



Individual Flexibility Arrangements

An individual flexibility arrangement is a written agreement used by an employer and employee to change the effect of certain clauses in their award or registered agreement.

Working at best practice

Best practice employers understand the legal requirements and have proper processes in place for making IFAs. They also communicate openly with their employees about the availability and effect of IFAs. Every workplace can enjoy the benefits of taking a best practice approach to IFAs. These may include:

- greater flexibility in the workplace
- certainty, simplicity, and clarity around conditions of employment
- attracting and retaining skilled and valuable staff
- improving job satisfaction and productivity.

What Is an Individual Flexibility Arrangement?

All awards, enterprise agreements and other registered agreements have to include an individual flexibility arrangement (IFA) clause. If a registered agreement does not include one, the model clause from the Fair Work Regulations 2009 will apply.

An IFA is used to make alternative arrangements that suit the needs of the employer and the employee. An IFA cannot be used to reduce or remove an employee's entitlements.

What Can an IFA Do?

An IFA can change how certain clauses in an award or registered agreement apply to the employee covered by it.

Example: Sally is covered by an award that says ordinary hours are worked between 9am and 5pm. She makes an IFA with her employer to work her ordinary hours between 7am and 3pm. The ordinary hours of work for the other employees will still be 9am to 5pm.

Changing Award Clauses

In awards you can use an IFA to vary clauses about; arrangements for when work is performed, such as working hours, overtime rates, penalty rates, allowances, and leave loading.

Changing Agreement Clauses

The flexibility clause used in a registered agreement will say what clauses can be changed. If a registered agreement does not have a flexibility clause, the model clause from the Fair Work Regulations automatically applies.

How Is an IFA Made?

An IFA can be made at any time after the employee has started working for the employer.

Both parties must genuinely agree to an IFA. An employee cannot be forced to sign an IFA to get or keep a job. An employee's right to refuse to agree to an IFA is protected by their general protections (a set of rights under the Fair Work Act 2009 that cover all employees under the national workplace relations system). This means that they cannot be discriminated against or treated adversely for refusing to agree to one.

An employer or employee can ask the other to enter into an IFA. When they have agreed on what arrangements they want to make it has to be put in writing and signed by both the employer and employee. If the employee is under 18 years old, it has to also be signed by their parent or guardian.

The employer should keep a copy of the signed IFA and give a copy to the employee. If an IFA is not made properly, it will still apply to the employee. However, the employer may receive a fine. An IFA does not need to be approved or registered with the Fair Work Ombudsman or the Fair Work Commission.

How Is an IFA Ended?

An IFA may be ended at any time by written agreement between an employer and employee. Otherwise, the

IFA can be ended by giving the other party appropriate notice. An IFA made under an award can be ended with 13 weeks' notice. A registered agreement will say how much notice is required, but it cannot be more than 28 days.

Legal Requirements

Genuine Agreement

An employer and employee must genuinely agree to an IFA. Employees cannot be forced to make an IFA, and they cannot be treated adversely or discriminated against for refusing to enter an IFA.

You also cannot make an IFA a condition of employment when hiring new employees.

Formal Requirements

An IFA must:

- be in writing and signed by you and the employee. If the employee is under 18 years of age, it must also be signed by their parent or guardian
- identify the terms of the award or registered agreement which the IFA will vary
- set out how the arrangement may be terminated by either the employee or the employer.

You must also keep the signed IFA in the employee's employment file and give a copy to the employee.

Better Off Overall Test (BOOT)

When making an IFA, the employer is responsible for ensuring their employee will be better off overall.

The better off overall test (BOOT) involves weighing up the advantages and disadvantages of the IFA to the employee. You should compare the employee's entitlements under the proposed IFA against their entitlements under their award/registered agreement.

When deciding if the employee is better off overall you should consider the following questions:

- Who initiated the request?
- What entitlements are being changed? (For example, hours, overtime, penalty rates, etc.)
- What is the value of these entitlements under the award or registered agreement?

- Does changing the employee's span of hours change their penalty rates?
- Is the employee better off financially? (For example, will they receive more on a flat rate of pay under the IFA than they would as separate entitlements under their award/registered agreement?)
- Are there any situations where the employee would not be financially better off? (Such as a roster cycle or after a certain amount of overtime.)
- Are there any other circumstances or characteristics unique to the employee that should be considered? (For example, factors such as the employee's family commitments, their health, whether they have a second job, study, or other interests.)

Frequently Asked Questions

Does an IFA replace the award or registered agreement?

No. An IFA applies as if it were a term of the employee's award or registered agreement. The other terms and conditions of their award/registered agreement not covered by the IFA will still apply.

Can I make an IFA which covers a group of employees?

No. An IFA is an agreement with an individual. You would need to have a separate IFA with each employee in the group, making sure that each individual consents, and is better off overall when compared to their award/registered agreement.

What happens if an IFA does not meet all the formal requirements or the employee is not better off overall?

It still operates as an IFA. This ensures that employees keep any benefits to which they are entitled to under the IFA. However, an employee can terminate an IFA if they believe they are being disadvantaged. The employee may be able to take action for compensation and penalties in that case. The employer may also face penalties for not meeting all the legal requirements for making an IFA, as this is a breach of the flexibility clause in their award/registered agreement.

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