# Full time / permanent employment contract template

The Pastoral Award 2010 specifically requires employers to give full-time employees a written statement setting out their classification, applicable pay and terms of engagement. **- Part-time employees** and the employer must agree in writing on the regular pattern of work specifying the hours to be worked each day, the days of the week when the employee will work and the daily starting and finishing times.   
- **Casual employees** must be told that they are employed as a casual employee, the identity of the employer, their hours of work, classification level and pay rate. Employers are not required under the Pastoral Award 2010 to provide a written statement to casual employees but this is advisable.

The Cotton Ginning Award 2010 requires employers to advise all employees other than casual employees in writing of their employment category or classification when they are appointed.

The contract of employment must not contain any terms or conditions for work which are inconsistent with or less favourable to the employee than the Pastoral Award 2010 and the National Employment Standards. If it does these terms and conditions will not be enforceable.

Suggested steps for preparing and using a contract template

## Step 1: Have all the paperwork ready that you’ll need

Before you can complete the contract template, make sure read the example contract thoroughly. The contract makes reference to the modern awards and the National Employment Standards, so you might like to have those handy. You’ll also need the position description to make sure the contract matches the job.

## Step 2: Complete the contract by filling in the detail where indicated in green

This contract caters for both **full-time and permanent** employees - fill in the detail, where indicated in green. There is a separate contract for **casual workers** in the [Am I ready to employ someone?](http://www.peopleinag.com.au/general/employers/am-i-ready-to-employ-someone/what-do-i-want-from-an-employee/) section.

## Step 3: Attach the position description

A position description should include:

* the job title;
* a summary of the role and how it fits into the business;
* details of the tasks to be undertaken for the role;
* the reporting structures and working relationships that apply;
* levels of performance required

You can download a sample position description and template in the [Am I ready to employ someone?](http://www.peopleinag.com.au/general/employers/am-i-ready-to-employ-someone/what-do-i-want-from-an-employee) section.

## Step **4**: Detail other benefits

Step 18 of the template provides a section for you to detail other benefits, such as accommodation.

Step 5: Meet with the new employee and provide employment contract

Meeting face to face with your new employee to provide the contract and talk about the contents is a good opportunity for:

* you to explain the terms and conditions of employment
* the employee to ask questions, and
* you to describe your expectations for the job

Step 6: Give your new employee time to consider the employment contract

You should give the person enough time to consider the contents of employment contract and seek their own advice (if they want to) before they accept the offer. When providing the contract you should give a date when you’d like the person to let you know whether the offer is accepted or not. Also, it is good practice to give the employee your contact details in case they have more questions.

Step 7: Keep a copy of the signed contract and provide the employee with a copy

Once you have received the signed contract from the employee, return a copy to them. This ensures you both have a record of what has been agreed.

<insert business name>

EMPLOYMENT CONTRACT

*(For Permanent Award Employees of National System Employers)*

This is an employment contract

**BETWEEN** <insert company name/partnership/other name > **the Employer**

AND

<insert employee’s full name> **the Employee**

1 Commencement Date

This employment contract commences on the <insert commencement date>.

2 Probation (See Note 1)

2.1 Employment is subject to the satisfactory completion of a three-month probation period.

2.2 The purpose of the probation period is to enable the employer and the employee to assess their suitability and capability to work together.

2.3 During the probation period the employer or the employee has the right to terminate the employment with one week’s notice for any reason and without any repercussions.

3 Award

The <insert name of award>Award and the federal industrial laws govern this employment contract.

4 Employment Category (See Note 2)

The employee is employed as a full-time permanent/part-time*[delete where not applicable]* <insert position title>to undertake the duties as outlined in the attached position description. *[attach position description.]*

5 Employment Classification (See Note 4)

The employee is classified as a <insert classification>*.*

6 Ordinary hours of work (See Note 3)

The ordinary hours of work are <insert ordinary hours of work>*.*

**7 Overtime/Additional hours (See Note 3)**

7.1 The employee will be expected to work reasonable additional hours.

7.2 This contract anticipates that the employee will work <insert number of overtime/additional hours anticipated to be worked >

8 Remuneration (See Note 4)

8.1 The rate of pay is <insert pay rate> per hour/per week *[delete where not applicable]*.

8.2 The rate of pay for overtime is <insert pay rate>.

8.3. The employer will pay the employee weekly/fortnightly *[delete where not applicable]* into a bank account/by cheque/in cash *[delete where not applicable]*.

