

The way to calculate your earnings:

3.05 When a person is protected from unfair dismissal—high income threshold

- (1) For subparagraph 382(b)(iii) of the Act, this regulation explains how to work out amounts for the purpose of assessing whether the high income threshold applies in relation to the dismissal of a person at a particular time.

Note: Under section 382 of the Act, a person is protected from unfair dismissal if specified circumstances apply. One of the circumstances is that the sum of the person's annual rate of earnings, and such other amounts (if any) worked out in relation to the person in accordance with the regulations, is less than the high income threshold.

Piece rates

- (2) Subregulations (3), (4) and (5) apply if part or all of the person's income at the time of the dismissal is paid as piece rates that are:
- (a) set by reference to a quantifiable output or task; and
 - (b) not paid as a rate set by reference to a period of time worked.
- (3) If the person was continuously employed by the employer and was not on leave without full pay at any time during the period of 12 months immediately before the dismissal, the total amount of piece rates paid or payable to the person in respect of the period of 12 months ending immediately before the dismissal is an amount for subparagraph 382(b)(iii) of the Act.
- (4) If the person was continuously employed by the employer and was on leave without full pay at any time during the period of 12 months immediately before the dismissal, the total of:
- (a) for the days during that period that the employee was not on leave without full pay—the actual piece rates received by the employee; and
 - (b) for the days that the employee was on leave without full pay—an amount worked out using the formula:

$$\frac{\text{Piece rates mentioned in paragraph (a)} \times \text{Days on leave without full pay}}{\text{Days not on leave without full pay}}$$

is an amount for subparagraph 382(b)(iii) of the Act.

- (5) If the person was continuously employed by the employer for a period of less than 12 months immediately before the dismissal, the total amount of piece rates worked out using the formula:

$$\frac{\text{Piece rates} \times 365}{\text{Days employed}}$$

is an amount for subparagraph 382(b)(iii) of the Act.

(Fair Work Regulation 2009)

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- (4) If the person was continuously employed by the employer and was on leave without full pay at any time during the period of 12 months immediately before the dismissal, the total of:
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- (5) If the person was continuously employed by the employer for a period of less than 12 months immediately before the dismissal, the total amount of piece rates worked out using the formula:

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Benefits other than payment of money

- (6) If:
- (a) the person is entitled to receive, or has received, a benefit in accordance with an agreement between the person and the person's employer; and
 - (b) the benefit is not an entitlement to a payment of money and is not a non-monetary benefit within the meaning of subsection 332(3) of the Act; and
 - (c) the FWC is satisfied, having regard to the circumstances, that:
 - (i) it should consider the benefit for the purpose of assessing whether the high income threshold applies to a person at the time of the dismissal; and
 - (ii) a reasonable money value of the benefit has not been agreed by the person and the employer; and
 - (iii) the FWC can estimate a real or notional money value of the benefit;

	the real or notional money value of the benefit estimated by the FWC is an amount for subparagraph 382(b)(iii) of the Act.
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