



## Mediation and Employment Relations Service

135 Fullarton Road Rose Park SA 5067 Phone: 08 8331 2422

Email: chas@mers.com.au Website: www.mers.com.au

### LIVESTOCK SA

#### MEMBER UPDATE SEPTEMBER 2014

#### DAYLIGHT SAVINGS STARTS THIS SUNDAY 5 OCTOBER 2014

Daylight Savings starts on Sunday 5 October 2014 in SA, ACT, NSW, Tasmania and Victoria. The clocks will go forward one hour from 2:00 am to 3:00 am next Sunday.

#### ELIGIBLE TERMINATION PAYMENTS

A *bona fide* redundancy occurs when a position is no longer required to be performed in the way it has in the past. Most Awards are now in the later stage of the Transitional Provisions which means by the end of this year **many small employers will be exempt from redundancy** payments. The small employer is defined as one with less than 15 employees.

Please note that a redundancy should not be confused with a termination of employment. If an employee resigns or, an employer terminates the employment and replaces that employee a redundancy will not occurred.

*The important thing to remember is a redundancy occurs when the position is not required as against when the employee is not required.*

If a redundancy does occur, the employee is entitled to severance payment in accordance with the National Employment Standards. When a *bona fide* redundancy does occur, the severance payments have a tax free threshold which in the income year 2014-2015 means that the first \$9,514 paid is tax free and the employee is also entitled to \$4,758 for each completed year also tax free.

If you have any queries in relation to the Transitional Provisions, what constitutes a redundancy and an explanation regarding the tax free threshold for severance payments, please do not hesitate to contact us.

#### WORKCOVER -2015 THE YEAR OF CHANGES

##### a) RETURN TO WORK BILL 2014

There is currently a Bill before the South Australian Parliament to reform the South Australian Workers Compensation Scheme. This is the first major overhaul of the Scheme in over 25 years. There are a number of changes that employers and employees should become acquainted with because if the Bill passes, there will be significant changes.

The Bill proposes a number of initiatives including a personalised early intervention program to become a focus of the Return to Work Scheme.



Return to work rates in South Australia are, the worst in Australia and the costs have resulted in the highest employers' workers compensation levies nationally. The Bill seeks to assist injured workers to return to work as quickly as possible.

Employers can be proactive in managing unresolved Industrial Relations issues including poor work performance before an employee goes on Workers Compensation. It is much cheaper and more efficient to deal with poor performance without a Workers Compensation claim. It is illegal to terminate an employee on workers compensation without the prior approval of WorkCover.

The Bill is also seeking to cap weekly payments to a maximum period of 2 years except for those employees who are seriously injured at work. A seriously injured employee is one who is deemed to have a minimum 30% whole of body incapacity. Employees in that category will continue to receive weekly payments beyond 2 years, therefore the Bill is drawing an important distinction between those workers who are seriously injured and those who are not seriously injured. The Bill recognises the different supports and services required.

#### **b) SA EMPLOYMENT TRIBUNAL BILL 2014**

The Return to Work Bill 2014 and SA Employment Tribunal Bill 2014 have passed through the House of Assembly. Both Bills have been introduced into the Upper House with the second reading debate scheduled for when Parliament sits next on 14 October 2014. We will keep you informed as time passes.

#### **c) WORKCOVER INDUSTRY PREMIUM RATES (IPR) AND INDUSTRY CLAIMS COST RATES (ICCR)**

With the proposed changes in legislation for WorkCover SA, one area that Employers should take an interest in is the Industry Experience Rating System ("ERS"). This compares an Employer's own claims experience to that of their industry. Currently for example, an Employer who has

- a) Grain-Sheep, Grain-Beef cattle farming has an Industry Premium Rate ("IPR") of 3.426%.
- b) Sheep-beef cattle farming 5.661
- c) Sheep farming 5.813%
- d) Beef cattle farming 6.31%
- e) Shearing 7.5%

If they have had a record of claims, they will pay in addition to the industry rate a percentage of the costs of those claims. Currently the industry levy is 6.882%. Employers who have experienced claims may be paying up to 7.5% because of those claims.

Should the Return to Work Bill 2014 pass it is likely to take effect on the 1st July 2015. The Bill indicates that Employers can expect a reduction of an average of about 2.5% on the current levy rates. However, the maximum 7.5% that exists under the current legislation will be removed and, there will not be a cap after the 1st July 2015. In effect, the levy rate per workplace will have no limit. There are changes proposed in the Bill in relation to the current premium



system. These changes are expected to significantly reduce the average premium rate and save South Australian businesses at least \$180M per year.

Employees with existing WorkCover claims will be supported during the transition of the new Scheme and ultimately the new Scheme will apply to all employees and workplaces.

Further information is available [http://www.workcover.com/upload/Industry-Premium-Rates-and-Industry-Claims-Cost-Rates-\(ICCR\)-2014-15.pdf](http://www.workcover.com/upload/Industry-Premium-Rates-and-Industry-Claims-Cost-Rates-(ICCR)-2014-15.pdf)

We suggest that you keep a copy of these rates handy and, should the legislation pass, you will be able to compare your current rates with the proposed rates

We will keep you informed with regular Member Updates during the passage of the legislation.

### **SUPERANNUATION GUARANTEE CONTRIBUTION**

We advised earlier this year that the Superannuation Guarantee Contribution which, at the time, was 9.25% was to increase to 9.5% on the 1st July 2014. That situation remains unchanged.