9 Annual Leave (See Note 5)

*[full-time employees]*

9.1 The employee is entitled to four weeks paid annual leave for each completed year of service with the employer. Annual leave accrues throughout the year and from year to year.

**OR**

*[part-time employees]*

The employee*)* is entitled to annual leave of four weeks per year calculated on a pro-rata basis according to the number of hours worked each week. Annual leave accrues throughout the year and from year to year.

9.2 The employee is entitled to an annual leave loading of 17.5% for all annual leave taken or paid out upon termination of employment.

**10 Personal/Carer’s leave and Compassionate Leave (See Note 6)**

“Immediate family” is defined as follows:

a) A spouse, child, parent, grandparent, grandchild or sibling of the employee;

b) A child, parent grandparent, grandchild or sibling of a spouse of the employee.

*[full-time employees]*

10.1 The employee is entitled to 10 days paid personal/carer’s leave per year for personal injury or illness. Personal/carer’s leave accrues throughout the year and from year to year.

**OR**

*[part-time employees]*

The employee is entitled to paid personal/carer’s leave of 10 days per year calculated on a pro-rata basis according to the number of hours worked each week. Personal/carer’s leave accrues throughout the year and from year to year.

10.2 The employee can use their personal/carer’s leave as paid carer’s leave for the purpose of caring for a member of the employee’s immediate family or household who requires care or support because of personal injury, illness or an unexpected emergency.

10.3 The employee is entitled to two days unpaid personal/carer’s leave per occasion for the purpose of caring for a member of their immediate family or household who requires care or support because of personal injury, illness or an unexpected emergency.

10.4 The employee is entitled to two days paid compassionate leave per occasion for the purpose of attending the funeral of a member of the employee’s immediate family or a member of the employee’s household or for spending time with a member of the employee’s immediate family or a member of the employee’s household who has a personal injury or illness which poses a serious threat to his or her life.

10.5 The employer may require medical evidence or a statutory declaration for any period of personal/carer’s leave or compassionate leave.

**11 Public Holidays (See Note 7)**

*[full time employees]*

11.1 In accordance with the National Employment Standards, the employee is entitled to a day’s paid leave for public holidays which fall on days when the employee would ordinarily work.

**OR**

*[part time employees]*

In accordance with the National Employment Standards, the employee is entitled to be paid for the hours they would ordinarily work on public holidays which fall on days when the employee would ordinarily work.

11.2 If the employee works on a public holiday he/she is entitled to be paid at double time.

**12 Community Service Leave (See Note 8)**

The employee is entitled to 10 days paid jury service leave or unpaid leave to attend a voluntary emergency management activity as provided for in the NES. The employee must provide evidence of the need for the leave if required to do so by the employer.

**13 Long Service Leave (See Note 9)**

The employee is entitled to long service leave as provided for in the National Employment Standards or state legislation.

**14 Parental Leave (See Note 10)**

The employee is entitled to Parental Leave in the form of Maternity, Paternity or Adoption Leave as provided for in the National Employment Standards.

**15 Flexible Working Arrangements (See Note 11)**

The employee is entitled to make a written request for flexible working arrangements once the employee has completed 12 months continuous service.

16 Superannuation

The employer will make superannuation contributions to a fund nominated by the employee. The superannuation contribution will be not less than that required under the *Superannuation Guarantee (Administration) Act*.

17 Termination (See Notes 12 & 13)

17.1 The following minimum notice periods apply to termination of employment:

|  | **Employee’s period of continuous service with the employer at the end of the day the notice is given** | **Period** |
| --- | --- | --- |
| 1 | Not more than 1 year | 1 week |
| 2 | More than 1 year but not more than 3 years | 2 weeks |
| 3 | More than 3 years but not more than 5 years | 3 weeks |
| 4 | More than 5 years | 4 weeks |

17.2 If the employee is over 45 years of age and has worked at least two years of continuous service with the employer the period of notice will be increased by one week.

