

## Hours of Work

There are two different types of instruments that your employment may relate to. These two instruments outlined below are clearly stated on your contract on the final page with all the other specific arrangements for you personally.

**NES: The National Employment Standards (NES)** are the minimum employment entitlements that have to be provided to all employees. You can find more information about NES here - <https://www.fairwork.gov.au/employment-conditions/national-employment-standards>

**The Restaurant Industry Award (RIA)** covers employers in the restaurant industry and their employees who fit within the classifications of the award. You can find more information about the Restaurant Industry Awards here - <https://www.fairwork.gov.au/employment-conditions/awards/awards-summary/ma000119-summary>

Most employees at the Ducks fall under the Restaurant Industry Award (RIA), (people covered by the (RIA) are ALSO covered by the NES). There are some exceptions who are only covered by the NES. This will be clearly stated in your contract.

There are 4 main types of employment at the Ducks; Full-time, Part-time, Casual & Contract. Your agreed employment will be clearly outlined in your Employment Contract.

### **1. Full-time Employees**

There are two types of full-time employment that are available and will be clearly stated in your Employment Contract, depending on what you have agreed with your manager.

#### **a) Hourly Employees**

Under the Restaurant Industry Award, a full-time employee who wishes to be paid by the hour has that option available to them. They will still get a minimum of 38 hours per week and will be paid all penalties based on the award and have all the usual benefits (annual leave, sick leave, etc). This means that your amount paid each week will change based upon the days, times and hours that you work but you are still a fulltime employee. - <https://www.fairwork.gov.au/find-help-for/fast-food-restaurants-cafes/restaurant-cafes-industry>

#### **b) Annualised Salary Employees**

Per the Restaurant Industry Award 2020 (MA000119), all full-time staff on an annualised salary at Three Blue Ducks, are paid at least 125% of the Award rate, which is intended to cover all minimum wages, overtime, allowances, loadings, and penalties.

The (RIA) requires us to carry out a Better Off Overall Test (BOOT) annually, for all Annualised Salary Employees, to review whether any of these employees would be better off if they were being paid as a Full Time Hourly Employee on the Award rate during that year. This is compared to their actual salary paid, plus any time in lieu accrued:

20.5 An annualised salary must not result in an employee being paid less over a year (or, if the employee's employment is terminated before a year is completed, over the period of that employment) than would have been the case if an annualised salary had not been agreed and the employee had instead been paid their weekly rate and any other amounts satisfied by the annualised salary.

## **2. Part-time Employees**

Part-time employees work less than 38 hours per week and their hours are usually regular each week. Part-time employees get the same minimum entitlements as a full-time employee, but on a pro-rata basis. You can find more information and some examples here - <https://www.fairwork.gov.au/starting-employment/types-of-employees/part-time-employees>

## **3. Casual Employees**

A person is a casual employee if they accept an offer for a job from an employer knowing that there is no firm advance commitment to ongoing work with an agreed pattern of work. For example, if an employee is employed as casual, their roster changes each week to suit their employer's needs, and they can refuse or swap shifts. You can find more information here - <https://www.fairwork.gov.au/starting-employment/types-of-employees/casual-employees>

## **4. Contracted Employees**

Independent contractors provide services to another person or business. They aren't employed by that person or business. Independent contractors usually negotiate their own fees and working arrangements. You can find more information and examples here - <https://www.fairwork.gov.au/find-help-for/independent-contractors>



The Three Blue Ducks Hours of Work Policy is comprised of two parts and only relates to those employees who are full time on an annualised salary:

### 1. Time in Lieu awarded weekly:

Time in lieu will be awarded on a weekly basis for the following scenarios:

- 6th and/or 7th days worked – 1 day in lieu per additional full day worked or pro rata for part day worked as rostered or instructed by your manager;
- Public holidays worked – 1 day in lieu per public holiday worked. You may also receive a day in lieu on a public holiday week even if you don't work the public holiday, depending on your usual days of work. For example: if you usually work on Mondays, and in a week with one public holiday on a Monday you still work 5 days (e.g. Tuesday-Saturday), you will receive a day in lieu even though you didn't work the public holiday, because you didn't get the additional day off. If you don't usually work Mondays (e.g. your usual days of work are Tuesday-Saturday) and you work 5 days, you will not receive a day in lieu.
- These DIL are designed to be taken as soon as is practically possible in agreement with or as instructed by your manager in line with the (RIA).

### 2. Additional Pay awarded annually per Better Off Overall Test (BOOT):

From January 2024, the BOOT test will be carried out as per the Award, with an annual reconciliation at the end of every financial year (30<sup>th</sup> June). We will also monitor working hours regularly throughout the year.

Where an employee is found to have been paid less than they would have earned if they were on the Award rate (including any time in lieu given per part 1 of this policy), they will be paid the shortfall in full.

