

# Minimum hours settings - frequently asked questions

Stakeholder engagement is well embedded in the Pacific Australian Mobility Scheme (PALM) scheme. The Australian Government is committed to listening to stakeholders and strengthening the PALM scheme to deliver for employers, workers and their families and communities in the Pacific and Timor-Leste.

From 1 January this year, employers have been required to offer 30 hours of work per week, averaged over 4 weeks, for all existing and new short-term recruitments. This requirement was due to end on 1 July 2024. The government has decided to continue the transition period for the minimum hours settings for short-term workers until 30 June 2025, and has accepted industry's suggestion to add a 120-hour work guarantee.

From 1 July 2024, employers of short-term workers will be required to offer 120 hours of work over 4 weeks. If employers cannot do this, they must pay workers' wages equivalent to 120 hours over 4 weeks.

These measures offer flexibility to agriculture employers, to adapt to weather and market conditions.

They ensure workers receive regular income and recognise that workers are not eligible for income support or able to source alternative work while in Australia due to their visa conditions, and they need to support themselves and often send money home to support their families and communities.

The department will undertake additional compliance monitoring in relation to the minimum hours employers are required to offer short-term workers.

## What is changing and why?

The government is continuing the transition period for minimum hours settings until 30 June 2025 and has accepted industry's suggestion to add a 120-hour work guarantee.

From 1 July 2024, employers of short-term workers will be required to offer 120 hours over 4 weeks. If employers cannot offer 120 hours over 4 weeks, they must pay workers income equivalent to 120 hours over 4 weeks.

These measures offer flexibility to agriculture employers, who make up the majority of short-term PALM scheme employers, to adapt to weather and market conditions.

The intent of the minimum hours requirement is to provide workers with reliable income and recognises that workers are not eligible for income support or to source alternative work while in Australia due to their visa conditions. They also need to support themselves and send money home to support their families and communities.

This approach strikes a balance between flexibility for the horticulture industry to adjust hours to meet weather and market factors, and safeguarding income for workers to ensure they receive a consistent, reliable income while they are in Australia.

- For agriculture employers, who make up most short-term stream employers, this allows for smoothing of hours through weather and market conditions as well as other events that may shift working hours availability.

- For workers, this means they will continue to have a consistent, guaranteed income each month, recognising they do not have other income options and need to support their families and communities at home while they are in Australia.

## When will this come into effect? When will the guidelines be updated to reflect the change?

The change to minimum hours will begin 1 July 2024 and be in place until 30 June 2025. The PALM scheme guidelines have been updated to reflect this change from 1 July 2024.

## Will employers need to issue a new offer of employment that includes the new settings from 1 July 2024?

Employers must make workers aware of the changes ahead of issuing a new offer of employment (OOE) within 3 months of the commencement of the setting. The communication of the change to the worker can be done verbally or in writing. Some communication materials (ie posters) will be provided to employers to assist with communicating this change.

The Department of Employment and Workplace Relations will not be required to reapprove this change to the OOE, where the only change is this condition.

## What can employers do to help workers understand the change?

Employers should ensure all current PALM scheme workers understand the transition period for minimum hours settings has been extended until 30 June 2025, and take the time to clearly explain the settings to workers.

For any new recruitments, employers must, at the time they provide workers with their OOE, clearly explain what the minimum hours settings will mean for each individual worker. If an employer is only able to offer workers 120 hours over 4 weeks as a general rule, without opportunities for additional hours, this should also be clearly explained.

This will help to manage expectations for workers who are hoping to be offered additional hours of work beyond the minimum requirements.

## Will this setting include a 'pro-rata' or other arrangements for 'part weeks' when workers arrive and depart, or for public holidays?

The 120 hours over 4 weeks will be on a 'pro rata' basis to include part weeks when workers arrive and depart and public holidays. Refer to the scenarios below for examples.

### Scenario - worker arrives mid-week

If a worker arrives mid-week, the hours will be calculated on a pro rata basis. That is, the worker's hours will only be applied from their commencement date or the first pay period, whichever is later.

For example, the worker's flight arrives on 16 May, and the worker starts work on 20 May. The worker's 4-week reconciliation period begins from 20 May, not 16 May, as 20 May is the first full week.

The department will work with employers to consider their pay runs and typical work week patterns to apply the reconciliation period. That is, for example: the department will not mandate that a week always starts on Monday.

See further information on how the 4-week reconciliation period will be measured below.

#### **Scenario - worker departs part-way through a reconciliation period**

If a worker departs part way through a 4-week reconciliation period, the hours will be calculated on a pro rata basis. That is, the worker's hours will only be applied up to their departure date. For example, the worker's 4-week reconciliation period would end on 30 September, but the worker departs on 15 September, so the average for the 2 weeks is 60, not 120.

#### **Scenario - public holiday**

If a worker is engaged on a casual basis and will not work on a public holiday, the department will reduce the minimum hours requirements by the amount the worker would have worked if it wasn't a public holiday. Employers should keep records or provide this information on request.

