

2018 July ESKi update pack (version 4)

In this pack, you will find updated ESKi pages and resources. Dates are listed alongside so you can check your version and easily find / replace pages and resources you have downloaded. Note: this version includes information relating to Family and domestic leave (applies as of 1 August 2018) & updated contract templates (September 2018).

Missed a previous ESKi update?

Note: look out for this orange icon which flags pages that may require future updating

This information is available at www.thepeopleindairy.org.au/eski



Section and pages

Employing Someone

Updated September 2018: Employment contract templates include Domestic and Family violence leave information (ESKi E/Someone section pg 25 - Perm. Award contract template and example) Latest templates available (check the updated date alongside the link) at www.thepeopleindairy.org.au/eski/employing_someone.htm

Payroll

ESKi pg 3/4 (check the minimum pay, record keeping)

Updated July 2018

How do I tackle pay rates? fact sheet (2 pages):

Updated July 2018 also available at www.thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=127025

Leave

Updated August 2018: Domestic and Family violence leave information added which requires a new page in the section - pages 3 & 4 in this pack.

IFA

ESKi pg 3/4 (Flat rate pay calculator eg: if you are thinking of trying out an IFA)

Updated July 2018

Flat Pay Rate calculator: www.thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=72476

Updated July 2018 (not in this pack - excel spreadsheet)

IFA template: www.thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=60119

Updated August 2018 - includes in this pack, has revised information regarding Superannuation on pg 6.

Pastoral Award 2010

Pastoral Award 2010

Download marked up version: <http://bit.ly/PastoralAward>

(not in this pack) also visit www.thepeopleindairy.org.au/engagement-reward/pastoral-award.htm

Note: The Pastoral Award 2010 will be **updated 1 October 2018** with information relating to casual conversion. Read more at www.thepeopleindairy.org.au/announcements/casual-conversion

In Western Australia?

Read more WA state industrial laws: www.thepeopleindairy.org.au/WAstatelaws

Updated July 2018



Pay rates are reviewed every year and likely to change - check at www.thepeopleindairy.org.au/payrates

Employee classification	Hourly rate	Weekly rate
FLH1	\$18.93	\$719.20
FLH3	\$19.75	\$750.60
FHL5	\$20.58	\$782.00
FLH7	\$22.04	\$837.40
FLH 8	\$23.68	\$899.70

Check the minimum pay

Reminder: the pay rates in the Pastoral Award 2010 apply to all national system employers across Australia, regardless of award coverage prior to 1 January 2010.

The minimum hourly rates for each employee classification are listed in the table above (you must pay these rates or above) which apply from the first pay period after 1 July 2018. These apply from **1 July 2018 – 30 June 2019**, based on ordinary hours of work of 152 hours over 4 consecutive weeks.

All time worked in excess of 152 hours over 4 weeks is overtime, and paid at time and a half, except on Sundays when the rate is double time (in the case of feeding and watering stock, Sunday work is paid at time and a half).

An **overtime and ordinary hours factsheet** is included later in this section and is available at www.thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=147571

In WA? Pay rates depend on how you run your business. The current minimum weekly rate of pay is \$726.90 per week or \$19.13 per hour from the first full pay period beginning on or after 1 July 2018.

Read more about WA state industrial laws and pay rates at:

www.thepeopleindairy.org.au/engagement-reward/WA-state-industrialaws.htm#minimum-wage

Payment of wages

The Pastoral Award 2010 requires wages to be paid weekly or fortnightly by cash, cheque or EFT. On termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee by post on the next working day.



You must keep written time and wages records for your employees for 7 years

Record keeping – what written records do you have to keep?

Under the Fair Work Act employers have to keep written time and wages records for their employees for 7 years.

Who & when

- the employer's name and the employee's name
- your Australian Business Number
- the date the employee started work.

Type of employment, hours & rates of pay

- if the employee is full-time or part-time
- whether the employee is permanent, temporary or casual
- the employee's pay rate, including gross and net amounts and any deductions from the gross amount
- loadings, allowances, bonuses, incentive-based payments, penalty rates or other paid entitlements that can be singled out
- if a penalty rate or loading must be paid for overtime hours:
 - the number of hours of overtime worked, or
 - when the employee started and finished working overtime.
- if the employee works casual or irregular part-time hours and has a guaranteed pay rate for a set period worked:
 - number of hours worked.
- if you and your employee have agreed to an individual flexibility agreement: a copy of the agreement.

Leave (all types)

- leave taken
- leave balance.

Superannuation

- amount paid
- pay period
- date(s) paid
- name of super fund
- a record of the **employee's super fund choice** and the date they made that choice.

