



ENTERPRISE AGREEMENTS UNDER FEDERAL LAWS

What is an Enterprise Agreement?

An enterprise agreement is a formal agreement between an employer and employee about working conditions and employee entitlements which is approved by Fair Work Australia as being Better Off Overall as compared to an underpinning industrial instrument.

There are specific requirements which must be complied with for an enterprise agreement to be approved including:

- Content (specific clauses must be included)
- Notification process (to employees)
- Good Faith Bargaining requirements apply
- Approval processes (a vote of eligible employees)
- Lodgement (specified process and documents)
- A test of the 'fairness' of the agreement against the underpinning award and minimum standards (Better Off Overall Test)

Compliance with these requirements and approval by Fair Work Australia does the following:

- gives the agreement legal force
- effectively does away with the award (but for the requirement to maintain a minimum rate in the agreement not less than the underpinning award) for the life of the agreement – unless the Agreement specifically retains aspects of the Award

Unlike Enterprise Agreements common law contracts are subject to the award and cannot override the award terms; although contracts can vary award terms (such as rolling up rates) if drafted correctly.

Who can make an Enterprise Agreement under Federal Laws?

Any employer covered by the Fair Work Act which includes constitutional corporations (ie. Pty Ltd's) in all jurisdictions and unincorporated entities in all States and Territories but for WA.

What are the advantages of implementing an Enterprise Agreement?

There are several advantages to implementing an Enterprise Agreement including:

- the agreement overrides and displaces the award which would otherwise apply
- the agreement is specific to your enterprise, it is not an inflexible and generally applied document like an award
- It can apply for up to 4 years – so you do it once and it will ‘cover the field’ for four years
- It will automatically cover all new employees employed in positions which are covered by the terms of the enterprise agreement, you don’t need to give new employees throughout this period a new contract of employment – the enterprise agreement will just apply
- It is unlawful to take industrial action on matters covered by the agreement during its period of operation



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If you have any questions regarding this fact sheet or would like assistance regarding IR/HR/OHS contact IR Assist for more information:

p: 1300 393 519 | m: 0408826625 | e: info@irassist.com.au