Factsheet: 10 factors for reasonable employee overtime under the Fair Work Act

What is reasonable overtime for employees under Australian workplace relations law?

Section 62 of the Fair Work Act 2009 (FW Act) states that an employer must not request or require a full-time employee to work more than 38 hours per week, unless the additional hours are reasonable.

There is no rule as to what is 'reasonable', but case law and section 62 make it clear that what may be reasonable depends on the particular circumstances of both the employee and the employer, as set out in the ten factors outlined in section 62(3) (Ten Factors).[1] If challenged, the onus is on the employer to prove that the additional hours are reasonable.

10 factors for reasonable employee overtime legally in Australia

The Ten Factors considered in assessing the reasonableness of overtime for employees in Australia under case law and section 62 of the FW Act are:

1. Risk to health and safety from working the additional hours – the courts will consider it common knowledge that working long hours creates fatigue and health risks. This is a significant consideration, particularly in safety-critical industries;
2. the employee's personal circumstances, including family responsibilities;
3. workplace needs such as time-sensitive tasks and rostering challenges;
4. any compensation received for working the additional hours – underpaying employees by breaching award conditions is viewed very dimly;
5. any notice given to work the additional hours – it is important to have an employment agreement which details additional hours; however, this will not be determinative;
6. any notice given by the employee of an intention to refuse to work the additional hours;
7. the usual patterns of work in the industry;
8. the nature of the employee's role, and level of responsibility – it is generally accepted that it is more reasonable for a manager to work longer hours (within reason) than an employee;
9. whether the additional hours are in accordance with averaging terms or arrangements that apply to the employee;
10. any other relevant matter – this is very broad, and includes considerations such as the vulnerability of the worker and whether the worker has complained (although this is not determinative).[2]

1 Australasian Meat Industry Employees Union v Dick Stone Pty Ltd [2022] FCA 512.

2 Fair Work Act 2009 (Cth) s 62(3).

There are significant consequences for employers who breach section 62 of the FW Act – starting with civil penalties of up to $93,900 for corporations and $18,780 for individuals involved. There are also other additional legal risks, including of psychiatric injury worker's compensation claims, work health and safety breaches, and unfair dismissal claims.

For more information

Speak with our Workplace and Employment and Insurance teams at HopgoodGanim Lawyers for further information, including assistance with your own circumstances.

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