FAQ: How do I tackle pay rates?



Updated: from 1 July 2018

Step 1 – what is the employee’s classification?

All employees should be given a classification which accurately reflects their skills and experience and the work they do. As a minimum, wages paid to the employee should meet award rates of pay which apply to their classification. The Pastoral Award 2010 applies to dairy employees. There are 5 employee classifications for dairy in the Award, which are summarised in the table overleaf.

Step 2 – find the minimum hourly rate – (you must pay this rate or above)

As of 1 July 2014, transitional pay rates no longer apply.

Reminder: as of 1 July 2014, the pay rates in the Pastoral Award 2010 apply to all [national system employers](#) across Australia, regardless of award coverage prior to 1 January 2010.

The minimum hourly rates for each employee classification are listed in the table below which apply from the **first pay period on or after 1 July 2018**

Employee classification	Hourly rate	Weekly rate
FLH 1	\$18.93	\$719.20
FLH3	\$19.75	\$750.60
FLH5	\$20.58	\$782.00
FLH7	\$22.04	\$837.40
FLH8	\$23.68	\$899.70

Step 3 – is the employee full time, part time or casual?

Under the Pastoral Award 2010 ordinary hours are 152 hours worked over a four-week period. Ordinary hours for casuals are the same as for full-time employees. All part-time and casual employees are entitled to a minimum payment of 3 hours' work. A casual worker must be paid at the hourly rate plus 25%.

Can I pay a flat hourly rate?

Once you have worked out the relevant minimum amounts of pay required by law and any other benefits which you may be able to provide, you can begin to work out a package.

Sometimes it may be more straightforward to pay a flat rate of pay taking into account overtime and penalty rates. As this is a variation to the award, the employer and employee must formalise the pay rate as part of an Individual Flexibility Agreement (IFA) or an enterprise agreement.

IFA's and enterprise agreements must pass the Better Off Overall Test (BOOT) to ensure the employee is better off overall compared to the award.

www.thepeopleindairy.org.au

Templates & Tools

Use the **flat rate calculator (excel spreadsheet)** to work out the hourly flat rate that takes into account overtime & penalty rates. Visit www.thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=72476

Further Reading

National Training Wage Schedule
www.thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=127018

National Employment Standards
www.thepeopleindairy.org.au/engagement-reward/national-employment-standards.htm

Stepping Stones provides information on the different types of careers and explores the different pathways available for people looking to start and/or progress their dairy career further available at www.thepeopleindairy.com.au/steppingstones

Other topics

Pay rates, Working out a package and the Pastoral Award 2010 are available at www.thepeopleindairy.org.au/engagement-reward/pay-rates.htm

Record keeping
www.thepeopleindairy.org.au/engagement-reward/record-keeping.htm

FAQ: How do I tackle pay rates?

Updated: from 1 July 2018



Classifications

Pastoral Award 2010 classification	Job category	Indicative Training level
<p>Farm and livestock hand level 1 (FLH1) Dairy operator grade 1A with less than 12 months' experience in the industry who:</p> <ul style="list-style-type: none"> uses their knowledge and skills to perform set procedures such as milking and attending to livestock, haymaking, fencing. 	<p>Assistant Farm Hand (works under supervision)</p> <p>This category is for people who are involved in a general range of farming tasks and working under supervision.</p>	Certificate II
<p>Farm and livestock hand level 3 (FLH3) Dairy operator grade 1B with 12 months' experience in the industry who:</p> <ul style="list-style-type: none"> uses their knowledge and skills to perform set procedures such as milking and attending to livestock, haymaking, fencing. 	<p>Farm Hand (works under limited supervision)</p> <p>This category is for people who are skilled or unskilled in a range of farming operations and work either independently or as part of a team.</p>	Certificate III
<p>Farm and livestock hand level 5 (FLH5) An employee at this level includes: Dairy operator grade 2 who:</p> <ul style="list-style-type: none"> has two years experience in the industry; uses their knowledge and skills to multiple operations involving basic levels of problem solving and decision making; and has an appreciation of the overall processes involved in a dairy farm. 	<p>Senior farm hand</p> <p>This category is for skilled people working either independently or as part of a team.</p>	Certificate IV
<p>Farm and livestock hand level 7 (FLH7) An employee at this level includes: Senior dairy operator grade 1 who:</p> <ul style="list-style-type: none"> uses their knowledge and skills to coordinate the operation of a farm process or area of expertise e.g. milking and animal attendance, pasture and farm maintenance, breeding programs and artificial insemination area. 	<p>Production Manager (implements policy and sets tactics)</p> <p>People in this role have significant responsibilities in managing the production activities on a dairy farm.</p> <p>Dairy farm production managers demonstrate broad industry knowledge and advanced technical skills.</p>	Diploma
<p>Farm and livestock hand level 8 (FLH8) An employee at this level includes: Senior dairy operator grade 2 who:</p> <ul style="list-style-type: none"> under the direction of the owner or manager uses their expertise and skills in order to supervise and maintain the operation of a dairy farm. 	<p>Senior Production Manager (farm supervisor) (supervises staff and reports to management)</p> <p>People in roles of this category have responsibility for staff and various production activities on the farm.</p> <p>A supervisor is expected to carry out some business management activities like monitoring OH&S in the workplace, preparing operating budgets and supervising work routines of others. A senior production manager uses industry knowledge and may be asked to solve a range of problems.</p>	Diploma
<p>Award-free business manager</p>	<p>Business Manager (sets policy)</p> <p>People in roles in this category have significant responsibility for ensuring the dairy enterprise is managed successfully.</p> <p>They are expected to demonstrate extensive industry knowledge, technical skills and business management principles in order to perform this complex role.</p>	Advanced diploma

