

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.

20 Meaning of *ordinary hours of work* for award/agreement free employees

Agreed ordinary hours of work

- (1) The ***ordinary hours of work*** of an award/agreement free employee are the hours agreed by the employee and his or her national system employer as the employee's ordinary hours of work.

If there is no agreement

- (2) If there is no agreement about ordinary hours of work for an award/agreement free employee, the **ordinary hours of work** of the employee in a week are:
- (a) for a full-time employee—38 hours; or
 - (b) for an employee who is not a full-time employee—the lesser of:
 - (i) 38 hours; and
 - (ii) the employee's usual weekly hours of work.

If the agreed hours are less than usual weekly hours

- (3) If, for an award/agreement free employee who is not a full-time employee, there is an agreement under subsection (1) between the employee and his or her national system employer, but the agreed ordinary hours of work are less than the employee's usual weekly hours of work, the **ordinary hours of work** of the employee in a week are the lesser of:
- (a) 38 hours; and
 - (b) the employee's usual weekly hours of work.

Regulations may prescribe usual weekly hours

- (4) For an award/agreement free employee who is not a full-time employee and who does not have usual weekly hours of work, the regulations may prescribe, or provide for the determination of, hours that are taken to be the employee's usual weekly hours of work for the purposes of subsections (2) and (3).

(Fair Work Regulations 2009)

1.11 Meaning of ordinary hours of work for award/agreement free employees

- (1) For subsection 20(4) of the Act, this regulation provides for the determination of hours that are taken to be the usual weekly hours of work of an award/agreement free employee who:

- (a) is not a full-time employee; and
- (b) does not have usual weekly hours of work.

Note: Under section 20 of the Act, the usual weekly hours of work of an award/agreement free employee are relevant to establishing the employee's ordinary hours of work.

- (2) To work out the usual weekly hours of work for an employee who has been employed by the employer for at least 4 weeks:
- (a) identify the total number of hours that the employee has worked during the previous 4 completed weeks; and
 - (b) divide the result by 4.
- (3) To work out the usual weekly hours of work for an employee who has been employed by the employer for less than 4 weeks:
- (a) identify the total number of hours that the employee has worked during the period; and
 - (b) divide the result by the number of completed weeks for which the employee has been employed by the employer.

