



Workplace Arrangements

The National Code sets minimum standards that businesses must meet to be eligible for certain Australian Government building and construction work.

The National Code Implementation Guidelines provide supporting detail on compliance requirements.

See other ABCC fact sheets to determine when the National Code applies and which set of Guidelines to use.

This fact sheet is relevant to projects complying with the June 2006 Guidelines.

Contractors and subcontractors who engage employees will normally be parties to a workplace agreement that outlines the pay and conditions that apply. Regardless of the arrangements in place, employers and employees must comply with the industrial instruments and legislative requirements that are applicable to the project and the work they undertake, including meeting all applicable employee entitlements.

WHAT IS AN INDUSTRIAL INSTRUMENT?

An industrial instrument is an agreement or an award that:

- is made under or recognised by an industrial law, and
- concerns the relationship between an employer and their employees.

This can include enterprise agreements, modern awards, workplace determinations, Fair Work Australia Orders, or unregistered agreements.

An unregistered agreement is an individual or collective agreement that has not been certified, registered or lodged under an industrial law, but is concerned with the relationship between an employer and its employees.

An unregistered agreement or side deed must comply with the workplace relations requirements of the National Code of Practice for the Construction Industry (National Code) and the Australian Government Implementation Guidelines for the National Code (Guidelines). Additionally, an unregistered agreement must not provide for a site allowance.

In some circumstances project agreements may be in place. They can only be applied to projects costing at least \$25 million and approval for them must be obtained from the principal client. Project agreements are uncommon on Australian Government projects.

WHAT DO I NEED TO KNOW WHEN MAKING AN ENTERPRISE AGREEMENT?

Enterprise agreements must pass the better off overall test. The test requires that each of the employees to be covered by the agreement are better off overall than under the relevant modern awards. The better off overall test applies to agreements made on or after 1 January 2010.

Principal contractors should develop management systems that ensure employers on site are meeting the obligations contained in their respective workplace arrangements.

Work arrangements should be flexible and enable contractors to work on site in accordance with their workplace agreement.

All entities must ensure that their workplace arrangements on Australian Government funded building and construction projects are consistent with the National Code and Guidelines. In particular, section 8 of the Guidelines sets out certain workplace relations and occupational health and safety requirements, including:

- freedom of association
- right of entry
- freedom of choice in agreement making provisions
- over-award payments.

EXTRA DEMANDS

An employer cannot be compelled to pay benefits above those prescribed in the registered agreement, relevant award or legislation. This includes contributions to industry superannuation funds, redundancy schemes, sick leave funds, 24-hour 'top-up' insurance schemes, ambulance cover and training levies.

You cannot be made to make any voluntary contributions above the provisions of agreements, awards or legislation.

WHAT ASSISTANCE IS AVAILABLE TO HELP MAKE MY WORKPLACE ARRANGEMENTS CONSISTENT WITH THE NATIONAL CODE AND GUIDELINES?

The Department of Education, Employment and Workplace Relations (DEEWR) can assess your workplace arrangements for compliance with the National Code and Guidelines. This normally involves an assessment of industrial instruments that cover a contractor. If not compliant, DEEWR will issue a letter identifying which clauses of the industrial instrument are inconsistent with specific provisions of the National Code and Guidelines. If any of your industrial instruments are not National Code compliant, you will be unable to tender for Australian Government funded building and construction work.

THINGS TO REMEMBER:

- Workplace arrangements can be formal or informal but must comply with the National Code and Guidelines.
- Access to work on the site should not be affected by the workplace arrangements of any other contractors.

FURTHER INFORMATION

To make an enquiry or obtain copies of the National Code and Guidelines, fact sheets and other reference material, contact:

The Office of the Australian Building and Construction Commissioner

- Hotline: 1800 003 338
- Website: www.abcc.gov.au
- Email: enquiry@abcc.gov.au

The Department of Education, Employment and Workplace Relations

- National Code Hotline: 1300 731 293
- National Code Mailbox: building@deewr.gov.au
- Website: www.deewr.gov.au/building

Fair Work Australila

- Website: www.fwa.gov.au



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