

Proposed Variation under section 157 of the Fair Work Act 2009 to:
Manufacturing and Associated Industries and Occupations Award 2010 - Clause 40.6

Current provision

40.6 Standing by

Subject to any custom prevailing at an enterprise, where an employee is required regularly to hold themselves in readiness to work after ordinary hours, the employee must be paid standing by time at the employee's ordinary time rate for the time they are standing by .

Proposed amendment:

Delete the first eight words in the current 40.6. The new Standing By Provision then becomes;

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Where an employee is required regularly to hold themselves in readiness to work after ordinary hours, the employee must be paid standing by time at the employee's ordinary time rate for the time they are standing by.

Rationale for this amendment

This proposed change is not to bring about any increase to the entitlements of those engaged to be on standby. It merely seeks to eliminate a long standing misinterpretation of this award provision.

As discussed in detail in my submission, it is impossible for any enterprise to demonstrate that they had "a custom prevailing at that enterprise" on the first occasion that they engaged an employee to be on standby under this award provision. Hence the overwhelming majority of enterprises are not entitled to be exempt from this provision.

It is unlikely, but possible, that there may be an odd enterprise around that engaged employees on standing by duties prior to the introduction of this provision in any preceding award and as such, do still have an entitlement to claim this exemption.

If there are any enterprises with a genuine claim to this exemption, how adversely and unfairly will they be affected with this removal of the exemption?

This exemption's only function was to serve as a transitional arrangement for those enterprises with a standing by arrangement in place before any award required them to pay an hourly rate for every hour that an employee is engaged on standing by. Any such enterprise has had the benefit of this transitional arrangement for many decades.

Any enterprise that does have a genuine claim for an exemption will, at worst, just have to pay the same as any other enterprise and compete on an equal basis with other enterprises.

This is perhaps a small price to pay to remove any doubt as to whether any enterprise is exempt from this provision.