The Senate recently passed amendments for the phasing-in period to 12% and the following table replaces previous advice received;

2014-20	9.5%
2021	10.0%
2022	11.0%
2023	11.5%
2024	12%

### **THE NATIONAL EMPLOYMENT STANDARDS ("NES")**

The Industrial Awards apply to workplaces covered under the National Workplace Relations System. This applies to all farms even though different Awards may apply. In addition to the Awards, the Minimum Standards are set out in the National Employment Standards ("NES"). It should be noted that the NES must be applied to all employment whether the employee is bound by an Award or not. These are the minimum requirements but if you

have employees on Common Law Contracts, please seek advice prior to executing those contracts.



When the Fair Work Ombudsman conducts audits, they will look at the NES as it is applied to your workplace including the provision of the Fair Work Information Statement which should be given to each employee on commencement of employment and we suggest also to be located in prominent place at work. The NES are 10 minimum terms and conditions of employment (set out in Part 2-2 of the *Fair Work Act 2009*) that apply to national workplace relations system employees. Parts of the NES may also extend to employees beyond the national workplace relations system.

The NES are minimum standards that cannot be overridden by the terms of enterprise agreements or awards.

The 10 NES relate to the following matters:

1. **Maximum of 38 weekly hours of work**—plus reasonable additional hours.
2. **Requests for flexible working arrangements**—in certain circumstances employees can request a change in their working arrangements.
3. **Parental leave and related entitlements**—up to 12 months unpaid leave for each employee, plus a right to request an additional 12 months unpaid leave, plus other forms of maternity, paternity and adoption-related leave.
4. **Annual leave**
  - 4 weeks paid leave per year
  - plus an additional week for certain shift workers.
5. **Personal/carer's leave and compassionate leave**
  - 10 days paid personal/carer's leave
  - 2 days unpaid carer's leave as required
  - 2 days compassionate leave (unpaid for casuals) as required.
6. **Community service leave**—unpaid leave for voluntary emergency activities and up to 10 days paid leave for jury service (after 10 days is unpaid).
7. **Long service leave**—a transitional entitlement for employees as outlined in an applicable pre-modernised award, pending the development of a uniform national long service leave standard.

- 8. Public holidays**—a paid day off on each public holiday, except where reasonably requested to work.



**9. Notice of termination and redundancy pay**

- up to 4 weeks' notice of termination (plus an extra week for employees over 45 years of age who have been in the job for at least 2 years)
- up to 16 weeks' severance pay on redundancy,

both based on length of service.

both based on length of service.

- 10.** The [Fair Work Information Statement](#) (external link) ([opens in a new window](#)) is available from the [Fair Work Ombudsman](#) (external link) ([opens in a new window](#)).

This must be given by employers to all new employees. It contains information about:

- the NES
- modern awards
- agreement making
- freedom of association and workplace rights
- termination of employment
- individual flexibility arrangements
- right of entry
- transfer of business
- the role of the Fair Work Commission
- the role of the Fair Work Ombudsman.

**QUESTION AND ANSWER RE LONG SERVICE LEAVE**

**Q 1. An employee has worked roughly 8 years and 7 months since her last break of service. Is this still the case or do we need to pay the full 8 yrs, 2 months?**

A 1. The entitlement is for continuous employment (except for termination for misconduct) is 1.3 weeks for each completed year. The incomplete year (2 months is not included). In this case 10.4 weeks are due.

**Q2 When the employee receives an allowance or penalty rates, are we required to include this when calculating the payment?**

A 2 This is covered by Section 8 of the Long Service Leave Act 1987 which states (in part);  
 "8—Payment in respect of long service leave

(4) A payment in lieu of long service leave made under this Act on the termination of a worker's service—

(a) will be calculated at the worker's ordinary weekly rate of pay applicable immediately before the termination; and



(b) must be made to the worker immediately on the termination or, if the worker has died, to the personal representative of the worker on request.”

The operative words are “ordinary rate of pay”. The Act defines that as “Sect 3 (2) A reference in this Act to a worker's ordinary weekly rate of pay is a reference to the worker's weekly rate of pay as at the relevant date exclusive of overtime, shift premiums and penalty rates but this definition is subject to the following qualifications—(this part goes on about hourly paid, commission and casual employment which don't appear to apply to your employee).”

In short, the payment only includes the ordinary weekly rate of pay and does not include overtime and penalty rates. There is no reference to allowances. If the employee receives an allowance for all time worked then it is to be taken into account because in effect it forms the ordinary rate of pay.

If the employee is paid the allowance only at some times then it is not part of the ordinary rate of pay even though the Horticultural Award states that the LH Allowance is for an “all purpose” rate.

**Q 3 The employee is employed at say a level 3 on a casual rate (25% loading) is this the rate we are required to calculate the payment at?**

**Q 3 The casual loading is to be included as that forms the ordinary rate of pay. However, if the hours fluctuate (as most casuals do) the process is back to Sect 3 (2) which in part states;**

*“(b) if during the whole or part of the period of three years immediately preceding the relevant date—*

*(i) the worker was employed on an hourly basis at an hourly rate of pay; or*

*(ii) the workers ordinary hours of work per week were varied and consequently the worker's weekly rate of pay was varied; or*

*(iii) the worker worked on a casual or part-time basis, the worker's ordinary weekly rate of pay will be ascertained by averaging the number of hours worked per week in that period of three years and multiplying that result by the worker's rate of pay per hour as at the relevant date, exclusive of overtime, shift premiums and penalty rates (and for the purposes of this paragraph a person who is employed on a casual basis is not to be regarded as being paid at a penalty rate)”*

**Q 4 During the employment this employee worked on a fulltime basis of 38 hours per week and later converted to casual employment?**

A 4 The calculation is to be based on what she was earning at the time of termination. If however, she was a full time employee and then converted to a casual and was a casual at time of termination, you will need to average her hours over the previous three years.