



DRAFT DETERMINATION

Fair Work Act 2009

s.157—FWC may vary etc. modern awards if necessary to achieve modern awards objective

Variation of *Professional Employees Award 2020* on Commission’s own motion

(AM2022/7)

PROFESSIONAL EMPLOYEES AWARD 2020

[MA000065]

Scientific services

ACTING PRESIDENT HATCHER
DEPUTY PRESIDENT SAUNDERS
COMMISSIONER P RYAN

SYDNEY, XX MONTH 2023

Professional Employees Award 2020 – Commission acting on its own motion – hours of employment and overtime – coverage.

A. Further to the decision issued by the Full Bench on 20 January 2023 [[2023] FWCFB 13], the above award is varied as follows:

1. By deleting clause 13.1 and inserting the following:

13.1 The ordinary hours of work, for which the minimum rates in clause 14 are payable, are 38 hours per week.

2. By deleting clauses 13.2 to 13.6.

3. By renumbering clause 13.7 as clause 13.2.

4. By renumbering Parts 5 to 7 as Parts 6 to 8.

5. By inserting a new Part 5—Overtime and Penalty Rates.

6. By renumbering clauses 18 to 28 as clauses 19 to 29.

7. By inserting a new clause 18—Overtime and Penalty Rates as follows:

Clause 18—Overtime and Penalty Rates

18.1 Overtime

An employer may, in accordance with s 62 of the [Act](#), request or require employees to work overtime provided the additional hours are reasonable.

18.2 Payment for overtime

- (a) The employer must, subject to clauses 18.3, 18.4 and 18.5, pay a full-time employee the appropriate minimum hourly rate in clause 14 for all hours worked in excess of 38 hours per week. This must include work on or in connection with call-backs and work performed on electronic devices or otherwise remotely.
- (b) This payment is in addition to the minimum annual wage in clause 14.1 prescribed for working ordinary hours.

NOTE: Part-time and casual employees are paid their hourly rate for work in excess of 38 hours per week in accordance with clauses 10.2 and 11.1.

18.3 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 18.3.
- (c) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv) that any payment mentioned in clause 18.3(c)(iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule F—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule F—

Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 18.3 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

- (d) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 18.3 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time to be paid for overtime covered by an agreement under clause 18.3 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph 18.3(e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 18.3 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the [Act](#), request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 18.3 will apply, including the requirement for separate written agreements under paragraph 18.3(b) for overtime that has been worked.

Note: If an employee makes a request under section 65 of the [Act](#) for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the [Act](#)).

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 18.3 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 18.3.

18.4 Penalty rates

- (a) An employer must pay an employee penalty rates for all hours worked at the direction of the employer as follows:

	Full-time and part-time employees	Casual employees
	% of minimum hourly rate	% of minimum hourly rate
Monday to Saturday—before 6 am	125	150
Monday to Saturday—after 10 pm	125	150
Sunday— any time of day	150	175
Public holiday—any time of day	150	175

NOTE 1: The penalty rates for casual employees have been calculated by adding the casual loading specified in clause 11.1(b) to the penalty rates for full-time and part-time employees.

NOTE 2: See Schedule C—Summary of Hourly Rates of Pay for a summary of hourly rates including overtime and penalty rates.

- (b) The penalty rates in clause 18.4 are paid instead of the hourly rates in clause 14—Minimum rates or the overtime rates in clause 18.2.

18.5 Record keeping

For the purpose of compliance with clauses 18.2, 18.3 and 18.4, the employer must keep records of all hours worked by an employee:

- (a) in excess of 38 hours per week;
- (b) before 6:00 am or after 10:00 pm on any day Monday to Saturday; or
- (c) on a Sunday or public holiday.

18.6 Exemptions

The following award provisions will not apply to employees who have a contractual entitlement to an annual salary which exceeds the appropriate minimum annual wage prescribed in clause 14.1 by **25% or more**.

- (a) Clause 18.2—Payment for overtime;

- (b) Clause 18.3—Time off instead of payment for overtime;
- (c) Clause 18.4—Penalty rates; and
- (d) Clause 18.5—Record keeping.

