Professionals Australia

PROFESSIONALS – ADDITIONAL HOURS AND UNPAID OVERTIME

A TIME FOR ACTION

WHAT'S **INSIDE?**

- *Understanding additional hours*
- *What is reasonable?*
- *Types of additional hours*
- *Why do additional hours?*

Foreword

As a long serving member of Professionals Australia's industrial staff, I have seen many changes in the industrial relations landscape as it affects professional employees.

One issue in the industrial relations landscape which is an on-going matter of concern is the lack of protection that professionals in the non-government sector have when it comes to working additional and or unsociable hours. This is an issue which is continually brought to the attention of the Association's Workplace Advice & Support Service (WAS) when members complain about the inadequacy of the compensation that they receive and the lack of choice as to whether they work additional hours at all. This particularly impacts on new and recent graduates but can affect professionals at all levels.

In late 2018 the Association conducted a major survey of members and non-member contacts working in the non-government sector in order to assess the extent of the problem. The survey covered such topics as the level and method of compensation for additional hours and the reasons why they are worked. As the results of this survey reveal the situation is more serious than we thought, and action is urgently needed at a number of levels.

The report contains several recommendations for action. One of these is to tighten the protections which exist in the Professional Employees Award which along with the National Employment Standards (NES) constitute the safety net which underpins individual common law contracts of employment. The existing award provision is impossible to enforce as it does not specify the precise compensation which needs to be paid when additional/unsociable hours are worked. Application has been made to the Fair Work Commission as part of their 4 Year Review of Modern Awards to rectify this problem.

I encourage members to read and act upon this very important report.

Michael Butler
Director Industrial Relations

About Professionals Australia

Professionals Australia (the trading name of the Association of Professional Engineers, Scientists and Managers, Australia) represents over 23,000 professionals including engineers, scientists, managers and information technology professionals throughout Australia

Professionals Australia members are employed across all sectors of the Australian economy. This includes all tiers of government and in a diverse range of industries throughout the private and public sectors including Roads, Rail, Water, Electricity, Information Technology, Telecommunications, Consulting Services, Laboratories, Research, Surveying, Construction, Mining, Oil & Gas, and Manufacturing.

Report preparation

This report was compiled by the following Professionals Australia staff:
Alex Crowther, Surveys Manager
Michael Butler, Director Industrial Relations

Professionals Australia

GPO Box 1272, Melbourne, Victoria, 3001
T: 1300 273 762
E: info@professionalsaustralia.org.au
W: www.professionalsaustralia.org.au

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Contents

INTRODUCTION	**4**
PROFESSIONAL EMPLOYEES AWARD	**5**
LONG HOURS AND COMPENSATION SURVEY	**5**
UNDERSTANDING ADDITIONAL HOURS	**6**
WHAT ARE ADDITIONAL HOURS?	**6**
WHAT IS REASONABLE?	**6**
VALUING A PROFESSIONAL'S TIME	**9**
WHAT IF I WORK PART-TIME?	**15**
WHAT ABOUT BREAKS?	**15**
COMMON TYPES OF ADDITIONAL HOURS	**17**
REASONS PROFESSIONALS DO ADDITIONAL HOURS	**21**
RECOMMENDATIONS FOR PROFESSIONALS	**25**

Introduction

The Fair Work Commission is currently in the process of conducting what is known as the 4 Year Review of Modern Awards. During this process each Modern Award is reviewed in its own right. In addition to common claims such as Domestic Violence leave which affect multiple awards interested parties have the opportunity to propose variations to individual awards.

The lack of industrial protection when additional hours are worked which currently exists in the major award covering professional employees has allowed a situation where a sizeable minority of professional employees are not adequately compensated, including when compared to other employees at similar classification levels who do not possess professional qualifications but who are covered by Awards that prescribe stronger minimum standards.

To assess the scale of the problem Professional Australia recently conducted a survey of professional employees looking into the hours they regularly work to perform their duties. This survey has produced some very disturbing findings regarding the amount of unpaid overtime which is worked by professional employees even at relatively junior levels.

Accordingly, the findings of the survey explode the myth that professional employees particularly at the junior levels don't require the same level of industrial protection as their counterparts in the workplace. The time has come for action to be taken to redress the imbalance which now clearly exists.

Key Findings

56.0%
of professionals report not receiving any compensation for working additional hours and only 16.2% paid overtime/penalty rates.

13.5%
of professionals were paid below the minimum award rate.

45 hours
The amount of hours the average professional works each week.

Considering all hours worked by professionals, many earned below award rates:

- 20% LEVEL 1
- 19.4% LEVEL 2
- 8.7% LEVEL 3
- 2.4% LEVEL 4

52.3% of professionals work alongside those who are paid for working additional hours

If the appropriate penalty rates were factored in, it's estimated even more would earn below award rates:

- 32.6% LEVEL 1
- 27.5% LEVEL 2
- 12.5% LEVEL 3
- 6.3% LEVEL 4

When explicit compensation is paid to professionals for working additional hours, they are less likely to do so than those compensated through their annual salary.

High workloads and strong 'cultural' expectations are key reasons that professionals work additional hours.

Professional Employees Award

Individual and Collective bargaining for most technology based professional employees working in the non-government sector is underpinned by the safety net which comprises the National Employment Standards (NES) and the Professional Employees Award 2010. Occupations which are covered under the Award include Professional Engineers, Professional Scientists, IT Professionals, Telecommunications Professionals and Quality Auditors. This Award covers a diverse range of industries.

The Award contains a classification structure for roles performed by professionals based on various levels of responsibility and assigns minimum applicable rates of pay for each. It also details professionals' entitlements with regard to leave, hours of work, allowances and mechanisms for resolving disputes amongst other things.

Long Hours and Compensation Survey

To better understand why professionals work additional hours, the kinds of additional hours they work, and whether they're compensated appropriately for working those hours Professionals Australia conducted a survey of Professional Employees Award covered employees.

The survey was conducted during December of 2018. Members of Professionals Australia as well as non-members who had previously contacted the association were invited to participate via direct e-mail and social media. Responses were recorded from 1,949 individuals.

Respondents were asked to indicate their eligibility for coverage under the Award by answering a couple questions. After removing those that are unlikely to be covered by the Award 1,480 responses were used for analyses presented throughout this report.

Professionals Australia also conducts annual employment and remuneration surveys of the major professions covered by the Professional Employees Award. Because Professional Engineers are the professional group the association has the greatest insights on, remuneration data collected in the 2018 Professional Engineers Employment and Remuneration Survey is also presented in this report.

6

Understanding Additional Hours

What are additional hours?

In Australia the standard working week is 38 hours long for a full-time employee according to the legislated National Employment Standards (NES). How those 38 hours are broken up during the week depends on the job. For example, Shift workers can work longer days, but fewer days of the week. Employers can also average the number of hours employees work across multiple weeks so that some weeks they do more than 38 hours, and others they do less.

