

328 Employer obligations in relation to guarantee of annual earnings

Employer must comply with guarantee

- (1) An employer that has given a guarantee of annual earnings to an employee must (subject to any reductions arising from circumstances in which the employer is required or entitled to reduce the employee's earnings) comply with the guarantee during any period during which the employee:
- (a) is a high income employee of the employer; and
 - (b) is covered by a modern award that is in operation.

Note 1: Examples of circumstances in which the employer is required or entitled to reduce the employee's earnings are unpaid leave or absence, and periods of industrial action (see Division 9 of Part 3-3).

Note 2: This subsection is a civil remedy provision (see Part 4-1).

Employer must comply with guarantee for period before termination

- (2) If:
- (a) the employment of a high income employee is terminated before the end of the guaranteed period; and
 - (b) either or both of the following apply:
 - (i) the employer terminates the employment;
 - (ii) the employee becomes a transferring employee in relation to a transfer of business from the employer to a new employer, and the guarantee of annual earnings has effect under subsection 316(2) as if it had been given to the employee by the new employer; and
 - (c) the employee is covered by a modern award that is in operation at the time of the termination;

the employer must pay earnings to the employee in relation to the part of the guaranteed period before the termination at the annual rate of the guarantee of annual earnings.

Note: This subsection is a civil remedy provision (see Part 4-1).

Employer must give notice of consequences

- (3) Before or at the time of giving a guarantee of annual earnings to an employee covered by a modern award that is in operation, an employer must notify the employee in writing that a modern award will not apply to the employee during any period during which the annual rate of the guarantee of annual earnings exceeds the high income threshold.

Note: This subsection is a civil remedy provision (see Part 4-1).

316 Transferring employees who are high income employees

- (1) This section applies if:
- (a) the old employer had given a guarantee of annual earnings for a guaranteed period to a transferring employee; and
 - (b) the transferring employee was a high income employee immediately before the termination of the transferring employee's employment with the old employer; and

- (c) some of the guaranteed period occurs after the time (the *transfer time*) the transferring employee becomes employed by the new employer; and
- (d) an enterprise agreement does not apply to the transferring employee in relation to the transferring work at the transfer time.

- (2) The guarantee of annual earnings has effect after the transfer time (except as provided in this section) as if it had been given to the transferring employee by the new employer.
- (3) The new employer is not required to comply with the guarantee of annual earnings in relation to any part of the guaranteed period before the transfer time.
- (4) The new employer is not required to comply with the guarantee of annual earnings to the extent that it requires the new employer to pay an amount of earnings to the transferring employee, in relation to the part of the guaranteed period after the transfer time, at a rate that is more than the annual rate of the guarantee of annual earnings.
- (5) If:
 - (a) the transferring employee is entitled to non-monetary benefits under the guarantee of annual earnings after the transfer time; and
 - (b) it is not practicable for the new employer to provide those benefits to the transferring employee;then the guarantee of annual earnings is taken to be varied so that, instead of the entitlement to those benefits, the transferring employee is entitled to an amount of money that is equivalent to the agreed money value of those benefits.
- (6) This section does not affect the rights and obligations of the old employer that arose before the transfer time in relation to the guarantee of annual earnings.