

16 Meaning of *base rate of pay*

General meaning

- (1) The ***base rate of pay*** of a national system employee is the rate of pay payable to the employee for his or her ordinary hours of work, but not including any of the following:
- (a) incentive-based payments and bonuses;
 - (b) loadings;
 - (c) monetary allowances;
 - (d) overtime or penalty rates;
 - (e) any other separately identifiable amounts.

Meaning for pieceworkers in relation to entitlements under National Employment Standards

- (2) Despite subsection (1), if one of the following paragraphs applies to a national system employee who is a pieceworker, the employee's ***base rate of pay***, in relation to entitlements under the National Employment Standards, is the base rate of pay referred to in that paragraph:
- (a) a modern award applies to the employee and specifies the employee's base rate of pay for the purposes of the National Employment Standards;
 - (b) an enterprise agreement applies to the employee and specifies the employee's base rate of pay for the purposes of the National Employment Standards;
 - (c) the employee is an award/agreement free employee, and the regulations prescribe, or provide for the determination of, the employee's base rate of pay for the purposes of the National Employment Standards.

Meaning for pieceworkers for the purpose of section 206

- (3) The regulations may prescribe, or provide for the determination of, the base rate of pay, for the purpose of section 206, of an employee who is a pieceworker. If the regulations do so, the employee's ***base rate of pay***, for the purpose of that section, is as prescribed by, or determined in accordance with, the regulations.

Note: Section 206 deals with an employee's base rate of pay under an enterprise agreement.

Division 6—Base rate of pay under enterprise agreements

206 Base rate of pay under an enterprise agreement must not be less than the modern award rate or the national minimum wage order rate etc.

If an employee is covered by a modern award that is in operation

- (1) If:
- (a) an enterprise agreement applies to an employee; and
 - (b) a modern award that is in operation covers the employee;

the base rate of pay payable to the employee under the agreement (the ***agreement rate***) must not be less than the base rate of pay that would be payable to the employee under the modern award (the ***award rate***) if the modern award applied to the employee.

- (2) If the agreement rate is less than the award rate, the agreement has effect in relation to the employee as if the agreement rate were equal to the award rate.

If an employer is required to pay an employee the national minimum wage etc.

- (3) If:
- (a) an enterprise agreement applies to an employee; and
 - (b) the employee is not covered by a modern award that is in operation; and
 - (c) a national minimum wage order would, but for the agreement applying to the employee, require the employee's employer to pay the employee a base rate of pay (the ***employee's order rate***) that at least equals the national minimum wage, or a special national minimum wage, set by the order;

the base rate of pay payable to the employee under the enterprise agreement (the ***agreement rate***) must not be less than the employee's order rate.

- (4) If the agreement rate is less than the employee's order rate, the agreement has effect in relation to the employee as if the agreement rate were equal to the employee's order rate.