Additional hours are the hours an employee works in excess of the NES standard working week of 38. They come in many forms and include but not limited to the following:

- Attending after hours functions or events in your professional role.
- Working call-backs or overtime.
- Working longer days due to a large workload.
- Shift work.
- Being available via remote access.

Your employer can ask you to work additional hours so long as those hours are reasonable.

What is reasonable?

Both the NES and the Professional Employees Award do not prescribe exactly what are reasonable additional hours for professional employees. What is reasonable depends on the circumstances. This allows for flexibility but can also leave individual professional employees in a vulnerable position.

In an assessment of reasonable hours all of the following principles need to be considered:

- The nature of the professional's role and their level of responsibility.
- The professional's personal responsibilities including family responsibilities.
- Whether the employer gave notice regarding the need for additional hours, or the professional communicated an inability to work additional hours.
- Employee health and safety.
- What's common in the industry.
- The needs of the workplace.
- How much compensation is available for working additional hours.
- Averaging of hours provisions in Awards, Enterprise Agreements etc.

Importantly, what's reasonable for one professional may not be reasonable for another. For example, reasonable additional hours for a professional with caregiver responsibilities will be fewer than for someone without.

Reasonable additional hours usually differ depending on the remuneration and level of responsibility attached to a professional role. Senior managers with generous salaries can reasonably be asked to perform more additional hours, while junior professionals paid close to the minimum for their profession should not be expected to perform many, if any, additional hours. In fact, pay is perhaps one of the best ways to understand what is and isn't a reasonable number of hours to be working each week.

What does the Award provide?

The Professional Employees Award stipulates that the working of additional hours must be compensated for.

The methods of compensation are set out in Clause 18.3 of the existing Professional Employees Award and include the following;

- Granting special additional leave.
- Allowances or loadings on top of an employee's regular rate of pay.
- Granting special additional remuneration such as a one-off payment in recognition of the additional hours worked.
- An annual salary that accounts for additional hours expected to be performed.

Employers can choose to use more than one method of compensation, if the compensation is appropriate. For example, an employer might choose to offer time in lieu for every additional hour worked, while also offering an inflated annual salary that also partially accounts for the additional hours that are expected. If professionals regularly engage in additional hours, their employer should be reviewing their rate of pay annually to ensure it accurately accounts for the hours they're working.

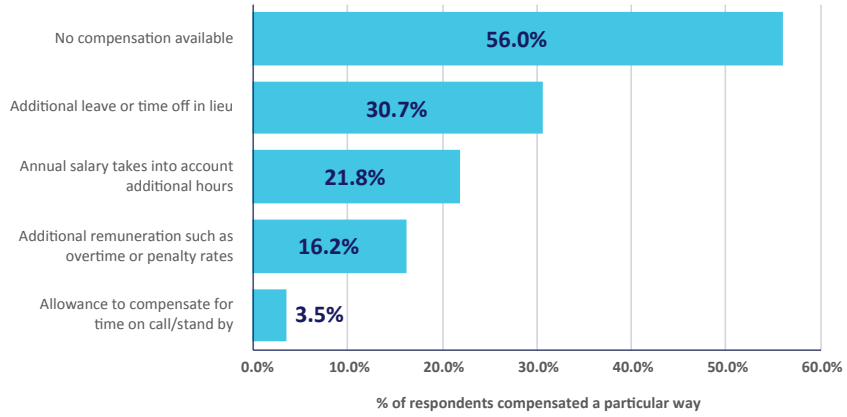
However, the current wording in the Professional Employees Award is "facilitative" rather than "prescriptive". To put it simply the Award says, "what ought to happen" not "what will happen". For instance, compensation must be set "at an appropriate level". Taken to its logical albeit extreme conclusion an employer can pay a minimal amount over the award minimum rate of a few dollars and legally argue that they have complied with the Award. If this is the case nothing can be done about it.

As survey results will show this is an unjust and ridiculous situation.

Professionals responding to the Professional Employees Award – Long Hours and Compensation survey were asked how they're compensated for working additional hours. Excluding those who do not work additional hours less than half of respondents indicated receiving any form of compensation. Amongst those that do receive compensation, time off in lieu was most common, followed by having an annual salary that takes additional hours into account.

How are professionals compensated for working additional hours?

Respondents could select all methods of compensation that applied to them.



Only 8.9% of survey respondents that reported their annual salary considered the additional hours they work could point to the portion of their salary that specifically compensates for those hours.

Valuing a professional's time

Most professional employees are paid an annual salary without access to additional leave or compensation for working additional hours. This puts a single dollar value on a year's worth of work. If a professional is engaged full-time in a permanent role, we know they should be working an average of 38 hours each week for 52 weeks of the year. The four weeks of annual leave that professionals are entitled to are included in these 52 weeks because they are paid. The result is 1,976 hours worked by a full-time permanent professional employee. By taking a professional's annual salary and dividing it by hours worked in a year we get an hourly rate of pay.

When a professional regularly performs additional hours of work beyond the mandated 38 these need to be factored in to get an accurate sense of what that professional is actually paid. Each additional hour decreases their hourly rate.

*Example: Sarah is full-time permanent employee paid an annual salary of $80,000. Her hourly rate of pay is $80,000 / (38 * 52) hours = $40.49 per hour.*

*However, Sarah's employer expects her to work an additional hour each day, five days a week. As a result, her effective hourly rate of pay is $80,000 / (43 * 52) hours = $35.78*

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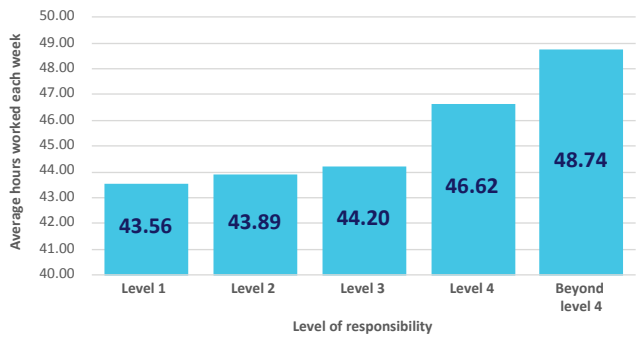
Professionals responding to the Professional Employees Award – Long Hours and Compensation survey were asked to indicate how many hours on average they work each week. For respondents employed in a permanent full-time role the average working week was 45 hours long. The number of hours worked in an average week tended to increase as the responsibility level of the professional increased, but even the lowest level professional reported working more than five additional hours each week beyond the NES mandated 38.

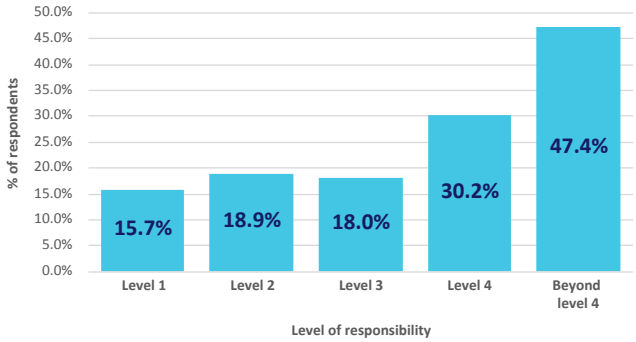
How many hours do full-time professionals work each week?