Family and domestic violence leave

Family and domestic violence leave is an award entitlement which **applies as of 1 August 2018**.

Family and domestic violence means:

- Violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

Family member means:

- spouse, de facto partner, child, parent, grandparent, grandchild, sibling of employee;
- spouse, de facto partner, child, parent, grandparent, grandchild, sibling of employee's spouse or de facto partner;
- person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.
- This includes former spouses or de facto partners.

Family and domestic violence leave is unpaid leave of 5 days per year for domestic violence victims to deal with family and domestic violence.

Family and domestic violence leave **applies in full to all employees** including part time and casual employees.

Family and domestic violence leave does not accrue progressively or accumulate from year to year but is available in full at the commencement of each 12-month period of the employee's employment.

Family and domestic violence victims do not have to have exhausted other forms of leave before accessing family and domestic violence leave.

Notice and evidence requirements

- Notice must be given to the employer as soon as practicable which can be after the leave has started.
- The employee must advise employer of the expected period of the leave.
- If required by the employer, the employee must provide evidence that would satisfy a reasonable person that the leave is taken for family and domestic violence reasons e.g. a document from police/family violence support service/family court or a statutory declaration.

Confidentiality requirement

Employers must ensure that any information provided by the employee with respect to family and domestic violence leave is treated confidentially.



You must keep written time and wages records for your employees for 7 years

Learn more

Visit the ESKi at:
www.thepeopleindairy.org.au/eski



Which leave gets paid out on termination?

Accrued annual leave must be paid out on termination. You don't have to pay out accrued personal/carer's leave. Long service leave may have to be paid out on termination see www.thepeopleindairy.org.au/pastoralaward for more information.

Record keeping

Under the Fair Work Act employers have to keep written time and wages records for their employees for 7 years, including records of leave taken and leave balances. Maintaining employee leave records can take up a lot of time. If you employ a number of staff, talk to your accountant or bookkeeper about investing in a computerised accounts package such as MYOB or Quickbooks.

Leave checklist

- Do you have processes in place for employees to apply for annual, personal, compassionate, parental, community service and long service leave? See **Application for Leave form**
- Do you maintain accurate records of employee leave entitlements? See **Leave record templates**

Flat pay rate calculator tool example (updated July 2018)

Use the flat rate calculator tool to work out the hourly flat rate that takes into account overtime, penalty rates and the 17.5% annual leave loading.

How to use the flat pay rate calculator...

1. Enter the minimum hourly rate for the position, based on the classification.
2. The number of ordinary hours is already entered. It is assumed to be 38 hours as specified in the Pastoral Award 2010.
3. Enter any hours worked on Sundays that were after the employee had exceeded 152 hours within a 4-week period.
4. Enter the overtime hours worked after the employee had exceeded 152 hours within a 4-week period.
5. Enter number of hours and days rostered to work on public holidays over 12 months.
6. The average hourly rate will be calculated. This rate is the minimum that needs to be paid to pass the BOOT test.

