



EMPLOYEES WITH A DISABILITY

Open employment where an employee with a disability is able to earn full adult, training or junior wages as their productive capacity is not impaired by disability

Who is an employee with a disability?

An employee with a disability is an employee who qualifies for a disability support pension or would qualify for a disability support pension, if they did not have to meet Australian residency requirements.

What is open employment?

Open employment exists where employees with a disability are engaged in the mainstream workforce and compete with other fully productive employees in a commercial setting.

What effect did Work Choices have on wage arrangements for employees with a disability whose productive capacity is not impaired by their disability?

Work Choices preserved pre-existing wage arrangements for employees with a disability in both federal and state award systems through preserved Pay Scales. Many employees with a disability (with reasonable adjustment as appropriate¹) are able to earn full adult², training or junior wages as their productive capacity is not impaired by their disability. If these employees were covered by a federal or state award prior to 27 March 2006, or are new employees or employers covered by a preserved Pay Scale, they continue to be, or will be, covered by their preserved Pay Scale rates of pay and will be entitled to be paid the same as other fully productive employees covered by the same Pay Scale.

What about the standard Federal Minimum Wage?

Work Choices introduced a new statutory federal minimum wage (the standard FMW) of \$12.75 per hour. A number of groups of employees, including employees with a disability, are excluded from coverage by the standard FMW. The Australian Fair Pay Commission (Commission) was given power to establish a special FMW for each of these groups of employees.

Why has the Commission now made new minimum wage instruments for employees with a disability?

¹ The term 'reasonable adjustment' is not contained expressly in the *Disability Discrimination Act 1992* (DD Act). However, the DD Act has an implied requirement for employers to make reasonable adjustments.

² Where adult wages means a basic periodic rate of pay that does not explicitly apply to a class of employees with a disability or employees to whom a training arrangement applies or junior employees.

The previous regulation of rates of pay for employees with a disability contained gaps in coverage of statutory minimum rates of pay and access to pro rata wage arrangements. These gaps are identified in the Fact Sheet 'Employees with a disability – overview' and 'Employees with a disability – Coverage of new wage instruments'.

What is the Commission doing to fill these gaps in coverage for employees with a disability in open employment?

The Commission has introduced a number of new special Federal Minimum Wages and new special Pay Scales to ensure that all employees who come within the legislative definition of 'employee with a disability' have the protection of a statutory minimum wage.

The Commission has introduced a new special Federal Minimum Wage for these employees where the employee's productive capacity is not impaired by their disability³ and they are not covered by a preserved Pay Scale that is equal to the standard FMW.⁴

What is the effect of the Commission's decision on employees with a disability employed in open employment whose productive capacity is not impaired by their disability?

In the rare circumstances where there is no preserved Pay Scale that covers an employee with a disability employed in open employment whose productive capacity is not impaired by their disability, the Commission's decision ensures that they will be covered by a new special Federal Minimum Wage equal to the standard FMW.

This new special Federal Minimum Wage establishes the same statutory minimum wage for these employees with a disability as for employees without a disability who were award free before Work Choices.

Need further information?

If you would like to view the Commission's Decision in full or check the fact sheets available, you can visit the **AFPC web site** at www.fairpay.gov.au

In particular, the following fact sheets may be of interest:

- Employees with a disability – Coverage of new wage instruments
- Employees with a disability – Overview
- Employees with a disability – Open employment where an employee with a disability is unable to perform the range of duties to the competence level required
- Employees with a disability – Business services.

For more information on wage rates, call the **WorkChoices Infoline** on **1300 363 264**

³ This new special FMW is expressed as applying to employees with a disability who are not covered by another special FMW (that is, the special FMW that enables access to a pro-rata FMW based on assessed capacity), rather than employees with a disability whose productive capacity is not impaired by their disability to simplify the operation of the instruments

⁴ The new special FMW will not apply to a junior employee or an employee to whom a training arrangement applies.