To be defined as full-time, respondents had to report working 35 hours or more in the average week



The biggest reason more senior professionals worked more hours on average than more junior professionals is because they were substantially more likely to report working 50 or more hours in the average week. Almost half of those employed in a role beyond level 4 had working weeks that were 50 hours or more. These are typically management roles that attract high rates of pay.

How common is it to work 50 or more hours each week?



The minimum rates of pay for a professional employee are laid out in the Professional Employees Award. These rates are provided as annual wages based on the 38-hour working week. The rate scales by the professional's classification. A professionals classification is determined by the level of responsibility they exercise in their role.

Minimum annual wages payable to full-time professionals as hourly rates of pay (Professional Employees Award 2010, July 2018)

Classification	Hourly rate of pay
Level 1.1 Graduate professional 3-year degree	$25.30
Level 1.1 Graduate professional 4 or 5-year degree	$25.95
Level 1.2 Graduate professional 1 year professional experience	$26.39
Level 1.3 Graduate professional 2 years professional experience	$27.49
Level 1.4 Graduate professional 3 years professional experience	$28.88
Level 2 Professional	$29.85
Level 3 Professional	$32.62
Level 4 Professional	$36.79

Definitions for each of the classifications can be found on the Fair Work Commission's website at https://www.fwc.gov.au/documents/documents/modern_awards/award/ma000065/ma000065-32.htm#TopOfPage

Professionals employed in roles at higher levels of responsibility tend to be compensated well beyond the minimums laid out in the award. They would need to be working many additional hours to be at risk of falling below the minimum. Less experienced professionals on the other hand tend to receive annual salaries much closer to the minimum. It wouldn't take many additional hours for a junior professional to find their effective hourly rate of pay falling too low.

*Example: Maria is a full-time permanent graduate professional with two and half years' experience in the workforce. She is paid a $60,000 annual salary but is expected to work an average of 43 hours each week. Her effective hourly rate is $60,000 / (43 * 52) hours = $26.83 per hour.*

Maria's hourly rate of $26.83 is $0.66 below the minimum of $27.49 she is entitled to. That's $1475.76 per year.

The minimums laid out in the Professional Employees Award do not include other payments a professional might be entitled to such as mandatory superannuation contributions. If these payments are rolled into a single salary package figure, they need to be disentangled from the base rate of pay to determine an effective hourly rate. These additional payments cannot be used to justify longer working hours.

In many industries it is common practice for employees working additional hours to not only receive additional pay, but for the value of that additional pay per hour to be greater than their regular rate of pay. Referred to as a loading, this has the effect of inflating the value of time worked beyond the standard 38 hours to compensate the negative impacts additional hours have on employees.

As mentioned above the Professional Employees Award does not prescribe loadings for working additional hours but does include them in the list of methods an employer can use to compensate additional hours. In particular, the Award indicates that loadings applied to professionals should reflect compensation available to most of a workplace.

To use an example, professionals working additional hours in a manufacturing workplace, where non-professionals are working at similar levels and are covered by the Manufacturing and Associated Industries and Occupations Award 2010, should have access to similar loadings as those employees. In this case 150% of their hourly rate for the first three additional hours worked, and 200% of their hourly for each hour afterwards.

*Example: Maria is a full-time permanent graduate engineer with two and half years' experience and employed in manufacturing. She would be classified as a Level 1 Graduate Professional at Pay point 1.3 which provides for a minimum annual salary of $54,311 per annum. She is paid $60,000 per year and is expected to work an additional hour each day. If you to apply the same loading to her pay that her non-professional colleagues receive her hourly rate of pay would be $60,000 / (38 * 52 + 5 * 150% * 52) = $25.36*

If you apply the loading to Maria's hourly rate given the number of additional hours she works, her hourly rate of $25.36 would be $2.13 per hour below the minimum she is entitled to under the Professional Employees Award.

After factoring fair remuneration for additional hours worked, particularly in an industry where loadings are applied when non-professional employees work those hours, the issue becomes obvious. Professionals paid close to the Award minimum engaging in even a small number of additional hours are at risk of being paid less than the minimum Award rate. For those professionals, many of whom are less experienced and vulnerable, it's unlikely any number of additional hours could be considered reasonable.

Professional Engineers are the biggest professional group covered by Professionals Australia, and one of the largest professions covered by the Professional Employees Award. Our annual Professional Engineers Employment and Remuneration Survey benchmarks pay and conditions for these professionals across the country.

Professional Engineers were asked to indicate their annual salary, the number of hours they work in an average week, their level of responsibility and how they're compensated for working additional hours. With this information we can determine the base hourly rate of pay for engineers working under varying conditions.

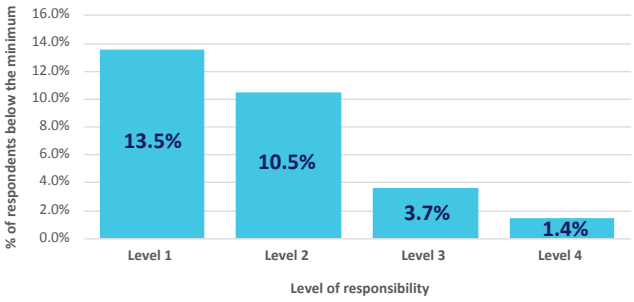
The average award covered full-time permanent professional engineer had a base rate of pay of $50.64 per hour assuming they worked no more than 38 hours each week, except where they were explicitly paid for working additional hours. This could be considered the hourly rate of pay defined in their contract. Hourly rates for award-covered professional engineers ranged from $31.91 per hour for a level 1 Professional Engineer to $65.00 per hour for a level 4 Professional Engineer. Professional Engineers whose level of responsibility exceeds coverage by the award were paid substantially more.

Average base hourly rate of pay for professional engineers

Engineers responding to the survey that answered in a way as to indicate they were unlikely to be award covered are excluded from the analysis.

How many professional engineers have an hourly rate of pay below the award minimum?

Where an engineer is level 1, their years of experience was used to determine which award rate to compare against.



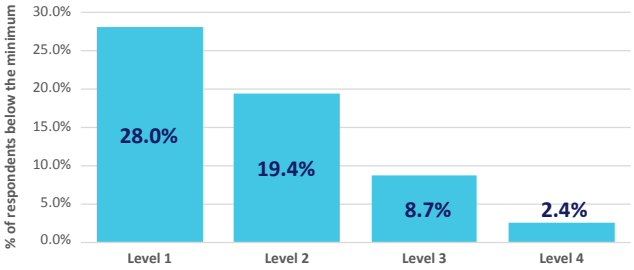
No surprises, the average base hourly rate of pay for a Professional Engineer is above the award minimum for each classification. Award minimums don't primarily exist to set the actual rate of pay for employees but to protect the most vulnerable workers from being paid less than they deserve given the skills and education their role requires. Unfortunately, several Professional Engineers still reported hourly rates of pay that would fall below the minimum they are entitled to, including 13.5% of those classified as level 1.

