

144 Flexibility terms

Flexibility terms must be included

- (1) A modern award must include a term (a ***flexibility term***) enabling an employee and his or her employer to agree on an arrangement (an ***individual flexibility arrangement***) varying the effect of the award in relation to the employee and the employer, in order to meet the genuine needs of the employee and employer.

Effect of individual flexibility arrangements

- (2) If an employee and employer agree to an individual flexibility arrangement under a flexibility term in a modern award:
 - (a) the modern award has effect in relation to the employee and the employer as if it were varied by the flexibility arrangement; and
 - (b) the arrangement is taken, for the purposes of this Act, to be a term of the modern award.
- (3) To avoid doubt, the individual flexibility arrangement does not change the effect the modern award has in relation to the employer and any other employee.

Requirements for flexibility terms

- (4) The flexibility term must:
 - (a) identify the terms of the modern award the effect of which may be varied by an individual flexibility arrangement; and
 - (b) require that the employee and the employer genuinely agree to any individual flexibility arrangement; and
 - (c) require the employer to ensure that any individual flexibility arrangement must result in the employee being better off overall than the employee would have been if no individual flexibility arrangement were agreed to; and
 - (d) set out how any flexibility arrangement may be terminated by the employee or the employer; and
 - (e) require the employer to ensure that any individual flexibility arrangement must be in writing and signed:
 - (i) in all cases—by the employee and the employer; and
 - (ii) if the employee is under 18—by a parent or guardian of the employee; and
 - (f) require the employer to ensure that a copy of any individual flexibility arrangement must be given to the employee.
- (5) Except as required by subparagraph (4)(e)(ii), the flexibility term must not require that any individual flexibility arrangement agreed to by an employer and employee under the term must be approved, or consented to, by another person.

145 Effect of individual flexibility arrangement that does not meet requirements of flexibility term

Application of this section

- (1) This section applies if:
- (a) an employee and employer agree to an arrangement that purports to be an individual flexibility arrangement under a flexibility term in a modern award; and
 - (b) the arrangement does not meet a requirement set out in section 144.

Note: A failure to meet such a requirement may be a contravention of a provision of Part 3-1 (which deals with general protections).

Arrangement has effect as if it were an individual flexibility arrangement

- (2) The arrangement has effect as if it were an individual flexibility arrangement.

Employer contravenes flexibility term in specified circumstances

- (3) If subsection 144(4) requires the employer to ensure that the arrangement meets the requirement, the employer contravenes the flexibility term of the award.

Flexibility arrangement may be terminated by agreement or notice

- (4) The flexibility term is taken to provide (in addition to any other means of termination of the arrangement that the term provides) that the arrangement can be terminated:
- (a) by either the employee, or the employer, giving written notice of not more than 28 days; or
 - (b) by the employee and the employer at any time if they agree, in writing, to the termination.