17.3 Payment in lieu of notice will be made if the appropriate notice period is not required to be worked.

17.4 The employee is required to give the employer the same amount of notice as a minimum. This does not include the extra week based on age of the employee. If the employee does not give the employer notice the employer can deduct the amount the employee would have been paid for the notice period from the employee’s termination payments.

17.5 If the employee has been given notice of termination he/she is entitled to up to one day off without loss of pay to look for work.

17.6 The period of notice to be given by the employer will not apply in the case of dismissal for serious misconduct that justifies instant dismissal, including conduct which causes imminent and serious risk to the health or safety of a person or the reputation, viability or profitability of the employer’s business; attendance at work under the influence of alcohol or drugs; theft, fraud, assault in the course of employment or refusal to carry out a lawful and reasonable instruction.

### 18 Other Benefits

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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## SIGNED

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_THE EMPLOYER\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_THE EMPLOYEE

DATED\_\_\_\_\_\_\_\_\_\_/\_\_\_\_\_\_\_\_\_\_/\_\_\_\_\_\_\_\_\_\_\_\_

# NOTES TO THE FEDERAL EMPLOYMENT CONTRACT FOR PERMANENT EMPLOYEES

GENERAL – Interpretation

National system employer

This template is for national system employers employing permanent full time or part time employees who are covered by the Pastoral Award 2010. There is a separate template for non award managers.

All employers in the private sector in New South Wales, Victoria, Tasmania, South Australia, Queensland, the Australian Capital Territory and the Northern Territory are called national system employers.

Businesses in Western Australia run by a company, including trusts with a company trustee, which employ workers as part of their business, are called national system employers.

Employers in Western Australia who run their business as a sole trader, partnership or trust which does not have a company trustee are called non national system employers. They should use the template for Western Australia which applies to managers as well as non managerial employees.

NOTE (1) PROBATIOn PERIODS

All new employees should be placed on a period of probation to enable both the employee and the employer to determine whether the employee is capable of doing the job and is suitable for the enterprise. Probation periods must be determined before work begins and cannot be extended. The length of the probation period must be reasonable in the circumstances and three months is generally accepted to be reasonable. If employers feel they need a longer period this must be justifiable based upon the special requirements of the job and the responsibilities which the employee will be required to undertake.

The federal industrial laws provide that employees of small businesses engaged for less than 12 months and employees of other businesses engaged for less than   
6 months cannot bring an action for unfair dismissal.

NOTE (2) EMPLOYMENT CATEGORY

Full-time employees

Full-time employees are engaged on a permanent basis and the following entitlements usually apply: paid annual leave and personal leave (sick leave, carer’s leave, compassionate leave/bereavement leave); parental leave and notice of termination. In addition, the Pastoral Award 2010 specifies payment for public holidays.

Part-time employees

Part-time employees are engaged for fixed hours every week and receive the same entitlements as full-time employees but on a pro-rata basis calculated on the proportion of the full-time rate.

The Pastoral Award 2010 provides that part-time employees must be engaged for a minimum of three consecutive hours on any shift.

NOTE (3) HOURS OF WORK

Hours of work may be governed by an award or legislation. Most employees on dairy farms will be covered by the Pastoral Award 2010 (see below).

*Managers*

Some managers may be excluded from awards and therefore the federal industrial laws will govern their employment entitlements.

Employers who wish to engage a manager should check that the duties they are performing and their responsibilities are significantly greater than the duties contained in the FLH7 and FLH8 classifications in the Pastoral Award 2010. If the duties match these descriptions then the manager should be engaged as an award employee.

If employers want to put in place hours of work which are more flexible than the award then they should enter into a formal enterprise agreement or an Individual Flexibility Agreement under the award.

Pastoral Award 2010

## Ordinary hours

The term ‘ordinary hours’ means hours of work where overtime is not payable.

Under this award ordinary hours are 152 hours worked over a four-week period. Ordinary hours for casuals are the same as for full-time employees.

Ordinary hours for part-time employees covered by the Pastoral Award 2010 are any hours less than 38 and must be agreed in writing specifying the hours and days of the week that the employee will work and the actual starting and finishing times each day.

## Overtime

Once the 152 hours have been worked overtime is paid at the rate of time and a half for all hours worked with double time being paid for any work done on Sundays. Feeding and watering stock on Sundays is paid at the rate of time and one half. This does not include milking.

