



The Fair Work Commission May 31st 2021

s.157-Variation of a modern award to meet the modern awards objective.

Award Flexibility - General Retail Industry Award 2020 (AM 2021 /7)

General Retail Industry Award 2020

(AM 000004)

Introduction

Master Grocers Australia (MGA/TMA) is a registered employer association, that participated in the recent Workplace Relations Industrial Reform Groups (Working Groups), with the Council of Small Business Organizations of Australia (COSBOA), arranged by the Minister for Industrial Relations, the Hon. Christian Porter, Attorney General, in 2020. During the meetings of the Reform Groups, it became apparent that there was a need to alleviate the distressed condition of some awards, including the General Retail Industry Award (the Retail Award).

There are several areas of the Retail award that MGA/TMA believes cause our members great concern, including clauses that relate to part- time employment. Those concerns prompted MGA/TMA to join with the Shop Distributive and Allied Employees Association (SDA) and the Australian Workers Union (AWU) to make a joint application to the Fair Work Commission, in order to alleviate a number of award clauses that have caused employers to hesitate about providing additional hours to their part- time employees.

There was ample time provided by the Fair Work Commission for representatives of the Applicants and the Respondents to contribute to the discussions that were held in relation to proposed variations and MGA/TMA and COSBOA were pleased to be part of those discussions.

Following the time being given to all parties to provide submissions on whether there was a need to make changes to the Retail award in respect of part-time employment, on 18th May 2021 the Full Bench of the Commission released a Statement. This Statement referred to the matter of Award flexibility, and in particular, part- time employment additional hours, in the Retail Award. The Draft Determination was released the following day.

We thank the FWC for the opportunity to comment briefly on the Draft Determination.

The FWC having concluded that, currently areas of the Retail Award relating to part time employment were uncertain and required variation, it has been decided by the FWC that changes should be made to the Retail Award. As previously stated, members of MGA/TMA have experienced difficulties in the past in their interpretation of the current part time employment clauses in the Retail Award due to its complexities. Therefore, the changes to the Retail Award, as proposed by the Commission, in the Draft Determination, are welcomed by MGA/TMA and COSBOA.

Background

The Australian economy has been seriously damaged due to the COVID-19 pandemic and the Retail industry is one that has been seriously affected. As a result of these adverse effects on many retailers and their employees, the Federal Government sought that the Fair Work Commission (FWC), might assist in alleviating some of the problems in considering the structure of the awards. MGA/TMA and COSBOA submitted that if certain terms and conditions in the Retail Award were clarified or amended, then employers would be able to provide more hours of work to part time employees and avoid the pitfalls of not paying their employees correctly. MGA/TMA and COSBOA appreciate the opportunity to comment on the proposed variations to the Retail Award proposed by the Fair Work Commission. Such amendments it is submitted will alleviate many complexities associated with the part time employment clauses in the Retail Award, that have caused hesitancy by employers in relation to offering additional part time hours of work and uncertainty in providing the correct wages.

Proposed amendments to part-time clauses in the General Retail Industry Award

MGA/TMA and COSBOA submit that the proposed changes to Clauses 10 and 15 of the Retail Award, which will provide clarity for employers and employees in respect of part time employment. In particular, the amendments to Clauses 10 and 15 refer to how hours of work may be increased and recorded which will provide a means of ensuring that both parties are fully aware of their mutual obligations in respect of such times worked and the recording and payment for such hours. It is noted that a simple and easy method of recording any proposed variations to hours of work will contribute to the avoidance of unintended underpayment of wages.

MGA/TMA Response to the Draft Determination

MGA/TMA and COSBOA support the proposed amendments to the Draft Determination. It is noted that the proposed amendments to the Retail award include deleting Clause 10 as currently contained in the Award and inserting a new clause 10 that provides for clarity on when work is to be performed and, also for changes to the regular pattern of work by agreement and changes to the regular pattern of work by the employee. Whilst the clauses provide for flexibility to the part time arrangements, all the necessary safeguards are included to protect the interests of both parties if changes are made to the original employment arrangements.

It is noted further that Clause 15.9 will be deleted and a new Clause 15.9 will allow for Clause 10 to provide comprehensively to roster arrangements for a part time employee.

Conclusion

MGA/TMA and COSBOA thank the Fair Work Commission for the opportunity to comment on the Draft determination in respect the Retail Award. The changes as proposed in the Draft Determination will provide the flexibility that is required to engage part time staff by providing more hours of work when they become available, at the ordinary rate of payment. The new arrangements will ensure more benefits for part-time employees and greater certainty for employers. Should the amendments as proposed be made to the Retail Award MGA/TMA and COSBOA are confident that many employers and employees will welcome the opportunity to have clarity in the award provisions that apply to part time employment.



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