



DRAFT DETERMINATION

Fair Work Act 2009

s.157 – Application to vary a modern award to achieve the modern awards objective

Clerks – Private Sector 2010

(AM2020/_____)

PRESIDENT ROSS

XXXXX

XXXXX

_____ 2020

Award schedule – COVID-19 pandemic

A. Further to the decision [_____] issued by the Full Bench of the Fair Work Commission on _____ 2020, the above award is varied as follows:

1. In the Table of Contents add a new Schedule I.
2. Add the following Schedule I to the award:

Schedule I - Award flexibility during the COVID-19 Pandemic

- X.1** The provisions of this schedule are aimed at preserving the ongoing viability of businesses and preserving jobs during the COVID-19 pandemic and not to set any precedent in relation to award entitlements after its expiry date.
- X.2** Schedule I operates from _____ 2020 until 30 June 2020. The period of operation can be extended on application.
- X.3** A reference in this schedule to an employee “working from home” is to be read as a reference to an employee who is working from home because of measures in response to the COVID-19 pandemic.
- X.4** During the operation of Schedule I, the following provisions apply:

Operational flexibility

- (a) An employee will perform all duties that are within their skill and competency regardless of their classification under clause 15 and Schedule B, provided that the duties are safe, and the employee is licensed and qualified to perform them, where necessary. No employee shall have their pay reduced as a result of being directed to perform duties in accordance with this clause.

Part-time employees working from home

- (b) Instead of clause 11.5, for a part-time employee who is working from home by agreement with the employer, the employer is required to roster the employee for a minimum of two consecutive hours on any shift.

Casual employees working from home

- (c) Instead of clause 12.4, for a casual employee who is working from home by agreement with the employer, the employee is entitled to a minimum payment of two hours' work at the appropriate rate.

Ordinary hours of work for employees working from home

- (d) Instead of clause 25.1(b), where an employee requests and the employer agrees, the spread of ordinary hours of work for day workers is between 6.00am and 11.00pm, Monday to Friday, and between 7.00am and 12.30pm on Saturday, for employees working from home by agreement with the employer.
- (e) Day workers are not shift workers for the purposes of any penalties, loadings or allowances under the award.
- (f) The facilitative provision in clause 25(2), which allows the spread of hours to be altered, will not operate for the employees referred to in subclause (d).

Agreed temporary reduction in ordinary hours

- (g) An employer and the full-time and part-time employees in a workplace or section of a workplace, may agree to temporarily reduce ordinary hours of work for the employees in the workplace or section for a specified period while this schedule is in operation. The approval of at least 75% of the full-time and part-time employees in the relevant workplace or section shall be required.
- (h) For the purposes of subclause (g), ordinary hours of work may be temporarily reduced:
 - (i) For full time employees, to not fewer than 75% of the full-time ordinary hours applicable to an employee immediately prior to the implementation of the temporary reduction in ordinary hours.

- (ii) For part-time employees, to not fewer than 75% of the part-time employee's ordinary hours immediately prior to the implementation of the temporary reduction in ordinary hours.
- (i) Where a reduction in hours takes effect under subclause (g), the employee's ordinary hourly rate will be maintained but the weekly wage will be reduced by the same proportion.
- (j) Nothing in this schedule prevents an employer and an individual employee agreeing in writing (including by electronic means) to reduce hours or to have an employee move temporarily from full-time to part-time hours of work, with a commensurate reduction in the minimum weekly wage.
- (k) For an employee whose hours have been reduced in accordance with subclause (g):
 - (i) the employer must not unreasonably refuse an employee request to engage in reasonable secondary employment; and
 - (ii) the employer must consider all reasonable employee requests for training, professional development and/or study leave.
- (l) For the purposes of subclause (g), where there is any reduction in the ordinary hours of work for full-time or part-time employees in a workplace or section during the period this schedule is operation, all relevant accruals and all entitlements on termination of employment will continue to be based on each employee's weekly ordinary hours of work prior to the commencement of this schedule.
- (m) For the purposes of subclause (g), the support of employees shall be determined by a vote of employees. In order for the vote to be valid, the employer must comply with the following requirements:
 - (i) Where any of the employees are known to be members of the Australian Services Union or another organisation, the ASU or other organisation shall be informed before the vote takes place.
 - (ii) Prior to the vote of employees, the employer shall provide the employees with the contact details of the ASU, should they wish to contact the ASU for advice.
 - (iii) The employer must notify the Fair Work Commission by emailing XXXX@fwc.gov.au that the employer proposes to conduct a vote under this schedule. The employer shall provide the work email addresses of the employees who will be participating in the vote, to the Commission. The Commission will then distribute the ASU COVID-19 Information Sheet to the employees prior to the vote. The Commission shall list the name of the business on a register which will be accessible to the

ASU, upon request, for the period when this schedule is in operation.

- (iv) The vote shall not take place until at least 24 hours after the requirements of paragraph (i), (ii) and (iii) have been met.

Annual leave

- (n) Employers and employees may agree to the taking of up to twice as much annual leave at a proportionately reduced rate for all or part of any agreed or directed period away from work, including any close-down.
- (o) Instead of clauses 29.6, 29.7 and 29.8, an employer may direct an employee to take any annual leave that has accrued, subject to considering the employee's personal circumstances, by giving at least one week's notice, or any shorter period of notice that may be agreed. A direction to take annual leave shall not result in an employee having less than two weeks of accrued annual leave remaining.

Close down

- (p) Instead of clause 29.5 and subject to subclause (q), an employer may:
 - (i) require an employee to take annual leave by giving at least one week's notice as part of a close-down of its operations, or part of its operations, or any shorter period of notice that may be agreed; and
 - (ii) where an employee who has not accrued sufficient leave to cover part or all of the close-down, the employee is to be allowed paid annual leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the closedown.
- (q) Subclause (p) does not permit an employer to require an employee to take leave for a period beyond the period of operation of this schedule.
- (r) Where an employee is placed on unpaid leave pursuant to clause (p), the period of unpaid leave: will count as service for the purposes of relevant award and NES entitlements.

B. This determination comes into effect on _____2020.

PRESIDENT