8. By deleting the words “For employment involving the performance of professional duties except professional medical research duties, the following classification definitions apply:” appearing below the heading in Schedule A and inserting “An employee performing professional engineering duties, professional scientific duties, professional information technology duties or quality auditing must be classified in one of the following classifications provided that the employee is not employed in a wholly or principally managerial position.”

9. By deleting “Schedule C—Summary of Casual Hourly Rates of Pay” and inserting a new “Schedule C—Summary of Hourly Rates of Pay” as follows:

Schedule C—Summary of Hourly Rates of Pay

C.1 Full-time and part-time employees—ordinary, overtime and penalty rates

	Ordinary hours and overtime	Monday to Saturday – before 6.00 am and after 10.00 pm	Sundays and public holidays
	% of minimum hourly rate		
	100%	125%	150%
	\$	\$	\$
Level 1 Graduate professional—Pay point 1.1 (3 year degree)	28.34	35.43	42.51
Level 1 Graduate professional—Pay point 1.1 (4 or 5 year degree)	29.07	36.34	43.61
Level 1 Graduate professional—Pay point 1.2	29.55	36.94	44.33
Level 1 Graduate professional—Pay point 1.3	30.78	38.48	46.17
Level 1 Graduate professional—Pay point 1.4	32.34	40.43	48.51
Level 2 Experienced professional/quality auditor/experienced medical research employee	33.43	41.79	50.15
Level 3 Professional/senior (lead) quality auditor/experienced medical research employee	36.54	45.68	54.81

	Ordinary hours and overtime	Monday to Saturday – before 6.00 am and after 10.00 pm	Sundays and public holidays
	% of minimum hourly rate		
	100%	125%	150%
	\$	\$	\$
Level 4 Professional/experienced medical research employee	41.21	51.51	61.82
Level 5 Experienced medical research employee	49.65	62.06	74.48

C.2 Casual employees—ordinary, overtime and penalty rates

	Ordinary or overtime hours	Monday to Saturday – before 6.00 am and after 10.00 pm	Sundays and public holidays
	% of minimum hourly rate		
	125%	150%	175%
	\$	\$	\$
Level 1 Graduate professional—Pay point 1.1 (3 year degree)	35.43	42.51	49.60
Level 1 Graduate professional—Pay point 1.1 (4 or 5 year degree)	36.34	43.61	50.87
Level 1 Graduate professional—Pay point 1.2	36.94	44.33	51.71
Level 1 Graduate professional—Pay point 1.3	38.48	46.17	53.87
Level 1 Graduate professional—Pay point 1.4	40.43	48.51	56.60
Level 2 Experienced professional/quality auditor/experienced medical research employee	41.79	50.15	58.50
Level 3 Professional/senior (lead) quality auditor/experienced medical research employee	45.68	54.81	63.95
Level 4 Professional/experienced medical research employee	51.51	61.82	72.12
Level 5 Experienced medical research employee	62.06	74.48	86.89

10. By inserting Schedule F—Agreement for Time Off Instead of Payment for Overtime as follows:

Schedule F—Agreement for Time Off Instead of Payment for Overtime

Link to PDF copy of [Agreement for Time Off Instead of Payment for Overtime](#).

Name of employee: _____

Name of employer: _____

The employer and employee agree that the employee may take time off instead of being paid for the following amount of overtime that has been worked by the employee:

Date and time overtime started: ___/___/20___ am/pm

Date and time overtime ended: ___/___/20___ am/pm

Amount of overtime worked: _____ hours and _____ minutes

The employer and employee further agree that, if requested by the employee at any time, the employer must pay the employee for overtime covered by this agreement but not taken as time off. Payment must be made at the overtime rate applying to the overtime when worked and must be made in the next pay period following the request.

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

11. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation from XX Month 2023. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect in relation to a particular employee until the start of the employee’s first full pay period that starts on or after XX Month 2023.

ACTING PRESIDENT