For an explanation of how the 152 hours over 4 consecutive weeks works in practice, download the **Overtime vs Ordinary Hours fact sheet** at <http://www.peopleinag.com.au/media/25183/peopleinag-overtime-ordinary-hours-factsheet.pdf>

***Overtime for part-time employees***

Overtime for part-time employees applies to all hours over the agreed part-time hours. The National Employment Standards (NES) about reasonable additional hours also applies to award employees. (See below)

***Time Off Instead of Overtime (previously time off in lieu – TOIL- or ‘banked hours’)***

The Award provisions about TOIL changed substantially as of the first pay period on or after 27 November 2017. For further information visit: <http://www.peopleinag.com.au/general/employers/pay-rates-awards-and-payroll/award-rates-work-agreements-and-pay-entitlements#updated-overtime>

Federal Industrial Laws – The NES

The National Employment Standards (NES) apply to all employment contracts as a minimum for all national system employers.

Reasonable Additional Hours

The NES does not use the word ‘overtime’. Under the NES, employees may be asked to work reasonable additional hours. The employment contract can only express hours of work in excess of the maximum 38 hours per week as *reasonable additional hours*. What is reasonable for additional hours is decided by weighing up a variety of factors including risks to occupational health and safety; operational requirements of the business; personal circumstances and family commitments; whether the employee has had notice of the likelihood of the need for additional hours; and whether the employee has previously indicated a willingness or capacity to work additional hours. Generally, this will be a process of balancing the needs of the enterprise with the employee’s needs.

NOTE (4) PAY RATES

National system employers

Employers bound by the Pastoral Award 2010 should consider the pay rates contained in this award.

Classifications – Pastoral Award 2010

The Pastoral Award 2010 creates five separate classifications for general farm employees with different rates of pay for each classification.

The classifications reflect the different experience and skills of employees. The classifications are as follows:

* farm and livestock hand level 1 - FLH1
* farm and livestock hand level 3 - FLH3
* farm and livestock hand level 5 - FLH5
* farm and livestock hand level 7 - FLH7
* farm and livestock hand level 8 - FLH8

Pay rates

As pay rates vary, no pay rates are included in this document.

Visit the following websites for more information:

Pastoral Award 2010 <http://www.fwa.gov.au/documents/modern_awards/pdf/MA000035.pdf>

When determining a pay rate employers and employees should consider not only wages and salary but also other benefits which may be provided by the business for the purpose of making the position more attractive to the employee and thus assisting in staff retention. Employers could consider other benefits such as accommodation and use of vehicles, provision of meat and milk, extra superannuation, and extra leave entitlements.

*Frequency of payment*

The Pastoral Award 2010 specifies that award employees must be paid weekly or fortnightly.

NOTE (5) ANNUAL LEAVE

The National Employment Standards (NES) apply to all employment contracts as a minimum and the template employment contract contains the NES terms.

The Pastoral Award 2010 contains the NES about annual leave. The Pastoral Award 2010 applies to national system employers in the majority of agricultural industries for all employees in the classifications set out in the award. (See note 4)

Whilst the NES is a minimum, employers may wish to consider offering extra annual leave as part of a package.

The NES & the Pastoral Award 2010

The National Employment Standards (NES) for annual leave is four weeks per year which accrues progressively throughout the year and from year to year.

Annual leave must be paid at a rate which is no less than the base rate of pay for ordinary hours the employee is paid at the time of taking the leave.

Cashing out of annual leave

Annual leave can only be cashed out by award employees if it is a term of an award or enterprise agreement.

As of 29 July 2016 employers and employees covered by the Pastoral Award 2010, can agree in writing to cash out annual leave. The maximum amount of annual leave that can be cashed out in any 12-month period is 2 weeks and employees must keep a minimum of 4 weeks’ accrued leave. The Award provides a template written agreement in a Schedule at the end of the award. This agreement must be kept with the employee’s employment records.

Download a template agreement to cash out annual leave here: <http://www.peopleinag.com.au/media/24951/agreement-to-cash-out-annual-leave.docx>

The Pastoral Award 2010 – Annual Leave Loading

The award also requires payment of a 17.5% annual leave loading for all annual leave. Annual leave loading must also be paid when annual leave is paid out on termination.