But what happens if we include all the hours worked by Professional Engineers?

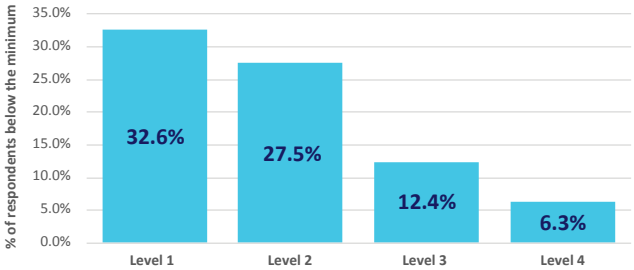
The average engineer works 43 hours each week which translates to an additional hour each day, five days a week. While some engineers receive time off in lieu, or additional pay for working additional hours in the form of overtime payments, many don't have access to compensation, or their compensation is rolled into their annual salary alongside an expectation they work more than 38 hours each week. For these people each additional hour they work reduces their effective hourly rate of pay.

Looking at the effective hourly rate of pay for engineers, when you consider all additional hours worked by those professionals and compensation they report having access to, the number of engineers who fall below the award minimums grows substantially. From 13.5% of level 1 engineers if you ignore additional hours worked without compensation, to 28.0% of level 1 engineers when including all additional hours worked.

How many engineers have an hourly rate of pay below the award minimum if additional hours are included?



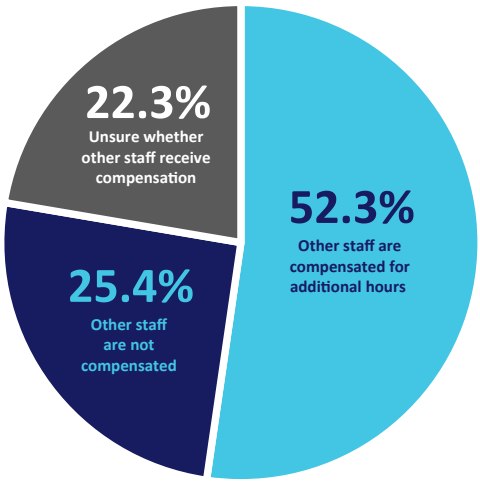
How many engineers have an hourly rate of pay below the award minimum if loadings are applied to additional hours?



Many Award-covered engineers work alongside non-professional staff in industries where awards include explicit compensation for working additional hours or overtime. How much that compensation is will depend on the industry, but a common loading applied to additional hours is an additional 50% of an employee's hourly rate of pay. A professional should be entitled to these loadings if their workplace predominantly employs those non-professional staff. As a result, those loadings should be factored into their annual salary to ensure their rate of pay was at or above the award.

If you apply a 50% loading to all additional hours worked by engineers responding to Professionals Australia's employment and remuneration survey the percentage of respondents that are at risk of being below the award rate extends out to 32.6% for level 1 engineers, and increases considerably for level 2 engineers as well up to 27.5%. These loadings won't apply to all engineers included in the survey, but a similar loading will apply to many of them.

How common is it for professionals to work alongside people that are entitled to compensation for additional hours?



What if I work part-time?

Normally a part-time employed professional will have a contract that specifies the number of hours they are expected to work each week, or over a given period. This number will be less than 38 hours per week. Even someone employed part-time can work additional hours, provided they are putting in more time than stated in their employment agreement. What's reasonable for a professional employed part-time will be different to a professional employed full-time, but the guidelines described here still apply, as do the minimum rates of pay laid out in the Professional Employees Award.

To determine the effective hourly rate of pay for a part-time employed professional merely substitute the NES mandated 38 hour working week with the working week described in their contract or employment agreement. If they are regularly working hours beyond those described in their agreement those should be included in the total number of hours to get an accurate representation of their pay.

*Example: Jonathan is a part-time employed professional contracted to work 25 hours each week over three days on a $50,000 per annum salary. Jonathan's hourly rate of pay is $50,000 / (25 * 52) = $38.46 per hour.*

*Despite only being contracted to work 25 hours each week, most weeks he must work an additional three hours on a fourth day due to meetings and general workload. Jonathan's real hourly rate of pay is $50,000 / (28 * 52) = $34.34 per hour. That's more than four dollar an hour less than Jonathan's contract specifies.*

In addition to part-time employment, professionals can be employed casually where the hours they work change week to week, and they are paid based on the time they work and they are entitled to a 25% loading on top of their base rate of pay.

What about breaks?

Neither the NES or the Professional Employees Award specify how breaks should be factored into the working day. Instead, enterprise bargaining agreements and individual contracts may specify the amount of time a professional is entitled to take as breaks, and how much of that time is paid. If they are specifically unpaid, they shouldn't be included when considering how many hours have been worked.

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Get the coverage you need in the workplace by joining Professionals Australia

The employee-employer relationship is governed by the Fair Work Act 2009. That said, the States and Territories still have their own legislation to oversee their workplaces despite having federal laws in place.

You are probably thinking; "My job is safe; I don't need to pay those extra fees."

However, with Australia's economic growth the slowest it has been in 10 years, you should consider what would happen if the unexpected occurred. Many of us take out policies to manage risks to our health, car or home, so why should your career be any different?

You really need to consider these three things:

WHY DO YOU NEED COVERAGE?

Navigating workplace law is complicated at best, and tortuous at worst. There is an expectation that you know your basic rights and conditions, however no-one could imagine you'd be across the details of each piece of legislation.

This is where we come in. At some point in your career, you'll need access to employment advice to assist with redundancy, performance management or disciplinary issues. This service can cost thousands elsewhere, but you will receive it free of charge as a benefit of your membership.

WHAT IS INCLUDED?

Your first point of contact is the National Workplace Advice and Support Centre (WAS). From here, your issue is then assigned to an experienced legal and/or industrial officer. You can rest assured when you reach out, we're with you every step of the way. We assist with a range of matters including:

- Independent contract reviews;
- Disciplinary process;
- Performance management;
- Workplace bullying and harassment;
- Discrimination;
- Unfair dismissal;
- Disputes under your Enterprise Agreement; and
- Underpayment claims.

We are committed to helping our members resolve workplace issues when they arise. We offer expert workplace advice and support to our members, and when needed, representation on more serious employment law and industrial relations issues. Everybody faces unique challenges at work, so we provide our members with personalised support.

HOW MUCH CAN YOU AFFORD?

Many providers charge thousands for a one-off service. At Professionals Australia, we are different. We're a membership-based organisation, meaning our services are available at no extra cost after you've joined. Our structure offers different categories to suit whatever stage of your career you are at. Your membership fees are also tax deductible.

