



EMPLOYEES WITH A DISABILITY - OVERVIEW

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.

Increasing wages for employees with a disability

Employees with a disability in open employment who are unable to work at the full minimum wage for their job are generally employed under the Supported Wage System (SWS). The SWS determines a minimum rate for an employee by pro rating the full minimum rate that would otherwise apply to the work the employee is performing. As a result, wages provided for under SWS arrangements will be increased because they will be pro rated against minimum wages that will be adjusted by the general increase provided by this decision. The SWS also includes a separate minimum rate that the pro rata wage cannot fall below. This rate will be increased to \$64.00 per week.¹ \$64.00 is the Income Test Free Area of the Disability Support Pension.

Pay Scales applying to business services include their own set of wages that are pro rated on a case by case basis. Business services Pay Scales are also increased by the general decision.

What effect did Work Choices have on wage arrangements for employees with a disability?

Work Choices preserved pre-existing wage arrangements for employees with a disability in both federal and state awards through preserved Pay Scales. These arrangements provide for pro rata wages where an employee with a disability is unable to perform the range of duties to the competence level required to earn full adult,² training or junior wages, due to the effects of the disability on their productive capacity.

As indicated above, the most common pro rata wage arrangement is the SWS. There were also special wage arrangements for employees with a disability employed in the business services sector (also known as supported employment services or sheltered workshops).

Why has the Commission now made special arrangements for employees with a disability?

There were gaps in the coverage of statutory minimum rates of pay for employees with a disability and in access to pro rata wage arrangements for such employees. The Commission has filled these gaps in coverage to ensure appropriate minima are in place and to increase access to pro rata wage arrangements.

¹ This weekly minimum wage has been expressed as a formula to comply with legislative requirements.

² Where adult 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.

What are the gaps in minimum rates of pay?

Employees with a disability are without any statutory minimum rates of pay if they were not covered by a federal or state award prior to 27 March 2006. No preserved Pay Scales exist for these employees. Furthermore, employees with a disability are excluded from the standard Federal Minimum Wage (standard FMW).

What are the gaps in access to pro rata wage arrangements?

Access to pro rata wage arrangements is not required by an employee who comes within the definition of 'employee with a disability' (with reasonable adjustment as appropriate) where the employee's 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 of employers covered by a preserved Pay Scale, they continue to be, or will be, covered by their preserved Pay Scale rates of pay and are entitled to be paid the same as other employees covered by the same Pay Scale.

Gaps in coverage exist because:

- not all employees with a disability are covered by preserved Pay Scales (because they were not covered by a federal or state award prior to 27 March 2006); and
- where an employee with a disability is covered by a preserved Pay Scale, many preserved Pay Scales do not provide access to pro rata wage arrangements such as the SWS.

What is the Commission doing to fill these gaps?

- The Commission has introduced a number of new special Federal Minimum Wages and new special Pay Scales to ensure that all employees defined by the legislation as employees with a disability have the protection of a statutory minimum wage.
- The Commission has created new wage instruments that fill the gaps in coverage. These are:
- a new special Federal Minimum Wage that is equal to the standard Federal Minimum Wage for employees who come within the legislative definition of 'employees with a disability' where the employee's productive capacity is not impaired by their disability in the rare cases where an employee may not be covered by an existing Pay Scale;
- a new special Pay Scale that extends coverage of the SWS pro rata wages for employees in open employment to preserved Pay Scales that do not currently provide for pro rata wage arrangements where an employee with a disability is unable to perform the range of duties to the competence level required;
- a new special Federal Minimum Wage extends the SWS to cover an employee with a disability who is unable to perform the range of duties to the competence level required in the rare cases where an employee may not be covered by an existing Pay Scale;
 - where the preserved Pay Scales and the new wage arrangements specify a SWS minimum weekly payment, the Commission has increased this to \$64 per week in accordance with the income test free threshold for the Disability Support Pension;
- a new special Pay Scale, reflecting the Liquor, Hospitality and Miscellaneous Union (Supported Employment Services) Award 2005, for employees with a disability employed in the business services sector who are not otherwise covered by a preserved Pay Scale; and

- for employees employed in business services and covered by a preserved Pay Scale³, the preserved Pay Scale has been varied to include additional wage assessment tools.

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 – Open employment where the employee's productive capacity is not impaired by their disability
- 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 Derived from the Liquor, Hospitality and Miscellaneous Union (Supported Employment Services) Award 2005 [Fed] [AW841959]