Please note, in order for us to complete the BOOT test report (which is a detailed and time-consuming process undertaken by our finance team) this will take a minimum of one month to occur.

#### To Note:

If you have been working with Three Blue Ducks in a full-time capacity under an annualised salary for one full year or more you will be included in the annual BOOT test at the end of each financial year.

If you have not worked with Three Blue Ducks in a full-time capacity under an annualised salary for one full year, your salary and working hours will be included in the annual BOOT Test on your anniversary date, which will be the date you started your employment with Three Blue Ducks (or the date you commenced full-time employment if you transferred from casual to full-time). After the first full year of your employment, you will be included in



the annual BOOT Test report at the end of each financial year.

**E.G.** You started working for Three Blue Ducks 1st May 2022. Your BOOT Test will be calculated from 1<sup>st</sup> May 2022 – 30<sup>th</sup> April 2023. Then moving forward you will be included in the report along with all other full-time Award employees. So we would redo the BOOT test for you and encompass the period of 1<sup>st</sup> July 2022 to 30<sup>th</sup> June 2023.

#### The BOOT process is as follows:

1) All full-time employees' timesheets for the period are costed out as if they were on the Award full-time hourly rate, including all overtime and penalty rates such as:

- weekend rates
- public holiday rates
- late night (10pm-12am) and early morning rates (12am-6am)
- delayed meal breaks or no meal break taken

2) The costing from step 1 is compared to what the employee was actually paid during the period (including the value of any time in lieu awarded), then:

a) If the costing from step 1 exceeds the actual amount paid from step 2, we will pay the shortfall amount in full in the next payroll.

b) If the costing from step 1 is less than the actual salary paid from step 2, no action is taken.

#### Exceptions

##### **Employees on the Exemption Rate**

The Award allows for these employees who are paid more than 170% of their relevant Level rate of pay to be exempt from most overtime and penalty rates, therefore these employees are excluded from the BOOT test. If this is relevant for you it will be clearly stated in your Employment Contract.

**Non-Award Employees** - Employees who are on a NES based contract are exempt from the BOOT Test under the Fair Work Ombudsman.

## Outer Limit Penalties

There are rules about the maximum number of hours that attract overtime or penalty rates that an employer can require an employee to work in a roster cycle and include in their annualised wage arrangement. If the employee works beyond these hours, the employer will have to provide them with an additional payment.

Under the Restaurant Industry Award, in any roster cycle an annualised wage can only cover up to the following number of hours:

- an average of 18 ordinary hours per week that attract a penalty rate (except for evening work as defined below)
- an average of 12 overtime hours per week.

Any hours worked in a roster cycle beyond either of these 'outer limits' are not covered by the annualised wage and must be separately paid at the relevant award rate for the pay period they are worked.

Under the Restaurant Award, evening & late night work does not count towards the 'outer limit' if the work occurs between:

- 10pm and midnight, Monday to Friday – in the Restaurant Award.
- Midnight to 6am, Mon to Fri – in the restaurant award

Time worked by an employee during these hours doesn't count towards the average of 18 ordinary hours per week 'outer limit' (this means no matter how many evening hours the employee works, it doesn't contribute to the 18 hours).

## Calculating Outer Limit Penalties:

Any hours worked in a 4-week roster cycle beyond either of these 'outer limits' are not covered by the annualised wage and must be separately paid for at the relevant award rate for the pay period they are worked.

The Outer Limit Penalties will be paid to employees every 4 weeks as part of their next payslip after the 4 weeks.



## Our Expectations

### **Clocking in and out of your shift:**

All employees are required to sign in and out of every shift using the Deputy app in the venue. Employees are also required to sign in and out of each break they take during every shift.

Accurate record keeping is paramount; adopting best practice record-keeping makes it easier to:

- keep track of employee details
- identify payroll mistakes
- ensure there is no discrepancy between what was worked and what was recorded

### **Breaks**

As an Employee, it is expected you take your break at the allocated time unless specifically asked by your Manager or Supervisor not to, due to unforeseen circumstances (e.g. too busy or covering for somebody). These breaks will be rostered but your manager may ask you to take a break at a different time depending upon circumstance. If in doubt please ask your manager.

### **Working to your rostered shifts:**

Unless specifically asked it is your responsibility to start and finish work at your rostered time. If you need to stay back or come in early to do additional work or need to work on another day please ask your manager first.

The Restaurant Industry Award (RIA), the National Employment Standards and also this Policy may change at any time. We will attempt to notify you as soon as is practically possible about any changes when they come into effect and will update this policy accordingly.

If you have any questions about the above please email [bianca@threeblueducks.com](mailto:bianca@threeblueducks.com) and we will answer your question/s OR schedule a time to have a chat.