NOTE (6) PERSONAL/carer’s LEAVE and compassionate leave

The National Employment Standards (NES) apply to all employment contracts as a minimum and the template enterprise agreement contains the NES terms.

The Pastoral Award 2010 contains the NES about personal/carer’s leave. The Pastoral Award 2010 applies to all national system employers in the dairy industry for all employees in the classifications set out in the award. (See note 4)

Whilst the NES is a minimum, employers may wish to consider offering extra personal/carer’s leave as part of a package.

The NES & The Pastoral Award 2010

Personal/ Carer's Leave and Compassionate Leave

Under the NES, employees (other than casual employees) are entitled to 10 days paid personal/ carer’s leave for each year of service.

Personal/carer’s leave accrues on a pro rata basis throughout the year and from year to year and there is no cap on how much of this leave can be used for carer’s leave. Personal/carer’s leave and compassionate leave accrue on the basis of the employee’s ordinary hours of work.

Personal leave can be taken if the employee is not fit for work due to personal illness or injury.

Payment for personal/carer’s leave is at the employee’s base rate of pay for ordinary hours of work.

Carer’s leave

Carer’s leave can be taken to provide care or support for a member of the employee’s household or immediate family due to personal illness or injury or an unexpected emergency.

*Immediate family* is defined to mean:

* a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
* a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.

*Immediate family* includes extended and blended families, de facto partners, step-relationships, adoptive relationships and same sex relationships)

All employees, including casual employees are entitled to 2 days of unpaid carer’s leave per occasion. Permanent employees can only take unpaid carer’s leave if they have used up all of their paid leave entitlement.

Compassionate leave

Employees are also entitled to 2 days of paid compassionate leave per occasion and casual employees are entitled to 2 days unpaid compassionate leave.

Compassionate leave can be taken on 2 consecutive days, 2 separate days or any other period as agreed between the employer and the employee.

Compassionate leave is available for employees to spend time with a member of their immediate family or household who has developed personal illness or injury or after the death of a member of their immediate family or household.

Payment for compassionate leave is at the employee’s base rate of pay for ordinary hours of work.

Notice and evidence requirements

When taking personal/carer’s leave and compassionate leave, employees must do the following or they are not entitled to take the leave:

* notify their employer as soon as is reasonably practicable (which can be a time after the leave has started);
* state the period, or expected period, of the absence
* if required by the employer—provide evidence that would satisfy a reasonable person of their entitlement to take the leave. (this can be a medical certificate or statutory declaration)

Cashing out of personal/carer’s leave

Personal/carer’s leave can only be cashed out if it is a term of an award or enterprise agreement.

The Pastoral Award 2010 does not provide for cashing out of personal/carer’s leave. Therefore, employees can only cash out accrued personal/carer’s leave if it is a term of a formal enterprise agreement.

NOTE (7) PUBLIC HOLIDAYS

The NES & the Pastoral Award 2010

The NES provides for employees to be absent from work on specified public holidays.

Payment is the employee’s base rate of pay for ordinary hours of work.

Full-time employees are entitled to a paid day off for public holidays if they would normally work on that day.

Part-time employees are entitled to be paid for the hours they would normally work on public holidays. If they do not normally work on the day of the public holiday they are not entitled to public holiday pay.

The following days are public holidays for the NES:

* 1 January (New Year’s Day)
* 26 January (Australia Day)
* Good Friday
* Easter Monday
* 25 April (Anzac Day)
* Queen’s birthday holiday
* 25 December (Christmas Day)
* 26 December (Boxing Day)

If a State or Territory substitutes another day or declares an additional day, the employee is entitled to be absent on that day. If a day is substituted then this day becomes the public holiday for the purpose of working out entitlements and not the other day.

Substitution of other days

The Pastoral Award 2010 allows for employers and individual employees or employers and the majority of employees to agree to substitute an alternative day for the public holiday.

Enterprise Agreements can also provide for substitution of public holidays.

Requests to work on public holidays

An employer may request an employee to work on a public holiday if the request is reasonable.

The request may be refused if it is unreasonable or the employee’s refusal is reasonable. The NES provides list of factors to be taken into account when determining the reasonableness of a request or refusal.

