable to the employee, or an averaging arrangement agreed to by an employer and an award/agreement-free employee
- any other relevant matter.

What averaging arrangements can apply to hours of work?

Averaging of hours of work under awards or agreements

An award or agreement may allow for the averaging of hours of work over a period of time that is greater than a week.

The average weekly hours over the period must not exceed the following, unless those additional hours are considered reasonable:

- for a full-time employee, 38 hours (unless their award or enterprise agreement specifies different hours) or
- for an employee other than a full-time employee, the lesser of:
 - 38 hours
 - the employee’s agreed ordinary hours of work in a week.

An award or enterprise agreement can provide for average weekly hours that are greater than the hours above if those additional hours are considered reasonable.

Example

Malcolm is a full-time employee. The award covering his employment includes averaging arrangements in relation to hours of work. It states that full-time employees can agree to work a total of 152 hours over a 4 week period (an average of 38 hours per week). Malcolm has agreed to this arrangement and his work pattern is as follows:

Week 1 – worked 21 hours

Week 2 – worked 60 hours

Week 3 – worked 38 hours

Week 4 – worked 33 hours

Although this pattern of work fits within the provisions under the award, Malcolm and his employer would need to consider whether it is reasonable to work an additional 22 hours in the second week. Factors such as Malcolm’s family responsibilities, his health and safety, and the notice he was given would need to be considered.

Averaging of hours of work for award/agreement-free employees

Employers and award/agreement-free employees may agree in writing to an averaging arrangement to average their ordinary hours of work over a period of multiple weeks. However, the maximum averaging period is 26 weeks.

The average weekly hours over the period must not exceed the following, unless those additional hours are considered reasonable:

- for a full-time employee, 38 hours or
- for an employee other than a full-time employee, the lesser of:
 - 38 hours
 - the employee’s ordinary hours of work in a week.

Alternatively, the agreement can provide for average weekly hours that are greater than the hours above if those additional hours are considered reasonable.

Under the Fair Work Act (FW Act) award/agreement-free employees are not entitled to a higher rate of pay for working overtime. Therefore it may be appropriate to consider whether the employee’s pay is sufficient to compensate for the additional hours when determining if these arrangements are reasonable.

Do I have to enter into an averaging arrangement?

There is no requirement for an employer and employee to enter into an averaging arrangement.

Where there is an averaging arrangement agreed between the employer and employee, the arrangement will be relevant in determining whether the additional hours are reasonable or not.

Under the general workplace protections provisions of the FW Act, it is unlawful for an employer to force (or try to force) an employee to make (or not to make) an averaging arrangement. Where identified, the Fair Work Ombudsman can initiate legal action against the employer.

For more information on general protections, please see our [Protections at work fact sheet](#) at fairwork.gov.au/factsheets

CONTACT US

Fair Work online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

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Call through the National Relay Service (NRS):

For TTY: **13 36 77**

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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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