



11 April 2019

Our Ref: 20140527

Your Ref: AM2016/15

BY EMAIL amod@fwc.gov.au

The Associate to his Honour Justice Ross
Fair Work Commission

ABN 76 008 556 595
140 Arthur Street
North Sydney NSW 2060
Locked Bag 938
North Sydney NSW 2059
DX 10541 North Sydney
t: 1300 565 846
f: +61 2 9954 5029
ablawyers.com.au

Dear Associate

AM2016/15 - PLAIN LANGUAGE - GENERAL RETAIL INDUSTRY AWARD

We act on behalf of Australian Business Industrial (**ABI**) and the NSW Business Chamber (**NSWBC**) with respect to the above proceedings and refer to the Statement of the Full Bench issued on 28 February 2019 (**Statement**). During the Hearing on 3 April 2019 to discuss matters raised by the SDA in respect of the Statement, we indicated we would provide further responses in relation to two matters, which are outlined below.

1. OVERTIME FOR PART TIME EMPLOYEES

1.1 In its Decision issued on 18 January 2019 ([2019] FWFCB 276), the Full Bench proposed to amend clause 24.2(a) as follows:

An employer must pay a ~~an~~ full-time employee for hours worked in excess of the ordinary hours of work or outside the span of hours (excluding shiftwork) or outside the roster conditions prescribed in clause 15—Ordinary hours of work at the overtime rate specified in column 2 of clause 24.2(e) ~~Table 10—Overtime rates.~~

1.2 ABI and NSWBC agree that the insertion of the words ‘full-time’ to the proposed clause 24.2 may result in a substantive change to the Award. The current Award clause 29.2(a) provides as follows:

Hours worked in excess of the ordinary hours of work, outside the span of hours (excluding shiftwork), or roster conditions prescribed in clauses 27 and 28 are to be paid at time and a half for the first three hours and double time thereafter.

Relevantly, there is no specification that this applies to “full-time” employees.

1.3 Both the current Award and the Exposure Draft contain clauses which specify that provisions of the award relevant to full-time employees will apply to part-time employees (see clause 12.9 of the current Award and 10.3 of the Exposure Draft).

1.4 While clauses 10.8 and 24.(b) of the plain language Exposure Draft make it clear that a part-time employee will receive overtime rates for all time worked in excess of their agreed

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number of hours per week, the proposed change would mean that a part-time employee would not be entitled to payment at overtime rates in the same circumstances as a full-time employee, such as where those hours fell outside the span of hours

- 1.5 Despite this position, we do not support the wording proposed by the SDA and set out at [7] of the Statement, for the reason that it potentially introduces complexity with respect to an employee's ordinary hours of work for the purpose of the clause.
- 1.6 One solution would be to delete the words "full-time" from clause 24.2(a) and revert to the previous drafting. However, if the Full Bench is minded to include the words, the following alternative drafting is proposed:

(a) *An employer must pay a ~~an~~ full-time employee for hours worked in excess of the ordinary hours of work or outside the span of hours (excluding shiftwork) or outside the roster conditions prescribed in clause 15—Ordinary hours of work at the overtime rate specified in column 2 of clause 24.2(e) ~~Table 10—Overtime rates.~~*

(b) *An employer must pay a part-time employee for:*

(i) hours worked in excess of the agreed hours in clause 10.5 or as varied under clause 10.6;

(ii) hours worked in excess of 38 hours per week;

(iii) hours worked outside the span of hours (excluding shiftwork); or

(iv) outside the roster conditions prescribed in clause 15 - Ordinary hours of work;

at the overtime rate specified in column 2 of clause 24.2(e) ~~Table 10—Overtime rates.~~

2. CLAUSE 24.4

- 2.1 During the Hearing, the Full Bench also requested ABI and NSWBC consider an alternative form of words for the note accompanying clause 24.4(g). The clause itself provides as follows:

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 24.4 will apply for overtime that has been worked.

- 2.2 The proposed form of wording for the accompanying Note is as follows:

Clause 6A contains additional provisions to section 65 of the Act, relating to requests for flexible working arrangements. If an employee makes a request under section 65 for a change in working arrangements, the employer may only refuse that request on reasonable business grounds. See Section 65(5) of the Act.

- 2.3 ABI and NSWBC do not oppose this wording.

We thank the Commission for the opportunity to provide this correspondence. If you have any questions, please contact Kate Thomson on (02) 4989 1003.

Yours sincerely

Luis Izzo
Managing Director - Sydney Workplace
Australian Business Lawyers & Advisors
(02) 9458 7640
luis.izzo@ablawyers.com.au



Kate Thomson
Senior Associate
Australian Business Lawyers & Advisors
(02) 4989 1003
kate.thomson@ablawyers.com.au