



DETERMINATION

Fair Work Act 2009

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

Independent Schools Victoria

(AM2020/17)

EDUCATIONAL SERVICES (SCHOOLS) GENERAL STAFF AWARD 2010

[MA000076]

Educational services

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER BISSETT

MELBOURNE, 24 APRIL 2020

Variation to the Educational Services (Schools) General Staff Award 2010 Application to vary the Educational Services (Schools) General Staff Award 2010 – Schedule J – award varied.

A. Further to the decision [[2020] FWCFB 2108] issued by the Full Bench of the Fair Work Commission on 24 April 2020, the above award is varied as follows:

1. By inserting Schedule J as follows:

Schedule J

J.1 Preamble

The purpose of Schedule J is to assist employers and employees in managing and lessening the effect of the Covid-19 pandemic. It is intended to facilitate keeping employees in work in circumstances where the employer has experienced a significant reduction in income and/or a significant diminution in operation.

J.2 Schedule J operates from 24 April 2020 until 1 August 2020. The period of operation can be extended on application.

J.3 During the operation of Schedule J, the following provisions apply:

J.3.1 Direction to reduce hours

- (a) An employer may issue a notice of intention in writing to direct a full-time or part-time employee to reduce their ordinary hours by up to 25% of their ordinary hours. Subject to the terms of this clause, the direction will come into effect 5 days after the notice of intention was issued and will remain in force for a period of no more than 12 weeks.
- (b) Immediately after issuing a notice of intention to direct under clause J.3.1(a) an employer must:

 - (i) discuss the reason behind the direction with the employee or their representative
 - (ii) notify the Independent Education Union of its intention to implement the change(s) in ordinary working hours
- (c) Where an employer complies with clause J.3.1(b) and the discussions result in a different reduction than that contained in the notice of intention, the employer does not need to provide the 5 day notice period again.
- (d) Upon the expiration of a direction made under clause J.3.1(a), an employer can issue a further notice of intention to direct if the circumstances in clause J.1 necessitate.
- (e) An employee given a direction under clause J.3.1(a) will continue to accrue annual leave and personal/carer's leave, and any other applicable accruals under this Award, based on each full-time or part-time employee's ordinary hours of work prior to the reduction in hours occurring as a result of a direction given in accordance with clause J.3.1(a).
- (f) If an employee given a direction under clause J.3.1(a) takes a period of paid annual leave or personal/carer's leave, the payment for that leave will be based on the full-time or part-time employee's ordinary hours of work prior to the reduction in hours as a result of a direction given in accordance with clause J.3.1(a).
- (g) Where an employee typically receives payment during periods of leave without pay in non-term time pursuant to an arrangement under clause 11—Leave without pay during non-term weeks, the employee will be paid during non-term time at the reduced rate of pay. However, in accordance with clause J.3.1(f) above, this does not apply to a period of annual leave taken during non-term weeks in the relevant year. Upon the conclusion of the direction all such employees will receive payment for subsequent non-term periods at the annualised rate of pay applicable prior to the commencement of the direction.
- (h) Consistent with the temporary basis of this schedule a full-time employee directed to work part-time retains their substantive full-time position.

- (i) Any direction provided pursuant to this clause will not enliven clause 13 – Redundancy for any employee. In the event that the employer seeks to affect a larger reduction or to declare the role redundant, an employer will need to comply with clause 8 – Consultation and clause 13 – Redundancy. Any redundancy payment will be made at the employee’s substantive fraction prior to the issuing of the direction.
- (j) Notwithstanding any other provision in this award an employee whose employment is subject to a 25% reduction consistent with this clause cannot have their ordinary hours of work further reduced.

J.3.2 Operational flexibility

- (a) As directed by their employer, where necessary an employee will perform any duties that are within their skill and competency regardless of their classification under clause 14 and Schedule B – Classifications, provided that the duties are safe, and that the employee is licensed and qualified to perform them.
- (b) An employer must not reduce an employee’s pay if the employee is directed to perform duties in accordance with clause.
- (c) Where employees are directed by their employer to perform duties at a higher level than their substantive classification, the higher level classification rates of pay will apply.

J.3.3 Dispute resolution

Any dispute regarding the operation of this Schedule may be referred to the Fair Work Commission in accordance with Clause 9 – Dispute Resolution

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

B. This determination comes into effect on 24 April 2020. 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 24 April 2020.

PRESIDENT

Printed by authority of the Commonwealth Government Printer