

Horticulture Award Changes 2022 - What you need to know

Hort Award changes in context

Types of work arrangements

- The Hort award has provisions covering 3 different types of work employment arrangements
 - Hourly wages
 - Annualised wage arrangements (salaries)
 - Piecework
- Hourly wages are the default system
 - piecework and salary arrangements must both clearly articulate back to hourly provisions

Existing piecework provisions

- Provisions relating to piecework arrangements are detailed in section 15.2
 - Average competent pieceworker must earn at least **15%** more than the minimum hourly rate – this is/was the safety net
 - Require process of 'genuine negotiation' between employer and each employee when setting and reviewing piecework rates
 - Piecework agreement must be in writing, signed by both employer and employee and provided to the employee
 - A number of other protections and recording requirements based on hourly time did not apply

Compliance with existing piecework provisions

- No transparency on how piece rates are being set and relate to hourly wage equivalents
- Poor record keeping by employers
- These structural issues makes identifying and prosecuting non-compliance very difficult.
- **Too many examples of underpayment**
- **Onus is on the employer to prove compliance**

New piecework provisions

- Section 15.2 is being updated with new pieceworker provisions
 - Daily minimum hourly wage guarantee
 - Recording hours and breaks a must
 - Competent worker definition clarified
 - Many businesses will need to maintain more detailed written records

Continuing piecework provisions

- Under the new piecework provisions, the following award provisions still apply for pieceworkers
 - Breaks
 - Public holiday penalty rates
 - Other allowances
- The following provisions also continue to not apply to pieceworkers
 - No entitlement to overtime or meal allowance
 - No restrictions on ordinary hours of work
 - No restrictions around rostering arrangements

Operative Date

- Hort Award changes come into effect from the first pay period after 28 April 2022.
- The remainder of this presentation will walk through:
 - what is included in the new piecework provisions; and
 - what good compliance looks like under the new provisions.

Piecework records

About piecework records

- A piecework record represents a formal agreement between the employer and employee about the included activities and remuneration rates for piecework
- Piecework records are not a new requirement, but there are new rules around them.

Requirements of piecework records

- Employers are required to issue a pieceworker with a written piecework record signed by the employer **before** they are permitted to begin any piecework tasks.
- A piecework record must:
 - state the date and time the piecework is to commence;
 - describe the task for which the piece rate will be paid;
 - state the amount of the piece rate;
 - include the following statement:

“Under the Horticulture Award 2020 a pieceworker must be paid for each day on which they work no less than their hourly rate under the award (including the 25% casual loading for a casual pieceworker) multiplied by the number of hours worked on that day.”

- state the relevant minimum award hourly rate for the pieceworker.

Requirements of piecework records

- A piecework record can cover more than one piecework task
 - E.g. picking apples vs picking strawberries vs picking raspberries, etc.
- Each task included on the piecework record must:

- describe the task for which the piece rate will be paid
- state the amount of the piece rate for that activity
- Piecework records must be provided **in writing – electronic is acceptable**
- **Employees do not need to sign** piecework records under the new provisions

Activities performed outside the piecework record

- If a pieceworker does any work which is not included in a piecework record, the pieceworker must be paid for that additional work at the hourly rate for the pieceworker.
- These new provisions allow employees to be reassigned by employers between piecework activities and hourly activities.
- For example, you can't ask workers to pick bad fruit for free

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Changing or updating piecework records

- Under the new provisions, employers will be permitted to set and change piece work rates unilaterally without prior negotiation or agreement with employees.
 - Recognises arrangements are a “take it or leave it” arrangement
 - Formalises existing industry arrangements
- Employers can only change the terms detailed in a piecework record by issuing a new written piecework record.
- New piecework records must be provided in writing to an employee before they come into effect
- Issuing a verbal instruction does not meet the requirements
- Each time a new piecework record is issued, it must be signed by the employer
- The new piecework record details the time and date that the new piecework record comes into effect

Employee record

- The employer must give a pieceworker or former pieceworker a copy of the employee record of all hours worked by the pieceworker and the applicable piece rate at the time these hours were worked, upon request
- This employee record can be used by an employee (and future employer) to verify experience that makes that employee a “competent” pieceworker for the relevant piecework task (for example, picking apples, picking strawberries or pruning grape vines)

Piece rates

Classification of competent workers

- Under the new provisions, a competent pieceworker is to be identified as follows:
 - pieceworker competent at the piecework task means a pieceworker who has at least 76 hours' experience performing the task (for example, picking apples, picking strawberries, pruning grape vines)
- This experience can be accrued within your business, or with previous employers. Employee records can be used as evidence of previous experience
- Worker competency is only used for assessing whether competent pieceworkers working at average productivity earn at least 15% more per hour than the hourly rate for the pieceworker

Process for setting a piece rate

- The Fair Work Ombudsman has provided guidance that employers using piece rates should be able to demonstrate how they calculated their piece rates. It has also stated that piece rates must be reviewed regularly.
- The employer must fix the piece rate at a level such that a pieceworker working at the average productivity of a pieceworker competent at the piecework task will earn at least 15% more per hour than the hourly rate for the pieceworker
- The new provisions provide greater clarity on the process of setting minimum piece rates. These are
 - Estimate the average productivity of competent pieceworkers within their workforce
 - Identifying the minimum hourly rate equivalent
 - Calculating the minimum piece rate that will achieve at least the minimum average hourly rate

1. Estimate the average productivity of competent workers within their workforce

- the average productivity of a pieceworker competent at the piecework task over a period is calculated by dividing the total output of the pieceworkers competent at the piecework task over that period by the total of the hours worked on the piecework task by the pieceworkers competent at the piecework task over that period (where output is measured in the same unit used to specify the piece rate, for example, a punnet, bucket or kilogram);
- Put more succinctly:
 - = (total productivity of competent workers) / (total hours worked by competent workers)

2. Identifying the minimum hourly rate equivalent

- Under the new provisions, the employer must fix the piece rate at a level such that a pieceworker working at the average productivity of a pieceworker competent at the piecework task will earn at least 15% more per hour than the hourly rate for the pieceworker.