Payment for working on public holidays

Payment for working on a public holiday is an award entitlement which does not apply to non award employees such as managers.

The Pastoral Award 2010

Work done on public holidays by farm and livestock hands is paid at the rate of double time.

**NOTE (8) COMMUNITY SERVICE LEAVE**

The NES provides an entitlement to leave for all employees required to attend jury service and for those who engage in a voluntary emergency management activity.

Jury service leave

Employees are entitled to be paid by their employer for a period of up to 10 days while they are absent from work during a period of jury service.

Payment for jury service leave is the employee’s base rate of pay for ordinary hours of work.

Employers can require the employee to obtain payments for jury service leave from the applicable State/Territory or Commonwealth body and these payments will reduce the amount payable to the employee.

Notice requirements – jury service leave

Employers can request evidence that the employee has taken steps to obtain any available payments and evidence of the payments from the State/Territory or Commonwealth body for the first 10 days of the jury service leave. If this is not provided the employer does not have to make the payment for jury service leave.

Voluntary emergency management activities

Employees are entitled to unpaid leave to engage in voluntary activities which involve dealing with a natural disaster or emergency if they are voluntary members of the emergency management body and the body has requested them to attend. Emergency management bodies include fire fighting bodies, civil defence and rescue.

Notice requirements – community service leave

Employees must give employers notice of the need for community service leave as soon as possible and advise the employer of the expected length of the absence. Employers can also require employees to give them reasonable evidence of the need for the leave.

NOTE (9) LONG SERViCE LEAVE

State and territory laws provide for Long Service Leave.

For further information, visit <http://www.peopleinag.com.au/general/employers/employee-leave-holidays-and-termination/employee-leave-entitlements-and-public-holidays>

NOTE (10) PARENTAL LEAVE

The federal parental leave laws contained in the NES apply to all employers.

Parental leave involves unpaid maternity leave, paternity leave and adoption leave.

Parents cannot take parental leave at the same time except for a period of up to eight weeks in total. This period of concurrent leave may be taken in separate periods but unless the employer agrees, each period must not be shorter than 2 weeks.

The concurrent leave must not start before the date of birth of the child or the day of placement of the child if the leave is adoption leave unless the employer agrees.

The entitlement exists once an employee has worked for the employer for 12 months. It also applies to certain long-term casual employees.

The laws about parental leave are complex and there are specific requirements for notification. Employers should seek legal advice or advice from their local state farming organisation if an employee becomes eligible for parental leave. For further information visit <http://www.peopleinag.com.au/general/employers/employee-leave-holidays-and-termination/employee-leave-entitlements-and-public-holidays#Parental-leave>

NOTE (11) REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS

The laws about requests for flexible working arrangements changed on 1 July 2013.

The NES give employees the right to request a change to working arrangements in the following circumstances:

* If the employee is a parent, or has the responsibility for the care, of a child who is of school age or younger:
* The employee is a carer (within the meaning of the Carer Recognition Act 2012);
* The employee has a disability;
* The employee is 55 or older;
* The employee is experiencing violence from a member of the employee’s family;
* The employee provides care or support to a member of the employee’s immediate family, or a member of the employee’s household, who requires care or support because the member is experiencing violence from the member’s family.

In addition, parents or those who have responsibility for the care of a child and who are returning from a period of parental leave or adoption leave may request to work part-time to assist the employee to care for the child.

Casual employees who work on a regular and systematic basis with a reasonable expectation of continuing work can also make a request for flexible working arrangements.

The request must be in writing and provide details of the change sought and reasons for the change.

Employers must respond to the request in writing within 21 days and give reasons if the request is refused.

 A request may only be refused on reasonable business grounds which should be specified in the written response.

Reasonable Business Grounds are defined as follows:

Fair Work Act provides the following list of matters which may amount to reasonable business grounds but there may be others:

* That the new working arrangements would be too costly for the employer;
* That there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;
* That it would be impractical to change the working arrangements of other employees or recruit new employees to accommodate the new working arrangements requested by the employee;
* That the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity;
* That the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service;

NOTE (12) TERMINATION

It is very important to manage employee separation carefully whether the employee is leaving because of resignation, redundancy or dismissal. First, it minimises the risk of legal problems and secondly, it protects the reputation of both your business and you as an employer.