If a worker is engaged on a part-time or full-time basis, typically they will be paid for public holidays (even where they do not work) and this will count towards the minimum hours requirements.

For example, Peter is a PALM scheme worker who would have been rostered for a 6-hour shift, but it fell on a public holiday. The employer should note it was a public holiday and the minimum hours requirements are reduced by 6 hours for that month.

## **How will the 4-week reconciliation period be measured?**

The 4 weeks are fixed and align to an employer's pay cycle. This defined 4-week period enables employers to pro-rata offered hours outside of the defined pay period, accounting for variability in a worker's commencement and departure dates.

In practice this would mean that an employer is likely to determine periods in line with weekly pay cycles. For example:

Week 1: Commences on pay day; Wednesday 3 July 2024 to Tuesday 9 July 2024

Week 2: Wednesday 10 July 2024 – Tuesday 16 July 2024

Week 3: Wednesday 17 July 2024 – Tuesday 30 July 2024

Week 4: Wednesday 31 July 2024 – Tuesday 6 August 2024

END 4-Week Period – reconciliation of offered hours occurs

Week 1: Wednesday 7 August 2024 – Tuesday 13 August 2024

Week 2: Wednesday 14 August 2024 – Tuesday 20 August 2024

Week 3: Wednesday 21 August 2024 – Tuesday 27 August 2024

Week 4: Wednesday 28 August 2024 – Tuesday 3 September 2024

END 4-Week Period – reconciliation of offered hours occurs

The department will consider compliance based on 4-week 'blocks' from the worker's first full week of work. Refer to the scenario below for an example.

**Scenario - worker arrives mid-way through 4 week period**

A worker begins work on Wednesday 17 July, the beginning of Week 3; this worker would be offered hours pro-rata given that they only work 2 weeks of the defined 4-week period (week 3 and week 4). This would require the employer to offer a worker 60 hours of work, averaged over this two week period

## What evidence will the employer need to provide to demonstrate they have met minimum hours requirements?

Employers will need to retain documentary evidence such as payslips showing the hours worked and written evidence where a worker has declined hours offered to them by the employer. The department will request evidence as part of monitoring and compliance activities. Refer to the scenario below for an example.

**Scenario - worker declines work shift (ad hoc)**

If a worker declines a shift on an occasional basis (for example due to sudden, short-term illness) the shift will still count as hours offered for the purposes of minimum hours reconciliation. The employer must document these situations and be able to provide evidence if requested by the department. In this instance the roster showing the hours offered and the reason the hours were declined would be sufficient evidence.

## When does an employer need to ‘top up’ pay?

Employers will need to ‘top up’ pay (additional pay) when they have not offered at least 120 hours over the 4-week period. For example, if the worker was only offered 100 hours in the period the employer will be required to ‘top up’ 20 hours as part of the pay for the period.

In contrast, if a worker was offered 120 hours over 4 weeks, but refused 20 hours of work, the employer does not need to top up the worker’s pay at the end of the reconciliation period.

The additional payment cannot be recovered through deductions

## What rate of pay is used to ‘top up’ pay when an employer does not meet the minimum hours requirement to offer 120 hours over 4 weeks?

If an employer cannot meet the requirement to offer a worker 120 hours over 4 weeks, they must pay the worker the equivalent of at least 120 hours over the 4-week period.

This additional payment should be paid in the following pay cycle, and it is calculated at the worker’s base rate of pay as identified in the worker’s offer of employment.

## What if workers are paid a piece rate?

Some PALM scheme workers are paid by the ‘piece’ based on the amount the worker has picked, packed, pruned or made. The minimum hours requirement is for hours worked not the rate of pay. Employers must keep a record of hours worked for piece rate workers and if they do not meet the

requirement to offer a worker 120 hours over 4 weeks, they must provide a ‘top-up’ calculated at the worker’s base rate of pay as identified in the worker’s offer of employment.

## How does an employer know they have met the minimum requirements?

To determine if minimum hours requirements have been met, employers will need to reconcile hours offered and hours worked.

For the purposes of reconciliation where an employer has offered hours, but the worker has refused the hours due to sick leave, approved or unapproved leave, no additional payment is required.

## What should an employer do if they self-identify non-compliance with the settings?

Employers are expected to proactively monitor their compliance with minimum hour settings and to provide notification to the department in instances where they self-identify non-compliance.

Employers must notify the department (in accordance with paragraph 13.4.2 of the PALM scheme guidelines) when it is unable to offer a short-term worker relevant minimum hours.

Notifications must be submitted in writing via PALM information system (PALMIS) and should include information about:

- the circumstances as to why a worker was not offered minimum hours, such as force majeure events
- if you have or will provide a pay top up as per paragraph 3.7.2 of the guidelines, and if not, why
- actions taken to ensure each worker has appropriate support during the period of low work hours.

