



9 August 2018

Payment of Wages (AM2016/8)

1. This submission is made in response to the Full Bench Decision of 17 July 2018¹ (the July 2018 Decision) in respect of the Pharmacy Industry Award 2010.
2. The Decision expressed a provisional view that it is necessary to vary the 86 modern awards which are currently silent in respect of the time period within which termination payments are to be made, and as such it is necessary to insert a model 'payment on termination of employment' term.
3. The Decision called for submissions from any party wishing to contest the provisional view in respect of the model clause being inserted into any of the 86 modern awards.
4. In general, the Guild does not object to a model clause being inserted into the Pharmacy Industry Award 2010. Nevertheless submits it is also necessary to adapt the model clause in some cases depending upon the Award's provisions.
5. In the Statement issued on 14 October 2016² (the October 2016 Statement), the Full Bench expressed a *provisional* view in respect of this issue and proposed a default clause to be applied across all modern awards. The proposed clause was:

"Payment on termination of employment

The employer must pay all amounts that are due to an employee under this award and the NES when the employee's employment ends:

 - a) within 7 days after the employee's last day of employment; or
 - b) on the next normal pay day."
 6. The October 2016 provisional view³ was amended after submissions to state that all wages and other amounts due to the employee must be paid within 7 days after the day on which the employee's employment terminates.
 7. The Full Bench made comment at paragraph 36 of the July 2018 Decision⁴, that they were not prepared to adopt the position that the payment be made in line with the employee's normal pay cycle as originally proposed, as it would be inconceivable that some employees may have to wait for up to a month before they received their termination entitlements.

¹ [\[2018\] FWCFB 3566](#)

² [\[2016\] FWCFB 7455](#)

³ [\[2016\] FWCFB 7455](#)

⁴ [\[2018\] FWCFB 3566](#)

8. The Full Bench also stated at paragraph 46, that this decision “ensures that employees receive their termination payments in a timely way while providing employers with sufficient time to calculate and pay the sums due. Such a term would address the ‘impracticability’ arguments advanced on behalf of the employers. We accept that we may impose some ‘time costs’ associated with obtaining information about the hours worked in the prior pay period and may require ‘out of cycle’ EFT transactions in some instances, but the costs involved are unlikely to be substantial”⁵
9. This view was repeated in the July 2018 Decision by indicating that there will be some adverse impact on business in the areas of employment costs, increased regulatory burden and the performance of work.
10. The Guild submits that that although the costs to business may be minimal (as noted by the Bench at paragraph 100 of the December 2016 Decision⁶), the costs associated with this change will have an impact on the smaller businesses most of all, where administration support or dedicated payroll is not located in-house. The pharmacy industry has a large percentage of small businesses of which do not have dedicated payroll or bookkeeping staff but instead hire contractors for a set number of hours per week or fortnight to perform this function. The proposed clause has potential to add significant costs to such businesses, as they would need to engage the contractors specifically for this task, where the pay cycle is fortnightly.
11. The Guild submits that consideration should be given to altering the model clause for the Pharmacy Industry Award 2010. As indicated in the December 2016 Decision, a delay of one month was impracticable for the payment of wages, however the Guild submits that the Pharmacy Industry Award 2010 only contains provisions for weekly or fortnightly payments. As such if termination payments were to be paid in line with the employee’s normal pay cycle, they would not have to wait an unreasonable amount of time to receive the monies owed to them as it would be a normal pay cycle for the employee.

Regards

Scott Harris

Workplace Relations, National Manager

Pharmacy Guild of Australia

⁵[\[2016\] FWCFB 8463](#)

⁶[\[2016\] FWCFB 8463](#)