Here is an example of a flat rate of pay (\$24.00), calculated using the calculator, for an employee classified as an FLH5 (senior farm hand) at a minimum hourly rate of \$20.58. Download the flat pay rate calculator from <http://bit.ly/flatpaycalc>

Minimum hourly rate for the FLH5 classification			\$20.58
	No. hours	Rate	Total
Ordinary hours per week	38	1	\$782.04
Sunday >152 hrs/4 wks	2.5	2	\$102.90
Overtime hours	9.5	1.5	\$293.27
Total hours per week	50		
Average hourly rate with overtime			\$23.56
Hours worked on public holidays and number of holidays worked in the year	10	5	\$1,029
Total annual salary			\$61,258
Total hours	2552		
Average hourly rate			\$24.00



The information in this example is current as at printing - stay up to date with the latest pay rates & IFA information at www.thepeopleindairy.org.au/eski/ifa.htm

Learn more

Download IFA template documents at
www.thepeopleindairy.org.au/eski/ifa.htm



If you are thinking of trying out an IFA

If you think you would like Individual Flexibility Agreements for your employees, you should contact your dairy adviser or legal adviser.

While an IFA is a relatively simple document, there are a few pitfalls you need to be aware of.

An IFA can also only be made after the employee has commenced employment and is entitled to the minimum award conditions contained in the relevant modern award. This means an employer cannot ask a prospective employee to agree to an IFA as a condition of employment.

Most importantly, you cannot force an employee to enter into an IFA and a person must not be treated adversely or discriminated against for refusing to agree to an IFA.

The flat rate will need to be recalculated every time there is a minimum wage increase and to reflect increases due to reclassification of the employee, e.g. moving from an FLH1 after one year to an FLH3.

Finally, the flat rate and BOOT test will only hold true if your employee's hours of work don't exceed the estimated hours. Accurate record keeping is crucial.

“The extra time and effort involved in putting together an IFA has been repaid tenfold by taking the worry out of paying my employee.”

– Tasmanian dairy farmer

INDIVIDUAL FLEXIBILITY AGREEMENT

Dated the <insert day> day of <insert month> <insert year>

BETWEEN:

<insert employer name> [the employer]

AND

<insert employee name> [the employee] **(See Note 1)**

1. This Individual Flexibility Agreement is made under the Pastoral Award 2010.
2. This Individual Flexibility Agreement begins to operate on the <insert date agreement begins>
3. The employer and the employee hereby agree that the Pastoral Award 2010 is varied as follows: **(See Note 2)**

<You must detail each award term which has been varied and how it has been varied.>

<You must detail how the employee is Better off Overall as a result of the variation to each award term.>

Sample clauses to implement a flat rate of pay. (See Note 2)

3.1 *Clause 23.4 (which deals with annual leave loading), clause 31 (which deals with overtime) and clause 32 (which deals with payment for public holidays) of the award are varied as follows:*

3.2 *In place of payment for annual leave loading, overtime and payment for working public holidays, the employee will be paid a flat hourly rate of pay of <insert \$ amount> for all hours worked.*

3.3 *The employee is Better Off Overall than the award because under the award the employee would have received a total of <insert \$ amount> per week/month/year ~~<delete where not applicable>~~. See attached spreadsheet.*

3.4 *The weekly hours of work will be <insert total weekly hours> which is made up of 152 hours over 4 weeks of ordinary time (as defined in the Pastoral Award 2010) at \$<insert \$ rate for ordinary hours> and <insert number of overtime hours> at \$<insert \$ rate for overtime hours>. **(See Note 2 re superannuation)***

4. This Individual Flexibility Agreement can be terminated in the following ways:
 - i) if the employer and the employee agree in writing to its termination this Individual Flexibility Agreement will be terminated as of the date of the agreement.

- ii) by either the employer or the employee giving 13 weeks' written notice of termination to the other person. At the end of the notice period this Individual Flexibility Agreement will cease to operate.
5. The employer and the employee have genuinely agreed to enter into this Individual Flexibility Agreement to meet the genuine individual needs of both parties and without any coercion or duress. **(See Note 3)**

SIGNATURES (See note 4)

The Employer

Date _____

Signed _____

Name in full (printed) _____

Position _____

Employer address _____

The Employee

Signed _____

Name in full (printed) _____

Employee address _____

Parent or Guardian (if the employee is under 18 years of age)

Signed _____

Name in full (printed) _____

Parent or Guardian's address _____

NOTES TO THE INDIVIDUAL FLEXIBILITY AGREEMENT

GENERAL NOTES

All of the clauses in this agreement are compulsory.

They should all be completed where applicable and none should be removed.

If the employer wishes to enter into an IFA with an employee they must put the request in writing.

A [template letter of request](#) is on the website.

It is suggested that at this stage a draft of the proposed IFA be given to the employee.

NOTE 1

An IFA can also only be made after the employee has commenced employment and is entitled to the minimum award conditions contained in the relevant modern award.

