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Awards prompt employment contract review

On 1 January 2010 a number of significant changes to industrial relations laws took effect, including the commencement of the National Employment Standards (NES) and Real Estate Industry Award 2010 (RE Award 2010) and the referral of Queensland's private sector industrial relations power to the Commonwealth (which will affect unincorporated employers).

Incorporated employers

The RE Award 2010 and the NES set the minimum standards of employment for employees of incorporated employers, who are engaged in real estate occupations. However, the Employment Agreement for Employees Employed by Company Employers (Employment Agreement) allows employers and employees to enter into individualised arrangements in the following ways:

1. Employees covered by the RE Award 2010 and earning over a specified amount (currently \$108,300) may exclude its application by entering into a formal Guarantee of Annual Earnings with their employer;
2. The Employment Agreement allows the employee to be paid on a commission-only basis. If the employee is to be paid as commission-only, the parties should indicate on the Employment Agreement how the employee's NES leave entitlements are to be paid (i.e. these entitlements may be paid in advance);
3. the employer and the employee may also choose to enter into an Award Flexibility Agreement to vary the application of the RE Award 2010 relating to arrangements for when work is performed, overtime rates, penalty rates, allowances and leave loading;
4. The employment agreement enables employers and employees to agree to offset allowances against commissions, bonus or incentive payments, or to include some allowances in the employees' base salary in accordance with the requirements of the RE Award 2010;
5. Parties are able to record individual arrangements as to how commissions and bonuses are to be paid; and
6. The Employment Agreement allows parties to record any special conditions of the Employment Agreement.

Employers should be mindful that an employee's entitlements under the NES cannot be reduced by agreement, regardless of their salary or the application of any industrial instrument.

Allowances

There are a number of mandatory allowances payable to employees under the RE Award 2010 however, its transitional provisions (which apply until 31 December 2014) mean that the allowance provisions will apply to employees covered by the award in different ways, for example, during the transitional period:

- no motor vehicle allowance is payable to an employee engaged under a property sales classification (referred to in the Employment Agreement as a 'Sales Employee'); and
- if the employer was not required under an industrial instrument to pay compensation for stand-by/call-out allowance or mobile telephone allowance and the employer and employee did not have an agreement immediately prior to 1 January 2010 to do so, the parties may agree to offset these entitlements against the employee's commission, bonus or incentive payment entitlements. If not, this entitlement may be included as a component of the employee's base salary provided that this component of the salary is in addition to the minimum wage and identified in the Employment Agreement.

Commission-only employees

The RE Award 2010 provides that its terms relating to payment of minimum weekly wages, allowances and overtime do not apply to commission-only employees. Furthermore, employees who are paid as commission-only employees are able to be paid any entitlements under the NES in advance, provided the monetary component for each of those entitlements must always be in addition to the minimum commission-only rate.

Unincorporated employers

On 1 January 2010, Queensland referred its industrial relations powers in respect of non-company private sector employers (such as partnerships and sole traders) to the Commonwealth. This referral is subject to a 12 month transitional period, during which state awards will be preserved as federal instruments operating on a no-detriment basis with the NES.

Revised Realworks agreements

The REIQ strongly recommends that employers review their employment practices to ensure compliance with the changes to these laws.

Accordingly, the REIQ has revised its agreements and produced a single employment agreement for property salespeople, property managers and strata/community title managers employed by a corporation.

Two new forms have also been introduced to provide employers and employees more flexible employment arrangements beyond the requirements of the RE Award 2010 but in keeping with the *Fair Work Act* legislation.

1. Award Flexibility Agreement – an agreement between the employer and the employee to vary terms in the Real Estate Industry award 2010 in a way which does not disadvantage the employee in respect to the current terms and conditions of the award.
2. Guarantee of Annual Earnings – the new award does not cover employees who earn more than a guaranteed \$108,300 a year (fulltime). This guarantee must be in writing from the employer.

Employees employed by non-corporations (e.g. sole traders) will still operate under the Queensland state awards but subject to the new NES.

New Queensland Property Industry Registry (QPIR) forms are also available through Realworks. In Queensland the written agreement of every employee covered by this award must be registered with QPIR. The QPIR registration fee can be shared between employee and employer, and provision for this arrangement is included in the new REIQ Employment agreement.

Additional new/updated employment forms on Realworks

Code	Name
EF042	Employment Agreement - Real Estate Industry award 2010 (Corporation)
EF043	Employment Agreement for Salespeople (non-Corporation)
EF046	Employment Agreement for Property Managers (non-Corporation)
EF048	QPIR - Application to Register agreement (Corporation)
EF056	QPIR - Application to Register agreement (non-Corporation)

all forms are currently available through Realworks. For more information contact Realworks on 3249 7350 or via email realworkslive@reiq.com.au.