- The hourly rate for the pieceworker means the minimum hourly rate for the pieceworker's classification level, plus for a casual pieceworker the 25% casual loading
- The current minimum hourly rate for Level 1 pieceworker, 20 years or older, is \$20.33 for full and/or part time workers, and \$25.41 for casual workers.
- Please note, the minimum hourly rate for a junior pieceworker is less than for an adult worker
- This means that piece rates must be set to ensure adult employees working at the average rate of productivity earn at least \$29.22 (15% more than \$25.41)

3. ***Calculating the minimum piece rate that will achieve at least the minimum average hourly rate***

- This is a straight-forward calculation which is performed by dividing the minimum hourly rate equivalent by the expected average productivity of your competent workers.
- Remember this is the **minimum**. As a business, you can pay on or above this rate, but you can't be below it.
 - If in doubt, employers can choose to pay a higher unit rate.

Reviewing a piece rate

- Compliance with the Award is an ongoing process and may be required to be demonstrated across each pay period. The onus is on the employer to demonstrate to the Fair Work Ombudsman that you have complied with the Award, not for the Ombudsman to prove that you haven't!
- Employers will be expected to set a realistic piece rate at the start of each season, and review this estimate regularly throughout the season.
- FGT suggests growers undertake this review at the end of each pay period using the recorded actual productivity of your competent pieceworkers.
- You will be required to increase your piece rate to be below the minimum rate required for compliance. This will require an updated piece work agreement to each employee, before they start picking at the new rate.

Requirement to record start and finish times

- Employers need to record and report the start and finish times of all employees, as well as unpaid breaks.
- Pieceworkers are also entitled to meal breaks in line with other employees, and penalty rates apply if employees work more than 5 hours without taking a meal break of 30-60 minutes duration.
- FGT suggests that employers agree in advance with their workers that they should take a meal break every time they work more than 5 hours, and this will be deducted from time worked.

Notes on previous recommendations

- Recommended minimum piece rates have previously been circulated in some sectors. This information is a guide only, as the situation for every grower will be different.

- Any piece rate used by employers must comply with the provisions of the Horticulture Award as it applies in your own workplace with your workers.
- Each business using these rates will need to demonstrate that they are compliant based on the average productivity of your competent pieceworkers based on the methodology described above.

Introduction of a minimum earnings floor

What is the minimum earnings floor?

- The new provisions will introduce a minimum earnings floor for horticultural pieceworkers based on the relevant minimum hourly rates in the Award
- This floor requires employers to supplement the income of workers any time that their **daily** piecework earnings would be less than their relevant minimum hourly rate.
- The specific provisions for this floor is:

Despite any other provision of clause 15.2 a pieceworker must be paid for each day on which they work no less than the hourly rate for the pieceworker multiplied by the number of hours worked on that day.

How is it calculated?

- Employers are required to perform the following calculation for **each day** worked within the pay period.
 1. Calculate piecework earnings
 - = (piece rate) × (total daily productivity)
 2. Calculate equivalent hourly earnings
 - = (daily hours worked) × (relevant minimum hourly rate)

This is \$25.41 / hour for casual employees aged 20 years & over at Level 1

1. Calculate any income supplementation that is required
 - = (equivalent hourly earnings) - (piecework earnings)

Expectations around non-productive workers

- In introducing the minimum earnings floor, the Fair Work Commission has noted that it expects employers to actively manage the productivity of their workers.
- This management includes any of the following
 - Increased selectivity within recruitment practices
 - Provision of mentoring and/or on-the-job training
 - Termination of non-productive workers
- All workers, including those terminated are entitled to a minimum of 2 hours pay (in a row) for any day of work.
- Casual workers do not require notice or redundancy

Record keeping requirements

- Pay slips issued for piece work activities must comply with reporting requirements of section 3.46(1) of Fair Work Regulations 2009.
- Due to the nature of piece work, employers will also be required to document the following information:
 - A daily record of all hours worked
 - The applicable piece rate for these hours
 - The recorded productivity of the worker on that date.
 - Daily earnings entitlement due to piece rate productivity
 - Daily earning supplement (if any) due to the minimum earnings floor

Ongoing record keeping and provision to workers

Employers must keep copies of the following records

- The new award provisions require employers to maintain copies of the following documents:
 - A copy of every piece work agreement issued
 - A record of daily work productivity
 - A record of all hours worked and applicable piecework rate
 - A copy of every pay slip issued
- The new provisions also require to make copies of these documents available to current and past workers upon request.
- In addition to this, FGT recommends employers keep a record of the methodology and calculations used each time when setting / reviewing a piece rate
- Businesses will be required to be fully compliant by the beginning of their first pay period after 28 April 2022.
- The onus is on the employer to demonstrate to the Fair Work Ombudsman that you have complied with the Award, not for the Ombudsman to prove that you haven't!