

## **Division 3—Maximum weekly hours**

### **62 Maximum weekly hours**

*Maximum weekly hours of work*

- (1) An employer must not request or require an employee to work more than the following number of hours in a week unless the additional hours are reasonable:
  - (a) for a full-time employee—38 hours; or
  - (b) for an employee who is not a full-time employee—the lesser of:
    - (i) 38 hours; and
    - (ii) the employee’s ordinary hours of work in a week.

*Employee may refuse to work unreasonable additional hours*

- (2) The employee may refuse to work additional hours (beyond those referred to in paragraph (1)(a) or (b)) if they are unreasonable.

*Determining whether additional hours are reasonable*

- (3) In determining whether additional hours are reasonable or unreasonable for the purposes of subsections (1) and (2), the following must be taken into account:
  - (a) any risk to employee health and safety from working the additional hours;
  - (b) the employee’s personal circumstances, including family responsibilities;
  - (c) the needs of the workplace or enterprise in which the employee is employed;
  - (d) 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;

- (e) any notice given by the employer of any request or requirement to work the additional hours;
- (f) any notice given by the employee of his or her intention to refuse to work the additional hours;
- (g) the usual patterns of work in the industry, or the part of an industry, in which the employee works;
- (h) the nature of the employee's role, and the employee's level of responsibility;
- (i) whether the additional hours are in accordance with averaging terms included under section 63 in a modern award or enterprise agreement that applies to the employee, or with an averaging arrangement agreed to by the employer and employee under section 64;
- (j) any other relevant matter.

*Authorised leave or absence treated as hours worked*

- (4) For the purposes of subsection (1), the hours an employee works in a week are taken to include any hours of leave, or absence, whether paid or unpaid, that the employee takes in the week and that are authorised:
  - (a) by the employee's employer; or
  - (b) by or under a term or condition of the employee's employment; or
  - (c) by or under a law of the Commonwealth, a State or a Territory, or an instrument in force under such a law.

**63 Modern awards and enterprise agreements may provide for averaging of hours of work**

- (1) A modern award or enterprise agreement may include terms providing for the averaging of hours of work over a specified period. The average weekly hours over the period must not exceed:
  - (a) for a full-time employee—38 hours; or
  - (b) for an employee who is not a full-time employee—the lesser of:
    - (i) 38 hours; and

(ii) the employee's ordinary hours of work in a week.

- (2) The terms of a modern award or enterprise agreement may provide for average weekly hours that exceed the hours referred to in paragraph (1)(a) or (b) if the excess hours are reasonable for the purposes of subsection 62(1).

Note: Hours in excess of the hours referred to in paragraph (1)(a) or (b) that are worked in a week in accordance with averaging terms in a modern award or enterprise agreement (whether the terms comply with subsection (1) or (2)) will be treated as additional hours for the purposes of section 62. The averaging terms will be relevant in determining whether the additional hours are reasonable (see paragraph 62(3)(i)).

## **64 Averaging of hours of work for award/agreement free employees**

- (1) An employer and an award/agreement free employee may agree in writing to an averaging arrangement under which hours of work over a specified period of not more than 26 weeks are averaged. The average weekly hours over the specified period must not exceed:

- (a) for a full-time employee—38 hours; or  
(b) for an employee who is not a full-time employee—the lesser of:  
(i) 38 hours; and  
(ii) the employee's ordinary hours of work in a week.

- (2) The agreed averaging arrangement may provide for average weekly hours that exceed the hours referred to in paragraph (1)(a) or (b) if the excess hours are reasonable for the purposes of subsection 62(1).

Note: Hours in excess of the hours referred to in paragraph (1)(a) or (b) that are worked in a week in accordance with an agreed averaging arrangement (whether the arrangement complies with subsection (1) or (2)) will be treated as additional hours for the purposes of section 62. The averaging arrangement will be relevant in determining whether the additional hours are reasonable (see paragraph 62(3)(i)).