

UNDERSTANDING IFAS, OVERTIME, FLAT RATES, AND SUPERANNUATION OBLIGATIONS: A COMPREHENSIVE GUIDE FOR EMPLOYERS

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Navigating overtime, flat rate payments, and superannuation obligations can be challenging for employers, especially when balancing legal requirements with business efficiency. Missteps in these areas can lead to costly penalties and compliance issues, affecting both employee satisfaction and financial outcomes. This guide explores when overtime rates apply, the role of Ordinary Time Earnings (OTE) in superannuation calculations, and how Individual Flexibility Arrangements (IFAs) can help employers manage costs while keeping employees fairly compensated. By understanding these concepts, employers can develop a more streamlined, compliant, and employee-friendly payment structure.

Overtime

Overtime is work performed by an employee outside the ordinary hours specified in an award or enterprise agreement. Examples include:

- hours in excess of the maximum daily or weekly ordinary hours of work,
- hours worked outside a part-time employee's agreed number of rostered hours, and
- hours performed outside the spread of ordinary hours.

It is essential for employers to understand their applicable award terms or enterprise agreement term to apply them appropriately.

Payment Types

Ordinary Time Earnings (OTE): includes payments made for ordinary hours of work, including bonuses, commissions, and shift loadings. Employers are required to use OTE to calculate the minimum superannuation guarantee (SG) contributions for eligible employees.

Salary or Wages: is remuneration paid to employees for their services as employees. While similar to OTE, salary and wages cover a broader range of payments, including overtime.

The Superannuation Guarantee Ruling (SGR) 2009/2 uses the following diagram to illustrate the relationship between OTE and salary or wages:



The Australian Taxation Office (ATO) provides guidance on which payments require superannuation contributions, with the following distinctions:

Overtime		
Payment	Consider as a salary or wages?	Included as OTE?
Overtime hours over and above the ordinary hours stated in an award or agreement	Yes	No- super contributions are not required for these hours
Overtime where the ordinary hours of work are not stated in an award or agreement, or not separated from other hours	Yes	Yes- super contributions are required for the total hours worked

IFAs

An IFA is a written agreement between an employer and employee that varies the applications of certain award terms. Both parties must genuinely agree to the terms, and an employee cannot be forced to sign an IFA. IFAs allow for flexibility, varying clauses like working hours, overtime rates, penalty rates, allowances, and leave loading. To enter into an IFA an employer needs to ensure the employee is better off overall. An IFA cannot be used to under cut Award terms. An IFA cannot be backdated and is effective on the date agreement was made or at a future date agreed upon by the employee.

Paying a Flat Rate under an IFA

A flat rate under an IFA simplifies payroll by consolidating some or all of an employee's award entitlements into a single hourly rate. This can streamline administration, particularly when the flat rate is higher than the award rate and covers entitlements such as overtime, penalty rates, and allowances.

However, employers must ensure that paying a flat rate does not reduce or remove any entitlements. The flat rate must leave the employee better off overall than under the award, which is assessed through the Better Off Overall Test (BOOT). This test ensures that the flat rate sufficiently compensates for all award entitlements. It can be complex, particularly if the rate includes additional components such as overtime or penalties. The IFA must clearly state that the flat rate compensates for additional hours worked beyond ordinary hours, but it does not alter the definition of what constitutes ordinary hours for SG purposes.

Since minimum pay rates in awards change frequently, typically annually, employers are required to review and adjust flat rates accordingly to ensure continued compliance with the BOOT. Employers should also ensure that the flat rate accounts for all the entitlements specified in the relevant award, especially if these entitlements are not being paid separately. This includes considering the full scope of hours the employee is expected to work.

To avoid underpayment risks and potential penalties, regular reviews of hours worked, and flat rate compensation are crucial. If the flat rate does not adequately cover entitlements, such as overtime or penalty rates, employers may face legal action from employees or Fair Work Australia. The IFA should explicitly confirm that the flat rate includes the necessary entitlements as outlined in the award, helping to safeguard both the employer and employee from disputes.

Calculating Superannuation for Employees Working Overtime under an IFA

SG contributions are generally based on OTE, typically including only ordinary hours and excluding overtime. If ordinary and overtime hours are clearly separated in an employment contract, IFA and on payslips, super contributions apply only to ordinary hours. For instance, if an employee works an average of 50 hours per week which comprises an average of 38 ordinary hours with the remaining 12 hours worked being overtime, only the 38 ordinary hours are included in SG calculations.

The SGR 2009/2 indicates that if a contract explicitly separates ordinary hours from overtime, SG contributions apply solely to ordinary hours. However, if no distinction is made and a flat rate covers all hours, the ATO may treat all hours as ordinary for SG purposes.

When ordinary and overtime hours are blended with a flat rate, SG contributions may be required on all hours worked. Employment agreements and payslips should clearly distinguish ordinary hours from overtime hours to ensure SG contributions are calculated only on ordinary hours.

Review and Adjustment of IFAs in Light of Legislative Changes

Over time, changes in business needs, employee circumstances, or award/registered agreement entitlements may render an IFA impractical.

IFAs should be reviewed at least annually to ensure employee entitlements under the IFA meet or exceed those under the relevant award or agreement. This is particularly important if:

- an employee is promoted or moves to a new classification,
- award terms and clauses are updated,
- a junior employee has a birthday, affecting entitlements,
- pay rates are updated annually in July under awards, or
- wage increases occur under a registered agreement.

Employers should schedule regular discussions with employees to confirm that the IFA continues to meet both parties' needs.

By accurately distinguishing between ordinary and overtime hours, correctly applying superannuation obligations, and ensuring IFAs leave employees better off overall, employers can build fair, efficient, and legally compliant pay structures. Regularly reviewing agreements, pay rates, and entitlements is essential to avoid underpayment risks and ensure that employee agreements remain aligned with business needs and legislative updates.

