



DETERMINATION

Fair Work Act 2009

s.158—Application to vary or revoke a modern award

Australian Workers' Union

(AM2020/104)

HORTICULTURE AWARD 2020

[MA000028]

Agricultural industry

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT CATANZARITI
COMMISSIONER RIORDAN

MELBOURNE, 1 FEBRUARY 2022

Horticulture Award 2020 – piece rates – minimum hourly rate.

A. Further to the decision [[2022] FWCFB 4] issued by the Fair Work Commission on 1 February 2022, the above award is varied as follows:

1. By deleting the sixth row of the table in clause 7.2, the reference to “clause 15.2(a) – Minimum wages—pieceworkers – An individual”.
2. By deleting clause 15.2 and inserting the following:

15.2 Piece rates

(a) In clause 15.2:

- (i) the **average productivity of a pieceworker competent at the piecework task** over a period is calculated by dividing the total output of the pieceworkers competent at the piecework task over that period by the total of the hours worked on the piecework task by the pieceworkers competent at the piecework task over that period (where output is measured in the same unit used to specify the piece rate, for example, a punnet, bucket or kilogram);
- (ii) **hourly rate for the pieceworker** means the minimum hourly rate for the pieceworker’s classification level plus for a casual pieceworker the **25%** casual loading under clause 11.2;

NOTE: The minimum hourly rate for a junior pieceworker is worked out under clause 15.3.

- (iii) **pieceworker** means an employee being paid a piece rate; and
- (iv) **pieceworker competent at the piecework task** means a pieceworker who has at least 76 hours' experience performing the task (for example, picking apples, picking strawberries or pruning grape vines).

NOTE: A pieceworker can use the employee records kept under clause 15.2(j) as evidence of their experience performing a piecework task.

- (b) The following clauses of this award do not apply to a pieceworker:
 - (i) Clause 13—Ordinary hours of work and rostering arrangements;
 - (ii) Clause 18.3(c)—Meal allowance; and
 - (iii) Clause 21—Overtime.
- (c) An employer may pay a full-time, part-time or casual employee a piece rate for performing a task.
- (d) The employer must fix the piece rate at a level such that a pieceworker working at the average productivity of a pieceworker competent at the piecework task will earn at least **15%** more per hour than the hourly rate for the pieceworker.

NOTE: A pieceworker is paid **200%** of the piece rate for work on a public holiday (see clause 27.3).

- (e) If a pieceworker does any work in addition to the task for which they are being paid a piece rate, the pieceworker must be paid for that additional work at the hourly rate for the pieceworker.
- (f) Despite any other provision of clause 15.2 a pieceworker must be paid for each day on which they work no less than the hourly rate for the pieceworker multiplied by the number of hours worked on that day.
- (g) Pieceworkers are paid allowances under clause 18—Allowances (other than meal allowance) in addition to the rates payable under clauses 15.2(d), (e) and (f).
- (h) Before a pieceworker begins a piecework task for an employer, the employer must give the pieceworker a written record signed by the employer (a **piecework record**) that must:
 - (i) state the date and time the piecework is to commence;
 - (ii) describe the task for which the piece rate will be paid;

(iii) state the amount of the piece rate;

(iv) include the following statement:

‘Under the *Horticulture Award 2020* a pieceworker must be paid for each day on which they work no less than their hourly rate under the award (including the **25%** casual loading for a casual pieceworker) multiplied by the number of hours worked on that day.’

and

(v) state the hourly rate for the pieceworker.

NOTE 1: A piecework record can cover more than one piecework task.

NOTE 2: An example of a piecework record is at Schedule I—Piecework Record. There is no requirement to use the form of record set out in Schedule I—Piecework Record.

- (i) If an employer proposes to change the piece rate for a piecework task the employer must first give the pieceworker a further piecework record including the new rate.
- (j) The employer must keep the following as employee records:
 - (i) a copy of each piecework record given to the pieceworker; and
 - (ii) a record of all hours worked by the pieceworker and the applicable piece rate at the time those hours were worked.
- (k) An employer must give a pieceworker or former pieceworker a copy of the employee record in clause 15.2(j)(ii) upon request.
- (l) For the purposes of the [NES](#) the base rate of pay and full rate of pay of a pieceworker are the same and are worked out as follows:
 - (i) By dividing the total amount payable to the pieceworker under this award during the relevant period by the total hours worked by the pieceworker during the relevant period.
 - (iii) If the pieceworker was continuously employed by the employer for a period of 12 months or more immediately before the rate of pay is to be worked out—the **relevant period** is the 12 months before the rate is to be worked out. If the pieceworker was continuously employed by the employer for a period of less than 12 months immediately before the rate of pay is to be worked out—the **relevant period** is that period.

3. By replacing the words “piecework rate” in clause 27.3 with the words “piece rate”.

4. By inserting Schedule I—Piecework record as follows:

SCHEDULE I—Piecework record

Link to PDF copy of Piecework record

Name of pieceworker: _____

Name of employer: _____

The piecework will commence on: ____/____/20____ at: _____ am/pm

Piecework Task 1

The piecework task is: _____

The pieceworker will be paid for this task the amount of \$_____ per _____

Piecework Task 2

The piecework task is: _____

The pieceworker will be paid for this task the amount of \$_____ per _____

Piecework Task 3

The piecework task is: _____

The pieceworker will be paid for this task the amount of \$_____ per _____

Under the *Horticulture Award 2020* a pieceworker must be paid for each day on which they work no less than their hourly rate under the award (including the 25% casual loading for a casual pieceworker) multiplied by the number of hours worked on that day.

The pieceworker's hourly rate under the award is \$_____ per hour.

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

B. This determination comes into operation on 28 April 2022. In accordance with s.166(5) 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 28 April 2022.

PRESIDENT

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