## What should I do if I know employers are not complying with the requirements?

If you are aware of situations where employers may not be compliant, please email ([PALM@dewr.gov.au](mailto:PALM@dewr.gov.au)) with details.

## What will happen if employers are not compliant with the settings?

The department will closely monitor PALM scheme employer compliance with minimum hours settings.

If employers are not offering workers minimum hours and not meeting the income guarantee, the employer may be subject to compliance actions. The department will undertake additional compliance monitoring in relation to the minimum hours employers are required to offer short-term workers.

## Does this mean the \$200 net pay requirement is no longer needed?

The \$200 net pay requirement is still required to ensure workers have a minimum take home pay that allows them to cover basic necessities each week. The minimum take-home pay may be relevant:

- early in the workers placement, when initial deductions for establishment costs (such as flights and visas) are still being repaid
- for any week where there are low hours within the 4-week period.

For more information, please see this factsheet: [Minimum hours requirement and interaction with minimum net pay guarantee](#).

## Does this mean the 20 hours safeguard is no longer needed?

The 20 hours safeguard, wherein employers cover the cost of workers' accommodation and transport if they offer workers fewer than 20 hours work in any week, is still needed while hours may be offered over a 4-week period. Over the course of 4 weeks, in some weeks there may be fewer than 20 hours of work available. In these instances, employers must cover the workers' accommodation and transport costs.

For more information, please see this factsheet: [Minimum hours requirement and interaction with minimum net pay guarantee](#).

## What happens if there is an extreme event that means employers cannot offer minimum hours?

In extreme circumstances, there are provisions for 'force majeure' events (e.g. floods or other natural disasters) within the PALM scheme deed.

In a force majeure event, employers must take actions to mitigate the impacts of the event and notify the department if it is likely to impact on their ability to meet their obligations. When the department receives a notice, the department may temporarily suspend the employer's obligations.

Refer to the scenario below for an example, or for more information, please see this factsheet: [Force majeure - information for employers](#).

### Scenario G - force majeure event/extreme circumstances

Jillian's farm is damaged due to a flood and for a period of 3 weeks she cannot offer 120 hours over 4 weeks (that is, she will not meet the minimum hours requirement). Jill must notify the department of the event and work with the department to ensure workers are safe and their welfare is considered. The department may suspend Jill's minimum hour obligations due to the impact of the floods, which are a force majeure event under the PALM scheme deed.

## What if bad weather means employers cannot offer minimum hours, but it is not bad enough to be a force majeure event?

If an employer is affected by poor weather that does not constitute a force majeure event (e.g. a flood or other natural disaster) they should apply 'make up' hours and must ensure a worker receives the equivalent of 120 hours of pay over the 4-week period.

### Scenario - weather prevents work

Tokoni is a PALM scheme worker in Queensland and cannot work for 2 days due to rain, so his employer Bill provides additional hours in another work week to make sure Tokoni is offered 120 hours over the 4-week period.



## What if an employer offers work but the worker refuses to work?

Employers are required to offer 120 hours over 4 weeks to workers. If workers are offered work and refuse, the hours refused will count towards hours offered. Employers do not need to top up worker's pay for hours workers have refused.

Employers should consider the reasonableness of work hours including cultural, religious, and work health safety considerations.

### Scenario - worker declines work shift (ad hoc)

If a worker declines a shift on an occasional basis (for example due to sudden, short-term illness) the shift will still count as hours offered for the purposes of minimum hours averaging. The employer must document these situations and be able to provide evidence if requested by the department. In this instance the roster showing the hours offered and the reason the hours were declined would be sufficient evidence

### Scenario - worker repeatedly refuses offered hours

If a worker regularly refuses work and this results in the low or inconsistent income, employers should discuss with the worker to understand the reason for not accepting shifts and make arrangements to get them back on track (ie reiterating performance expectations, fitness for work considerations, reasonable allocation of duties, resolving welfare/wellbeing issues raised about the workplace by the worker). Employers should be conscious when offering work to consider the reasonableness of work hours including cultural, religious, and work health safety considerations. If the employer has concerns regarding refusals of offered hours they should advise the department.

## Are there any requirements for employers to offer a regular pattern of hours to workers in any working week?

All short-term workers will be offered 120 hours for every 4 weeks of their placement from 1 January 2024 to 30 June 2025. A short-term worker's pattern of hours may be irregular, depending on things like weather conditions.

From 1 July 2024, if a short-term worker is not offered 120 hours over 4 weeks, their employer must pay them wages equivalent to 120 hours over 4 weeks. The additional payment cannot be recovered through deductions. The employer does not have to pay a worker if the worker refuses reasonable shifts that the employer has offered.

Under the Horticulture Award, ordinary hours of work for casual workers can be worked at any time and in the horticulture industry they are paid overtime if they work more than:

- 304 ordinary hours over an 8-week period
- 12 hours per engagement or 12 hours in a single day.