This means an employer cannot ask a prospective employee to agree to an IFA as a condition of employment.

NOTE 2

This clause must detail each award term which has been varied and how it has been varied.

IFAs can only vary the following award terms:

- arrangements for when work is performed such as working hours;
- overtime rates;
- penalty rates;
- allowances, and
- leave loading.

In addition, the clause must detail how the employee is Better off Overall as a result of the variation to each award term.

What is the Better Off Overall Test?

The Better Off Overall Test compares the agreement with the relevant award. The agreement will pass the Better Off Overall Test if on balance the employee is better off than they would have been if no agreement had been entered into and they remained subject to the award

In most cases this will amount to a comparison of the financial rewards the employee receives before and after the enterprise agreement is entered into.

The following is a step-by-step process you could use to work out if the agreement passes the Better Off Overall test.

There is a spreadsheet on the website ([Flat Pay Rate Calculator](#)) which performs this calculation for you.

Better Off Overall TEST CALCULATOR

1. Calculate the minimum amount due under the award

- Assess the total hours needed to be worked over a given period (say 4 weeks if using the Pastoral Award 2010 which provides for 152 hours over a 4 week period before any overtime is payable).
- Work out the total rate of pay for this period of time taking into account any overtime and penalty rates which will be payable.
- Multiply by 12 months if hours of work will be regular over that time. If hours will not be regular break the calculation down into the various periods when hours will be regular.
- Add in the value to the employee of double time pay for any public holidays which are usually worked.
- Add in the value of annual leave loadings if you wish to include these.
- This will give you the minimum annual amount you will need to pay employees in each classification to meet the Better Off Overall Test.

2. Divide the total amount by the total number of hours to be worked over the year.

3. The final amount is the hourly rate you will enter into the agreement for that employee.

What about superannuation?

Superannuation is payable on Ordinary Time Earnings (OTE) which are defined in the taxation laws.

Overtime is NOT defined as Ordinary Time Earnings but if you pay a flat rate of pay which incorporates overtime and the overtime is not distinctly identifiable then superannuation must be paid on the full amount.

If, however the payment includes an amount that is “expressly referable” to overtime hours as remuneration for overtime worked then the payment for overtime will not be OTE. (Superannuation Guarantee Ruling SGR 2009/2)

The ATO has issued an administratively binding advice which is on the ATO website. The reference number is 1012597896867.

While this advice is specific to the employer who sought the advice it is useful to ascertain how the ATO might interpret the situation. If you want absolute certainty then you should seek your own private ruling from the ATO.

The advice states that if the hours which are **ordinary time hours** are **clearly specified in an IFA** then superannuation need only be paid on these hours not on all of the hours worked.

This is because the IFA does not alter the hours which are ordinary hours of work but rather varies the rate of pay for the overtime hours and those hours.

if you wish to pay superannuation on the 38 hours worked not the hours inclusive of overtime then Sample *Clause 3.4* should be included in the IFA. It has been drafted to comply with SGR 2009/2 and the ATO Advice to ensure that the overtime hours are ‘expressly referable’. The spreadsheet which you will attach to the IFA will also identify the overtime hours.

NOTE 3

An employee or employer must not be forced to enter into an IFA and a person must not be treated adversely or discriminated against for refusing to agree to an IFA.

It is the employer’s responsibility to ensure that an employee has genuinely agreed to an IFA.

Employers should be careful not to make false or misleading statements about the effect of the IFA or penalties could apply. Statements made carelessly may also attract penalties if the employee is misled, even if this was not intended.

It is the employer’s responsibility to ensure that an employee has genuinely agreed to an IFA. This means that the employer should take steps to ensure that the employee fully understands the effect of the agreement as compared to the award entitlements. It is a good idea to have a copy of the award available for the employee to look at.

When making an IFA, an employer should keep in mind any language or cultural differences that might affect the employee’s understanding of the terms of the IFA or their choice to agree to an IFA.

If any employees have limited literacy, employers will need to be especially careful to make sure they understand the effect on them of each clause of the proposed agreement.

NOTE 4

Unlike enterprise agreements, IFAs do not need to be approved by the Fair Work Commission.

It is the employer's responsibility to ensure that the IFA is made correctly, and meets all of the requirements of the FW Act.

An IFA must be in writing and signed by the employer and employee. If the employee is under 18 years of age, it must also be signed by the employee's parent or guardian.

Once an IFA has been made, it is the employer's responsibility to ensure that a copy of the IFA is given to the employee.

The employer must also keep a copy with the employee's employment records.