

# Fair Work | Fact Sheet



## Maximum Weekly Hours of Work

The information in this sheet concerns national system and Victorian employers. It refers to the maximum weekly hours of work provisions in the National Employment Standards (NES), which come into effect under the Fair Work Act 2009 (Cth) on 1 January 2010. These provisions differ from the current provisions dealing with that subject matter in the Workplace Relations Act, in that it provides for a right of an employee to refuse to work additional hours if they are unreasonable.

### Overview of entitlement

The NES caps the number of ordinary hours a full time employee can work per week at 38 hours. This is subject to the proviso that an employer can require an employee to work reasonable additional hours i.e. hours in addition to 38 a week. The employee can refuse to work additional hours if they are unreasonable, having regard to a number of factors.

Part time or casual employees will have a cap on their ordinary hours worked per week based on their agreed hours or usual hours.

### How to make an averaging arrangement

Averaging of hours is used when an employee's actual hours vary from week to week but are averaged to determine compliance with restrictions on the maximum ordinary hours.

Employees covered by a modern award or enterprise agreement will have terms included that allow for the averaging for hours over a specified period. Employees not covered by an award or an agreement may agree in writing with their employers to average their weekly hours over a period of 6 months or less.

Any hours worked in a week above 38 (for full time employees) or above the ordinary hours of work (for non full time employees) will be treated as additional hours. In determining whether the additional hours are reasonable, the averaging period will be taken into account.

For the purposes of determining the number of hours an employee works, any hours of authorised paid or unpaid leave or absence must be taken into account.



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### Assessing whether additional hours are reasonable

An employer can require an employee to work reasonable additional hours (on top of the maximum 38 hours or the employee's ordinary hours of work). Factors that must be taken into account when deciding whether additional hours are reasonable include:

- any risk to the employee's health and safety from working the additional hours;
- the employee's personal circumstances, including family circumstances and responsibilities;
- the needs of the workplace or enterprise where the employee is employed;
- whether the employee is entitled to receive overtime payments, penalty rates or other compensation from working the additional hours;
- notice by the employer of a request or requirement to work overtime;
- notice by the employee of an intention to refuse the additional hours;
- the usual patterns of work in the industry, or part of the industry, in which the employee works;
- the nature of the employee's role and the employee's level of responsibility;
- whether the additional hours are in accordance with an averaging arrangement; and
- any other relevant matter.

The relevance of each of these factors and the weight given will vary according to the particular circumstances of each case. In some situations it will be that one single factor is of great importance and outweighs all others, whilst others will require a balancing of factors.

For example, there may be a situation where, although an employer provides advance notice of the requirement to work additional hours and the requirement to work those hours is based on the needs of the workplace, the hours are nonetheless unreasonable when the risks to employee health and safety or the employee's family responsibilities are taken into account. On the other side, there may be a situation where the significant remuneration and other benefits paid to a senior manager, together with the nature of the role and level of responsibility, means that those additional hours are considered to be reasonable.

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### Tips for compliance

It may be useful for employers to have a template averaging agreement to be signed by employees whose hours of work vary from week to week (or month to month) to ensure the company is complying with restrictions on the maximum ordinary hours of work.



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