

The Fair Work Act 2009 – High Income Employees

Welcome to EMA Note 10 and the incorporation of our new logo and corporate design.

In the forthcoming weeks we will be looking at a number of features of the Fair Work Act 2009 ("Act"), so that by the time we reach 1 July 2009 our clients will be better informed and equipped to deal with the changes. In this issue we are looking at the concept of "High Income Employees".

What is a High Income employee?

A High Income Employee is an employee who would ordinarily be covered by a Modern Award and who is paid a salary (excluding superannuation) of \$106,300 or more (or the pro rata equivalent in the case of a less than full-time employee). Under the Act, an employer and an employee can agree to exclude the application of the Modern Award to the employee subject to a number of conditions. The concept is that if the employee is receiving such a High Income, that the Award and its inherent complexity of base rates, allowances, overtime and penalties does not have to apply.

Condition 1 – Earnings must be guaranteed

The employer must guarantee for a period of 12 months or more that the employee will not earn less than the High Income amount. The guarantee must be in writing and must be agreed by the employee to be effective under the Act. This is evidenced by the employee's written consent.

Condition 2 – Employee must be covered by a Modern Award

To qualify as a High Income Employee, the employee must be covered by a Modern Award. If the employee is bound by an Enterprise Agreement, AWA, ITEA or any other form of agreement subject to the terms of the Act that agreement will continue to apply to the employee until that agreement is terminated.

When does an Employee cease to be a High Income Employee?

Once a guarantee is made and agreed, it continues to operate until one of the following events occurs:

- ÿ The guarantee periods ends (at which point a new guarantee can be made)
- ÿ The employee's salary drops below the guarantee
- ÿ The employee becomes bound by an Enterprise Agreement

What is Included in an Employee's Salary?

In deciding whether an employee potentially qualifies a High Income Employee, the following amounts are taken into account in ascertaining an employee's salary:

- ÿ Base salary or wage
- ÿ Overtime, penalties or allowances
- ÿ Salary sacrificed amounts
- ÿ The private value of non monetary benefits



What happens to the Modern Award?

Whilst the earnings guarantee is in place the Modern Award has no effect on the employer or the employee.

Example of employees who might be High Income Employees

Employees who might qualify as High Income Employees potentially include:

- Y Pilots
- Y Engineers
- Y Skilled Trades
- Y Mining
- Y Scientists
- Y High overtime based occupations
- Y High market rate based blue or white collar occupations

Need more Information?

EMA Consulting has developed a comprehensive guide on the topic for any client who requires further information. The Guide includes examples, forms and letters required to enact a High Income Employee result under the Act. For updates on EMA Notes, seminars and other products visit our new website at www.emaconsulting.com.au.

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