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South Australian Oyster Industry Seminar Aquaculture Award 2011 – An overview

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Thursday 11 August 2011



Coverage & Classification

- Breeding, production, farming and related harvesting of shellfish
- Level 1 – introductory only for LESS THAN 4 months – use carefully
- Level 2 – major classification for workers – most workers employed here
- Level 3 – minor supervisor duties – use carefully
- Level 4 – supervisor – regularly supervisors others and diving duties if applicable
- Higher duties paid for **all hours worked** if an employee is required to work more than 2 hours at a higher level



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NES and Award

- the National Employment Standards (NES) is a set of 10 minimum conditions of employment and is referred to extensively in the Award
- a copy of the NES and Award are to be provided and accessible in the workplace



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Employment types

- In writing at commencement of employment
- Full time – 38 ordinary hours per week – paid leave entitlements
- Part time – less than 38 ordinary hours
 - predictable hours with a minimum 3 consecutive hours per shift
 - written pattern of hours including start, finish and hours worked
 - variation to this pattern in writing
 - pro rata paid leave entitlements



Employment types

- Casual employees
 - paid a 25% casual loading
 - casual loading not paid on overtime, penalties and public holidays
 - paid long service leave only – no other **paid** leave entitlements
 - no minimum hourly engagement in award



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Ordinary time vs Overtime

- Overtime is the absence of ordinary hours – Never confuse the two
- FT and PT employees must be paid their ordinary hours per week in addition to any overtime work – e.g. a FT employee must be paid 38 ordinary hours per week and overtime in excess
- superannuation (in most circumstances) and leave entitlements are based on ordinary hours



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Ordinary time

- average of 38 ordinary hours over a maximum 12 week period
 - but can a shorter period e.g. 76/2, 114/3, 152/4 – 456/12
- Monday to Sunday – caution, penalties apply on weekend
- up to 10 hours in a day
- between the span of 5 a.m. to 7 p.m.
- for up to 5 days in the week
- any work outside of these limits **MUST** be paid as overtime and cannot be included in an employee's contracted ordinary hours



Penalty rates

- ordinary time worked on weekends attracts a penalty payment
- Saturday is paid at time and a quarter (multiply hourly rate by 1.25)
- Sunday is paid at time and a half (multiply hourly rate by 1.5)



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Overtime

- Any time worked in excess of the ordinary time limits must be paid as overtime.
- time and a half for the first 3 hours (hourly rate by 1.5) , and
- double time thereafter (hourly rate by 2)
- each day stands alone
 - meaning where possible overtime is calculated daily and not on cumulative totals



Breaks

- an unpaid meal break of not less than 30 minutes, not later than 5 hours after commencing work
 - may be agreed to a different time to ensure completion of task before change of tide
- 2 paid 10 minute tea breaks, 1 morning, 1 afternoon, at agreed times
 - Afternoon break may be dispensed with and 10 minute early knockoff if agreed with majority of employees
- 20 minute paid crib break for after each 4 hours overtime



Allowances

- Standard rate means the weekly rate for a level 4 employee
- first aid allowance is 0.34% of standard rate **per day**
- diving allowance where employer supplies diving equipment is 0.47% of standard rate **per hour** or part thereof
- diving allowance where employee supplies diving gear is \$5.60 **per hour**
- tool allowance (where tools are required) is \$9.45 per week. Not paid where the employer supplies all necessary tools



Allowances

- Travel time and allowance
 - time spent travelling to a workplace away from usual place will be paid for time reasonably spent travelling in excess of usual travel time
 - use of employee's private car in travelling away is reimbursed at 74 cents per km
- Protective clothing and equipment is either supplied by employer or the employer must reimburse the employee for cost of employee purchase



Allowances

- meal allowance for an employee required to work more than 2 hours overtime
 - If notified the day before – no payment or requirement to supply a meal
 - if not notified the day before – provide a meal or pay the employee \$14.50
 - If notified, and the employee brings their own meal, and the overtime is not required the overtime advised – pay the employee \$14.50 for each not required meal



Payment of wages

- not later than Thursday – unless by majority agreement
- wages paid weekly or fortnightly by agreement
- wages normally paid by EFT
 - if by cash or cheque – must be paid during working hours



Superannuation

- freedom of choice for employee
- if employee does not choose own superannuation fund then employer pays to one of:
 - Australian Super
 - Austsafe Super Pty Ltd
 - Prime Super
 - Tasplan
- a complying eligible choice fund if payments were made before 12 Sept 2008



Public holidays

- as per NES
- may be substituted for another day if by majority agreement
- employees working on a public holiday must be paid double time and a half for all hours worked
- no loss of money if not required to work on a public holiday (not casual employees)



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Annual Leave

- as per NES – not to casual employees
- 17.5% leave loading payable
- taken within 18 months
 - may be required to take leave on a minimum of 28 days notice
- paid at rate the employee would have earned if not on leave, exclusive of overtime
- temporary closing of workplace
 - paid leave and 1/12th of ordinary pay
 - if not enough accrued leave – unpaid leave and payment of public holidays



Other paid leave

- personal leave (sick, carers and compassionate) FT and PT only
 - 10 days per year (76 hours) and 2 days for compassionate per occasion
- Community service leave
 - up to 10 days per occasion for jury service
- Casual employees can access unpaid leave for above situations
- Not mentioned in Award
 - Parental leave – 52 weeks unpaid + option of a further 52 weeks
 - Long Service leave – 1.3 weeks per completed whole year
 - Pro rata at 7 years (9.1 weeks)
 - leave or cash out on employee request at 10 years (13 weeks)



Transitional arrangements

- phasing in over 5 years from July 2010 to July 2014
 - casual loading from 20 – 25 %
 - wages from FMW to award rates
 - weekend penalties
 - allowances
- **no phasing in of overtime**



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Termination and Redundancy

- Notice of termination is provided for in the NES as well as redundancy payments
- Advice should be sought if buying or selling a business as there are significant implications for transfer of employee entitlements and payment of redundancy payments





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