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Sent: Friday, 17 April 2020 3:00 PM
To:
Subject: FWC Update – JobKeeper disputes and shortened access period for enterprise bargaining

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Fair Work Commission
Australia's national workplace relations tribunal

COVID-19: JobKeeper disputes and shortened access period for enterprise bargaining

Response to Australian Government JobKeeper payment scheme

On 9 April 2020, the *Fair Work Act 2009* was temporarily amended to help employers who qualify for the JobKeeper payment to deal with the economic impact of the coronavirus (COVID-19) pandemic.

The Fair Work Commission has a role helping parties resolve JobKeeper disputes about:

- temporary and partial stand downs
- temporary changes to an employee's usual duties and locations of work
- agreements about altering an employee's days and times of work
- agreements about use of annual leave
- employee requests for secondary employment and training.

We have power to deal with the dispute by mediation or conciliation, making a recommendation or expressing an opinion, or arbitration.

We have established a new application form ([Form F13A](#)) for an employee, an employer, an employee organisation (eg a union), or an employer organisation to apply to the Commission to deal with a JobKeeper dispute.

We have published information about our role on a new [JobKeeper disputes](#) page on our website. Different government agencies are responsible for different parts of the JobKeeper payment scheme. To help people find the information they need, we have included common questions and links to relevant information on the websites of other agencies.

Government shortens access period for enterprise bargaining proposals to 1 day

On 16 April 2020, the Government approved a **change to the Fair Work Amendment Regulations 2020** that provides greater flexibility for rapidly responding to the urgent workplace challenges caused by the COVID-19 pandemic by reducing the time required for enterprise agreement variations to be agreed by an employer and their employees.

Previously, employers were required to give at least 7 days' notice of any proposed amendment before it could be put to a vote by workers. That time period – known as the access period – will now be reduced to a minimum of 1 day.

This change to the regulations applies to access periods that start on or after 17 April 2020 and will remain in force for at least the next 6 months, unless altered after a review that is scheduled to occur two months after the changes commenced.

Proposed changes to the Fair Work Commission Rules 2013 for declarations

The Commission sought feedback on **proposed changes to the Fair Work Commission Rules 2013** so that people no longer need to risk face-to-face contact during the COVID-19 pandemic in order to have statutory declarations signed in the presence of an authorised witness.

The Commission has considered the feedback received and is now making arrangements to give effect to the proposed changes. Under the new arrangements, parties will be able to lodge a signed statement rather than a statutory declaration.

Recent significant decisions

Modern awards

On 8 April 2020, a Full Bench of the Commission **varied 99 modern awards** to provide millions of award-covered workers with an entitlement to 2 weeks unpaid 'pandemic leave' and the flexibility to take annual leave at half pay. The variations will operate until 30 June 2020, unless extended.

Dispute under the Auscript Australasia Enterprise Agreement 2010

The Australian Municipal, Administrative, Clerical and Services Union (the ASU) filed a dispute alleging that Auscript Australasia P/L (Auscript) failed to consult in respect to employee redundancies and probable closure of site(s).

In a **decision issued on 6 April 2020**, the Commission outlined it was not satisfied Auscript gave genuine consideration to options other than redundancy. The Commission determined that Auscript did not consult its employees or the ASU as required by its Agreement. An order will be published separately.

Urgent applications

Health sector awards (AM2020/13)

The Commission convened a conference of interested parties on 14 April 2020. A **statement was published on 15 April** outlining the key issues arising from the conference.

On 16 April applications were filed in relation to the 9 Health sector awards. Each application seeks to vary **Schedule X – Additional measures during the COVID-19 pandemic** to provide for **paid** pandemic leave (instead of unpaid leave). The proposed paid leave term would apply to full-time, part-time and casual employees.

The applications also seek an additional special leave provision where an employee contracts COVID-19. This provision is also proposed to apply to casual employees. Information related to these matters is on the [Health sector awards – pandemic leave](#) page.

Legal Services Award 2020 (AM2020/15)

13 law firms have made a [joint application to vary the Legal Services Award](#) to insert a new **Schedule I – Award flexibility during the COVID-19 pandemic**. The proposed schedule mirrors the variation to the Clerks Award and is directed at providing flexibility in relation to:

- the range of duties employees can be required to perform
- the minimum engagement for a part-time and casual employees working from home
- the spread of ordinary hours of work for day workers working from home
- temporary reduction of ordinary hours by agreement; the taking of annual leave, and
- the notice period for a close-down.

The application has been listed for a telephone conference at 2pm on 20 April 2020.

Real Estate Industry Award 2020 (AM2020/14)

The Real Estate Employers Federation has made an [application to vary the Real Estate Award](#) to insert a new **Schedule I – Award flexibility during the COVID-19 pandemic**. The proposed schedule relates to commission-only arrangements.

The matter was listed for a telephone conference on 16 April 2020. A report back conference has been listed at 10am on 7 May 2020.

Find out more

Visit the [Coronavirus \(COVID-19\) updates & advice](#) page on our website for information about specific application types and any changes to our operations in response to COVID-19.

To find out more about measures taken to restrict gatherings and non-essential business, and support for businesses, please read the latest [Information note – Government responses to COVID-19 pandemic \(PDF\)](#).

17 April 2020

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