Membership with Professionals Australia is your insurance policy in case something unfortunate happens in your career. With Australia's complex workplace laws – you have to ask yourself one last question – Can you afford not to join?

http://www.professionalsaustralia.org.au/join/

Common types of additional hours

Working more than 38 hours per week is the most common form of additional hours professionals engage in, but it isn't the only kind of additional hours recognised by the Professional Employees Award that employers must compensate for in some manner. All the following also count as a form of additional hours:

Time worked on call-backs

If you must go back to work after hours to perform your professional duties your employer should provide some form of compensation. This can include time off during your regular hours of work to make up for the time you spent on the call-back.

Time spent standing by in readiness for a call-back

If your employer expects you to be available for a call-back outside of your regular hours they should compensate you for that time whether or not you actually had to go back to work on a call-back

Time spent carrying out professional duties outside of the ordinary hours of duty by telephone or via remote access arrangements

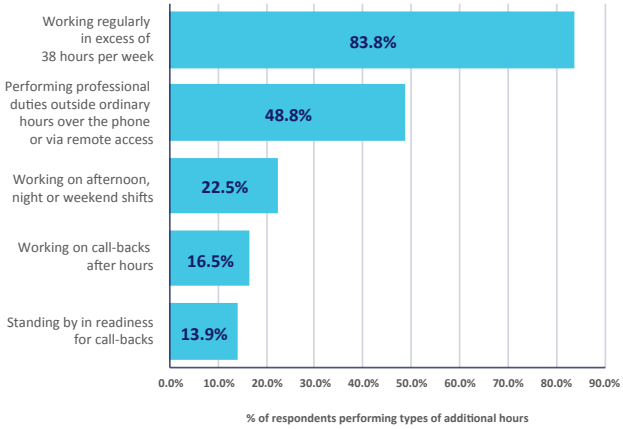
Even if you don't have to physically go into work to perform professional duties after hours, your employer should still compensate you for time you spend performing those duties using some form of communication like phone or e-mail outside of your regular hours. No matter where you are, if you are working you are entitled to compensation.

Time worked on afternoon, night or weekend shifts

Professionals typically work regular hours during the day. When you're asked to regularly work on the weekend, or during the evening your employer should provide compensation in recognition of working those less sociable hours.

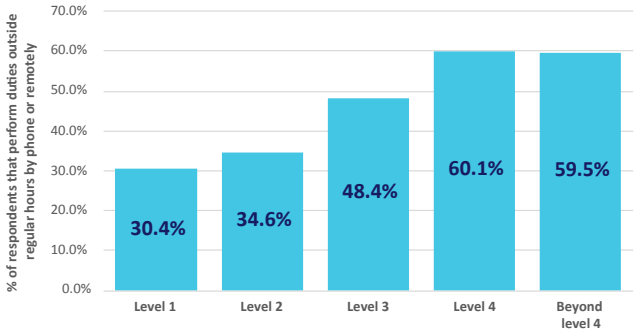
How an employer compensates for these forms of additional hours is open for negotiation. For example, if a professional working in IT is regularly required to come into work after hours to update computer systems while the rest of an organisation's staff aren't there, an employer could compensate for that time by letting the IT professional take a normal day of work off or simply by paying that professional an annual salary far enough above the award rate that those hours are clearly rewarded.

What kinds of additional hours do professionals engage in?



Professionals responding to the Professional Employees Award – Long Hours and Compensation survey were asked to indicate the types of additional hours they engage in. Of those that did work additional hours, most did so by regularly working in excess of 38 hours per week. Half of respondents that worked additional hours were also required to perform their professional duties outside of their ordinary hours by telephone or via remote access arrangements.

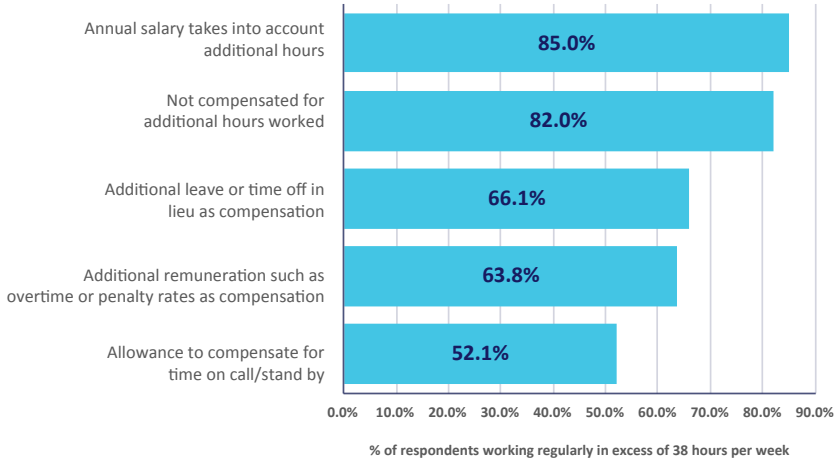
How common is it to perform duties outside regular hours by phone or remote access?



Performing professional duties by phone or remote access outside of additional hours was the only form of additional hours that tended to vary in how common it was by level of responsibility, being more common amongst professionals at higher levels of responsibility.

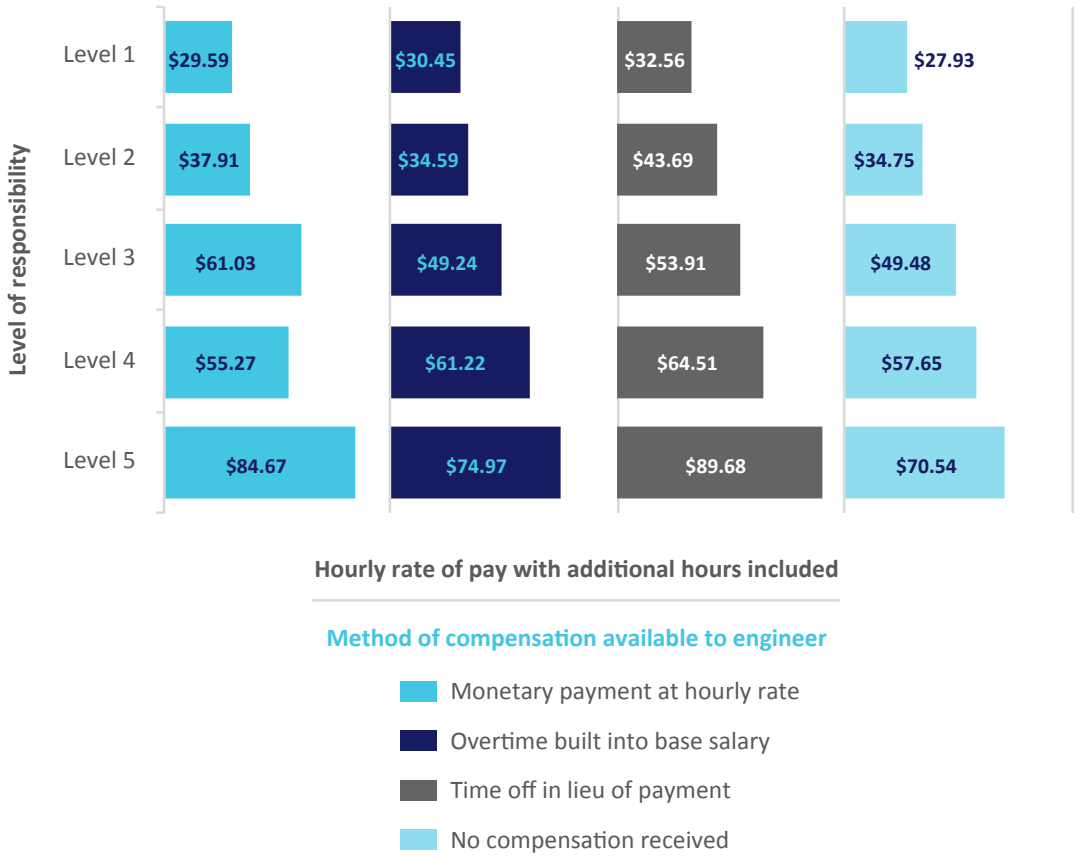
Whether or not compensation was available for working additional hours changed the pattern of additional hours worked by survey respondents. Professionals receiving overtime payments, time off in lieu, or specific allowances for being on call or standby were less likely to regularly work in excess of 38 hours per week than those whose compensation for additional hours was built into their salary, or not available at all. Professionals that receive an allowance for working on call or standby were much more likely to work call-backs or stand by, while those with access to overtime or penalty rates were more likely to work afternoon, night or weekend shifts and less likely to perform professional work outside ordinary hours of duty remotely. Unfortunately, those receiving no compensation, or who believed compensation for additional hours was rolled into their salary were the most likely to perform some kind of additional hours.

