



## HORTICULTURE WORKERS RIGHTS

If you are employed in a fruit picking / harvest / farming job in Australia your rate of pay and workers rights may be determined by the Horticulture Award 2010. The national award provides a safety net for employers and employees in this sector and ensures that pay rates / minimum wages cannot be changed to the disadvantage of an employee.

**Important:** Some harvest workers in Australia agree to be paid cash by their employer and do not pay tax on their earnings. Australia's income tax and the taxation authorities are VERY diligent in uncovering people who don't pay taxes. This practice is illegal and working holidaymakers face fines and deportation if caught. Cash workers are not protected by the Horticulture Award 2010.

### Which industries are covered by the Horticulture Award 2010?

- Agricultural holdings, flower or vegetable market gardens in connection with the sowing, planting, raising, cultivation, harvesting, picking, packing, storing, grading, forwarding or treating of horticultural crops, including fruit and vegetables upon farms, orchards and/or plantations; or
- Preparation or treatment of land (including clearing, fencing, trenching or draining) for the sowing, raising, harvesting or treating of horticultural crops, including fruit and vegetables.

### Which industries are not covered?

- The wine industry
- Silviculture and a forestation
- Sugar farming or sugar cane growing, sugar milling, sugar refining, sugar distilleries and/or sugar terminals
- Any work in, or in connection with, cotton growing or harvesting, cotton ginneries and associated depots, cotton oil mills and the extraction of oil from seed
- Plant nurseries, or
- A broad acre mixed farming enterprise as defined in the Pastoral Award 2010.

### Pay rates

- Minimum pay rate for adult employees: \$14.31
- Under the Horticulture Award 2010, casual employees get paid no less than 1/38th of the minimum weekly rate of pay for an employee in the relevant minimum wage and classification in the award for each hour worked, plus a casual loading of 25%.
- Piecework rates may also be paid to employees in substitution for hourly rates of pay.

### Hours of work

Full-time and part-time employees - 152 ordinary hours over a four week period

Unless an arrangement is in place, ordinary hours:

- Shouldn't exceed eight hours per day (but cannot exceed 12 hours)
- Will be worked between 6am to 6pm Monday to Friday
- Hours worked in excess of ordinary hours are deemed overtime

Shiftwork employees - 152 ordinary hours over a four week period.

- Shouldn't exceed eight hours per day (but cannot exceed 12 hours).
- Afternoon shift finishes between 6pm and midnight, night shift finishes between midnight and 8am.
- Hours worked in excess of ordinary hours are deemed overtime.

For full details see clause 22 of the Horticulture Award 2010;

## Breaks

- An unpaid meal break of between 30 minutes to one hour should be taken no later than after five hours of starting work (unless otherwise mutually agreed). Employees instructed to work during a meal break are entitled to an overtime rate of 200% until they are released for their meal break.
- Employees will be paid a rest break of 10 minutes each morning. An additional unpaid rest break may be mutually agreed.
- There should be a 10-hour break between finishing a shift and starting a shift the next day.

For full details see clause 23 of the Horticulture Award 2010

## Overtime

The overtime provisions in the Horticulture Award 2010 are:

- Full-time, part-time and shiftwork employees are entitled to an overtime rate of pay of 150%, except on a Sunday when the rate is 200%, subject to the following:
  - if employees are required to work on a Saturday and the majority of these employees elect to work on the Sunday instead, then the work performed on that Sunday will be paid at Saturday rates (150%)
  - during harvest period, the first eight hours of overtime in a week may include five hours work on a Sunday at the rate of 150%, but all Sunday work in excess of the eighth overtime hour worked in the week, or in excess of five hours on a Sunday, will be paid at the rate of 200%.
- A minimum of three hours work must be paid on a Sunday.
- Employees may have time off instead of payment for overtime.

For full details see clause 24 of the Horticulture Award 2010

## Employment status

Your employer must inform each employee of the terms of their employment, in particular whether they are full-time, part-time or casual. They must also inform them of the ordinary hours of work and starting and finishing times, even if it is for short-term or seasonal employment.

Under the Horticulture Award 2010, casual employees get paid no less than 1/38th of the minimum weekly rate of pay for an employee in the relevant minimum wage and classification in the award for each hour worked, plus a casual loading of 25%.

For full details see clause 10 of the Horticulture Award 2010

## Piecework

Pieceworkers are generally paid on the basis of results achieved or components produced (eg. a fruit picker paid on a rate per bucket of fruit picked). Piecework rates can be offered to full-time, part-time or casual employees.

The piecework agreement must:

- Enable the average competent employee to earn at least 15% more per hour than the minimum hourly rate prescribed in the Horticulture Award 2010 for the relevant employment status and classification level
- Be paid for all work performed in accordance with the piecework agreement
- Be in writing and signed by the employee.

Important notes:

- A piecework employee is not guaranteed to earn the minimum ordinary time weekly or hourly wage in the Horticulture Award 2010 relevant to their employment status and classification level, as the employee's earnings depend on their productivity. If the pieceworker is full-time or part-time they will still receive the leave entitlements under the National Employment Standards.
- Ordinary hours of work and rostering (clause 22), Overtime (clause 24), Meal allowance (clause 24.5) do not apply to piecework employees
- Full-time or part-time pieceworkers receive the leave entitlements under the National Employment Standards.
- The piecework rate is also subject to phasing, as explained in Transitional arrangement section of this guide.

The daily rate is then divided by the bin or kg rate per day that an average competent pieceworker can achieve to determine the piecework rate. The rate for an average competent pieceworker may vary day-to-day depending upon variable things like weather conditions; ripening process; type of bin; type of picking (eg. selective or stripping); size of trees/plants; density of trees/plants and other variable conditions. These different variables need to be factored into a piecework agreement. If the piecework rate is to be varied, it must be agreed with the employee and be in writing and signed by the employee.

For full details on piecework see clause 15 of the Horticulture Award 2010

If you need assistance with information about an award contact the Fair Work Ombudsman [www.fairwork.gov.au](http://www.fairwork.gov.au) Call: 13 13 94