Employers should use fair procedures when terminating employees as replacing employees is expensive and claims for unfair or unlawful dismissal can be costly and time consuming to defend.

Termination of employment can lead to court action. Employers who are considering dismissing an employee should always obtain legal advice before doing so.

Further information can be found at <http://www.peopleinag.com.au/general/employers/employee-leave-holidays-and-termination/terminating-employment>

NOTE (13) NOTICE PERIODS

The National Employment Standards (NES) apply to all employment contracts as a minimum and the template enterprise agreement contains the NES terms.

The Pastoral Award 2010 contains the NES about notice of termination plus further terms about employee notice and the job search entitlement. The Pastoral Award 2010 applies to all national system employers in the dairy industry for all employees in the classifications set out in the award.

The NES & the Pastoral Award 2010

Notice Periods

Continuous service’ is the time an employee has spent working for an employer without a break and this needs to be calculated so that the notice period can be worked out.

Unauthorised absences from work do not break continuous service but are not counted when calculating how long the notice period should be.

Exclusions from notice requirement

The following employees do not have to be given notice:

* employees employed for a specified period of time, for a specified task, or seasonal employees;
* employees whose employment is terminated because of serious misconduct;
* casual employees;
* trainees (other than apprentices) and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement.

Termination without notice

The Pastoral Award 2010 and the NES allow for termination without notice in cases of serious and wilful misconduct. The template contains a clause providing for termination without notice in these circumstances.

NOTE 13.1 Employee notice

Employees can only be required to give notice if it is a term of an award or enterprise agreement.

Pastoral Award 2010

Under the Pastoral Award 2010 employees must also give the same amount of notice as employers and if they fail to give notice, employers can deduct money from the employee’s termination payments.

However, employees do not have to give the additional week of notice based on the age of the employee and length of service.

NOTE 13.2 Job search entitlement

Job search entitlement is an award entitlement.

Pastoral Award 2010

Under the Pastoral Award 2010 where an employer has given an employee notice of termination, the employee is entitled to take one day off without loss of pay to look for other work. The employee can take the day off at a time when it is convenient to the employee after consultation with the employer.

NOTE (14) ACCOMMODATION

Residential tenancies laws may apply to accommodation on farms where the accommodation is not a part of the wider lease of the farming property. These laws lay down notice periods for ending the tenancy, whether bonds can be required and how much can be charged as well as rules regarding repairs and inspection and agreements with specific terms. Breaches of these laws attract fines.

*Deduction of rent*

The Fair Work Act requires written authority from the employee if rental is deducted from wages or salary.

Visit <http://www.peopleinag.com.au/general/employers/pay-rates-awards-and-payroll/managing-farm-payroll> to find a template ‘[Authority To Deduct’](http://www.peopleinag.com.au/media/1102/authority_to_deduct.docx).

New South Wales, South Australia, Tasmania and Western Australia

In New South Wales, South Australia, Tasmania and Western Australia, residential tenancy laws do not usually apply where the tenancy is not ‘for value’ or ‘consideration’ which means that no rent is paid for the accommodation. However, farmers should be aware that making accommodation a part of a formal workplace agreement where the accommodation is used as a part of the Better Off Overall Test may have the effect of making the tenancy ‘for value’ and residential tenancy laws may then apply.

Victoria

In Victoria, residential tenancy laws do not apply where the tenancy is a part of the employment contract. Employers should agree with employees on a fair period of notice which will apply in the event that the employment is terminated. The notice period should be long enough to enable the employee to find alternative accommodation but also recognise the needs of the employer if the property is needed for a new employee. As a minimum, three to four weeks is considered to be fair in these circumstances.

Queensland

The Queensland residential tenancies laws may apply to accommodation on farms where the accommodation is not a part of the wider commercial lease of the farming property. Whilst residential tenancy laws can protect both the tenant and the landlord, the notice periods for ending the tenancy (four weeks) can be problematic when accommodation has been part of a remuneration package and an employee leaves as a result of their employment being terminated either with notice but particularly when dismissed summarily for misconduct. In these circumstances the only avenue available to the employer is to make an application to the tenancy tribunal to have the lease terminated earlier on the ground of hardship.