How does compensation effect the way professionals engage in additional hours



Looking at rates of pay for Professional Engineers specifically, those that received no compensation for working additional hours had the worst hourly rates of pay once you consider the time they actually put into the job. By comparison those compensated through time off in lieu had the best hourly rates of pay because all additional hours worked are offset by additional time off. Professionals whose compensation for working additional hours was built into their salary tended to earn an hourly rate like those with no access to compensation. They may have a premium attached to their salary, but the increased hours they work eliminate that premium.

How does compensation for additional hours worked affect the hourly rate of pay for professionals?



Reasons professionals do additional hours

The average professional works five additional hours each week despite no explicit compensation being made available for working those hours. Even when compensation is available that compensation rarely translates into a substantial improvement in earnings like it might in an industry where overtime payments or penalty loadings are common. Why then do professionals frequently engage in additional hours?

Employer requirement

The obvious reason is because their employer specifically requests they work additional hours. This could be in response to a busy period or more generally communicated. If an employer includes clauses in a contract that specify additional hours will be required from time to time, they very well may feel entitled to request those hours. Whether or not the request is reasonable the professional might be concerned about negative consequences if they don't work those hours.

Workplace Culture – "choice"

For many professionals their workplace culture promotes working long hours. Employees don't want to be seen 'leaving early' by their colleagues or managers, even when early really means leaving on time. Employers can take advantage of staff's tendency to stay long hours by trimming back their workforce and spreading a greater workload amongst fewer professionals. When previously professionals had stayed back to make a positive impression, now those professionals must stay back or risk falling behind in their workload.

A culture of long working hours can disadvantage those who have responsibilities outside of work. Long working hours can unfairly be seen as a proxy for professionalism or as an indicator of commitment to the workplace. Where an organisation regards a capacity to work long hours as a key selection criteria for advancement, it can embed unconscious bias within the organisation's promotion and development practices. This acts as a barrier to merit-based advancement. In turn, it can lead to those with responsibilities outside work being under-represented in senior, management and executive ranks and can lead to a gender pay gap in the organisation.

Lack of Skill and Experience

Less senior professionals may also feel a need to work additional hours to compensate for a lack of skill or experience. More experienced employees typically complete the same task faster than junior employees. If those junior employees are given heavy workloads without time available to develop professionally, they could feel pressured to work longer hours to achieve career goals. They may also feel this behaviour reflects positively on them at pay review time when they're trying to stand out from their peers or be recognised for good work ethic.

Even if no expectation is placed on a professional to work additional hours, explicit or implicit, they may feel obligated to do so simply because their manager works those hours. Managers and supervisors act as role models in the workplace. When they work long hours, they set a standard that working additional hours is normal. Less senior professionals need to remember that their managers and supervisors are much more likely to have an annual salary that appropriately compensates for those additional hours and avoid emulating long hours worked by senior staff that are better compensated than themselves.

Adequate Compensation

If a professional is paid well beyond the Award minimums, many of these reasons for working additional hours could be reasonable. However, without adequate rates of pay or other forms of compensation many of these become examples of poor workforce planning, unhealthy workplace culture, and severe devaluing of a professional's time by the individual or the business. Organisations should develop their workforce keenly aware that the 38-hour working week is the norm and that less experienced staff need opportunities to develop. When staff are increasingly feeling a need to work additional hours to meet the expectations of their managers, peers or the business it's time for that organisation to re-evaluate its resource allocation and workplace culture, not demand long hours without extra pay.

Flexible or part-time hours a trade-off for additional hours

In some cases, those who opt for flexible or part-time work are not allocated a workload that takes into account their reduced hours. This can lead to excessive additional hours being needed to meet workload requirements and little chance of meeting what can be unrealistic performance targets. This in turn can create an obstacle to merit-based advancement and a form of systemic bias that can impact development and promotion opportunities. Many respondents to the 2018 Professionals Australia Women in STEM Report found that they were allocated a full-time workload on part-time pay when they opted for part-time work and worked unreasonable additional hours as a result.

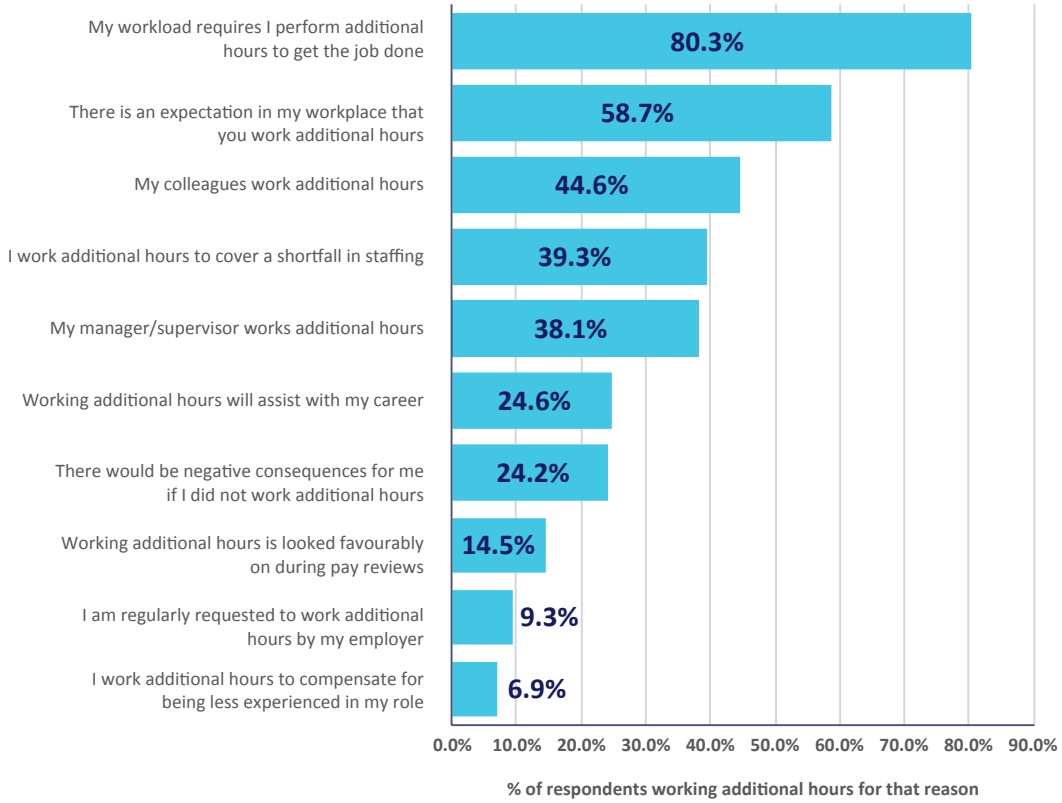
Further information on how a culture of long working hours can impact particular segments of the workforce and the career penalties attached to part-time work is available from the 2018 Professionals Australia Women in STEM Report available:
https://apesma.informz.net/apesma/pages/2018_Women_in_STEM

Respondents to the Professional Employees Award – Long Hours and Compensation survey were asked to share the reasons they work additional hours. A range of the most likely reasons were listed from which participants could select any number or indicate none applied. The reasons presented were:

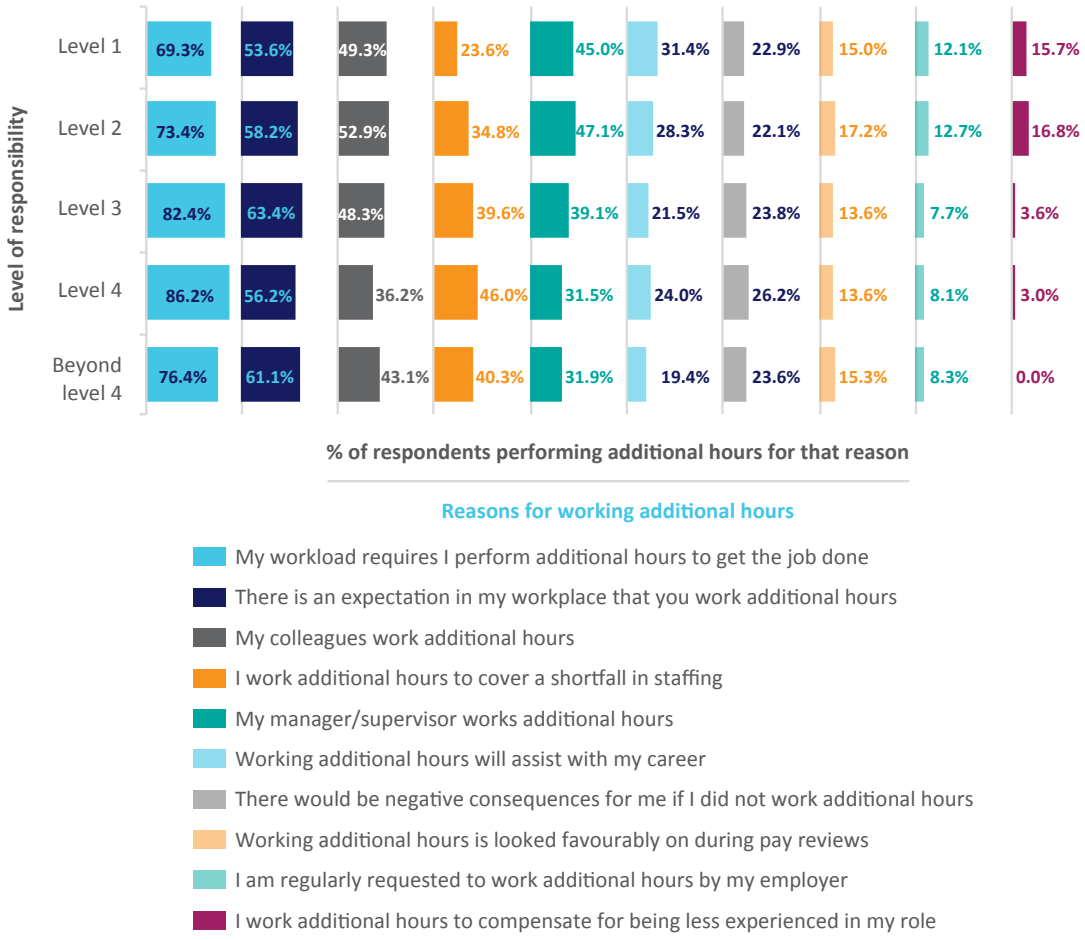
- There is an expectation in my workplace that you work additional hours
- My manager/supervisor works additional hours
- My colleagues work additional hours
- Working additional hours will assist with my career progression
- Working additional hours is looked favourably on during pay reviews
- My workload requires I perform additional hours to get the job done
- I am regularly requested to work additional hours by my employer
- I work additional hours to cover a shortfall in staffing
- I work additional hours to compensate for being less experienced in my role
- There would be negative consequences for me if I did not work additional hours

Across all professionals responding to the survey the most common reason for working additional hours was because their workload requires they perform additional hours to get the job done. This was followed by there being an expectation in their workplace that they work additional hours, their colleagues working additional hours, and working additional hours to cover a shortfall in staffing. Working additional hours to cover a shortfall in staffing was much more common amongst more responsible staff, as was working additional hours because their workload requires it to get the job done. By comparison, less senior staff were more likely to work additional hours because their manager or supervisor works additional hours, or to compensate for being less experienced in their role.

Why are professionals working additional hours?



How do the reasons for working additional hours change by a professionals level of responsibility?



Professionals Australia

Understanding your employment contract with Professionals Australia

Employment contracts are a common feature of professional employment. Contracts establish the working relationship by outlining your rights, responsibilities and obligations. In return your employer provides you with minimum terms and conditions.

WHAT IS A CONTRACT?

Your contract covers you while you work. It sounds simple, but it's worth repeating.

This document sets out the terms and conditions of a job, which includes pay, hours of work, leave entitlements, and much more. Signing a contract indicates that you and your employer have agreed to these terms.

If your circumstances suddenly change or you're being pressured, your contract is there to protect you. Management expects their employees to work to a certain minimum, likewise you should expect your employer to adhere to the contract you both signed.

WHAT ARE THE MINIMUMS?

All contracts of employment must comply with the minimum salaries and conditions that are contained in the NES (National Employment Standards); the relevant Award and in some cases a relevant Enterprise Agreement. In other words, your contract of employment cannot contain provisions that are less than these minimum conditions of employment. These industrial instruments automatically apply. The main benefit of having a contract of employment is to allow for salaries and conditions of employments that are better than those in the NES, Awards and Enterprise Agreements or contain matters that are not covered anywhere else.

Depending on how you negotiate your contract, it will include clauses that may have implications down the track in your career, such as non-compete or intellectual property rights clauses.

It's very important that you know your contract complies with all minimum requirements, and that you understand the implications of any clauses it contains.

HOW WE CAN HELP?

Where are you along your career path? Are you starting a new job, changing roles or re-negotiating a condition in your contract? No matter what stage of your career, the key to a successful negotiation is preparation and planning.

We understand negotiations can be difficult, but proper preparation is 90% of the job. So, prior to signing on the dotted line, take the time to prepare yourself before you enter any contract negotiations.

Professionals Australia can review the employment contract you are offered in your new job, provide you with an understanding of what you are being asked to sign, and provide advice as to how it can be improved.

When you join the Association, you can take advantage of our Employment Contract Review Service. Our team of legal staff will review your contract, check the minimums and explain the implications of all the clauses and conditions. This service can cost hundreds elsewhere, but our members receive it free of charge.

This service will equip you with the knowledge to know what makes a good contract that benefits and protects you while you work.

Recommendations for professionals

The results of this survey have not only confirmed that there is a major problem with the hours worked by professional employees but in actuality the problem is more serious than what was thought. This is particularly so for graduates, recent graduates and generally those professional employees in the early stages of their career.

Whilst it is understandable that professionals as career orientated employees will want to gain as much experience as possible and develop a diverse range of skills, there is nevertheless a responsibility on the part of employers to ensure that the compensation for additional hours which are required to perform the job is set at an adequate level.

It is simply unacceptable that nearly a third of professionals at the lower levels are in reality receiving less, based on hours worked, than the minimum Award rate. Further any additional hours should be "reasonable". Claims by some employers that professionals "manage" their hours of work and choose to work additional hours almost solely because they want to are exposed by the survey results as a myth.

This Hours of Work issue needs to be tackled through a range of measures:

Stronger industrial protection

As part of what is known as the 4 Year Review of Modern Awards the Association has made a claim which if successful will require employers to remunerate additional hours and/or unsociable hours. In the case of new and recent graduates, hours should be measured and assessed at a level not less than what other similar employees who do not possess professional qualifications but who enjoy far greater industrial protection receive. For the more senior professionals at Level 3 and 4 where the remuneration more clearly compensates for the working of additional/unsociable hours the current flexibility would largely remain. This claim will involve a major case to be conducted before the Fair Work Commission and it is an essential component of any strategy to rectify this problem.

Reducing Workload

A large workload can be a result of a range of factors including shortage of staff, inadequate training and more. Whilst staff shortage is usually a broader issue requiring a collective response access to relevant training to assist in managing work demands is a legitimate issue to raise during annual reviews/performance appraisals. Whilst some employers take the CPD needs of their employees seriously others need to be reminded or may be simply unaware that there is an issue.

If professionals find a demanding workload performing tasks they have not had adequate training for is leading to the need to perform excessive hours they should consider discussing the issue with their immediate manager. Brief training can be beneficial for both the professional and their employer, increasing productivity.

"Reasonable Hours"

Whilst professionals, like other employees, may be required to work additional reasonable hours the National Employment Standards (NES) as outlined in the Fair Work Act contain guidelines as to what is "reasonable". Whilst the definition of "reasonable" will depend on the circumstances, the Fair Work Act outlines a number of criteria for determining what is "reasonable" including but not limited to family responsibilities; the level of remuneration received; nature of the employee's role and level of responsibility; any risk to employee health and safety and so on. An employee has the right to refuse to work unreasonable hours.

If you suspect the hours you're being required to work are becoming unreasonable a good first step to take is recording the hours you work on a day to day basis. By recording the hours you work and how those hours conflict with your responsibilities outside of work you are better able to build an argument for whether the hours you work are unreasonable. You might find opportunities to adjust those hours so that they become less of a burden for you without disrupting your responsibilities at work.

Raising the issue of unreasonable hours with an employer can be challenging. Professionals are encouraged to seek advice before having such a conversation and having the hours you work recorded will help. Members of Professionals Australia can contact the Association's WAS services to receive help from one of lawyers/industrial officers.

If you are not currently a member of the Association, you can seek information from the Fair Work Ombudsman. For more information visit https://www.fairwork.gov.au/

Annual Review

The Annual Review process which is the norm for most professional employees is your opportunity to both receive feedback and to have a conversation around issues that are affecting you in the workplace. These include your salary and working hours expectations.

Make sure you participate in any annual review process conducted by your employer and come prepared. If there are issues affecting you at work, including working additional hours, record these in a manner which will make it easy to discuss them with the manager conducting the review. Many employers see reviews as the ideal time to discuss these issues but will expect you to be able to justify the reasons you're seeking a change.

If your employer doesn't engage in an annual review process, consider asking for one explicitly. Annual reviews are often seen as an administrative task low on the priority list. If you make it clear these reviews are valuable to you, your employer is more likely to conduct them.

Professionals Australia WAS staff can provide advice to Association members on how best to prepare for these types of discussions, including access to the latest benchmarks for professional work.

Joining together

The issue of working/compensation for additional/unsociable hours is a common issue affecting both professionals and other employees in the workplace that could benefit from a collective solution. When you face working "unreasonable" hours the Association can raise the issue directly with your employer as a "one off", but also negotiate an enterprise agreement that addresses the issue more broadly with your employer. Once a majority of employees at your workplace want the Association and/or any other relevant union to bargain on their behalf your employer must agree to do so in good faith.

Collective bargaining through a union has the advantage of strength in numbers. A strong voice representing all employees achieves better outcomes for the group in the form of higher pay and fairer conditions. Contact Professionals Australia to learn more about how to start the process of getting a collective outcome where you work.

Workplace Advice and Support

The team at Professionals Australia offer advice and representation to thousands of members each year, for issues such as bullying, unfair treatment, unfair dismissal and other workplace issues.

Join today to speak to our experienced legal and industrial officers today. pa.org.au

Professionals Australia

10 Reason to join

1. Personal advice and assistance
2. Your industry voice
3. Campaigning for your conditions
4. Maximise you pay
5. Member Rewards
6. Professional development
7. Career advice
8. Registered Professional Engineer of Professionals Australia (RPEng)
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Professionals Australia

STREET ADDRESS
152 Miller Street, West Melbourne,
Victoria, 3003, Australia

POSTAL ADDRESS
GPO Box 1272, Melbourne
Victoria 3001, Australia

TELEPHONE
1300 273 762

EMAIL
info@professionalsaustralia.org.au

WEB
www.professionalsaustralia.org.au