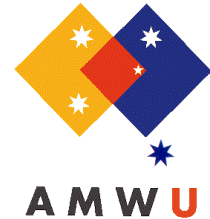


13 November 2014

By email: amod@fwc.gov.au



His Honour Justice Ross President
Fair Work Australia
Level 4, 11 Exhibition Street, Melbourne 3000

Your Honour,

Re: AM2014/300 and 301 – Award flexibility and Public holidays

We refer to the above and the Statement issued by the Commission on 6 November 2014. The AMWU seeks to vary to several awards in relation to payment for the Christmas Day public holiday.

Currently under some circumstances when the holiday falls on a weekend it can be substituted so that 25 December is not considered a public holiday. As such, workers that perform work on the 25 of December itself may receive no penalty rate at all.

This matter was raised in the 2012 review by the ACTU, along with the AMWU and other unions, however the bench did not express a concluded view on the matter stating:

*[93] It is also relevant to observe that Christmas Day will not fall on a weekend until December 2016, being a Sunday in that year. This will be some years after the Commission has conducted the more comprehensive 4 yearly review of all modern awards. In such circumstances it is unnecessary for us to express a concluded view on this aspect of the ACTU's claim. **The matter can be reconsidered in the context of the 4 yearly review.**¹*

Provisions for an additional 50% loading already exist in nine other awards (full clauses listed in Appendix 1), and the merit arguments of the proposal were expressed in the 1995 AIRC full bench public holidays test case.

The AMWU seeks to insert an equivalent clause to those in existing award into the following awards:

Awards to vary	Award Code
Food, Beverage and Tobacco Manufacturing Award 2010	MA000073
Graphic Arts, Printing and Publishing Award 2010	MA000026
Manufacturing and Associated Industries and Occupations Award 2010	MA000010
Vehicle Manufacturing, Repair, Services and Retail Award 2010	MA000089

This is subject to discussions with other parties that may expand the number of awards in the application.

Josh Moriarty
Acting Research Coordinator

¹ [2013] FWCFB 2168 (emphasis ours)

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Appendix 1 – List of current *Christmas Day Loading* clauses

Animal Care and Veterinary Services Award 2010

- 29.2 (h)** *When Christmas day falls on a Saturday or Sunday:*
(i) *Permanent full-time and part-time associates required to work on 25 December will receive the Saturday or Sunday rate (as appropriate) plus a loading of 50% (of the ordinary time rate) and be entitled to the benefit of a substitute day.*

Hospitality General Award 2010

- 32.2 (c)** *An employee other than a casual working on Christmas Day when it falls on a weekend, and is not prescribed as a public holiday under the NES will be paid an additional loading of 50% of their applicable ordinary hourly rate for the hours worked on that day and will also be entitled to the benefit of a substitute day.*

Mannequins and Models Award 2010

- 27.3** *In the case of Christmas Day where substitution occurs, work on 25 December will attract an additional loading of half a normal day's wage for a full day's work in addition to the Saturday/Sunday rate and the employee will also be entitled to the benefits of the substituted public holiday.*

Registered and Licensed Clubs Award 2010

- 29.3 (c)** *An employee other than a casual working on Christmas Day when it falls on a weekend will be paid an additional loading of 50% of their ordinary time rate for the hours worked on that day and will also be entitled to the benefit of a substitute day.*

Restaurant Industry Award 2010

- 34.4 (d)** *An employee other than a casual working on Christmas Day when it falls on a weekend and it is not a prescribed public holiday must be paid an additional loading of 50% of their ordinary time rate for the hours worked on that day and will also be entitled to the benefit of a substitute day.*

Road Transport and Distribution Award 2010

- 28.2 (a)** *If Christmas Day falls on a Saturday or Sunday and by force of the NES another day is observed as a public holiday, a full-time or part-time employee who is regularly rostered to work ordinary hours on a Saturday or Sunday will be paid a loading of half a normal day's wage for a full day's work in addition to the Saturday/Sunday rate for all ordinary hours worked on 25 December with a minimum of four hours pay. Such employee will also be entitled to the benefit of the substituted public holiday.*

Textile, Clothing, Footwear and Associated Industries Award 2010

43.2 (b) *If Christmas Day falls on a Saturday or Sunday and by force of the NES another day is observed as a public holiday, a full-time worker who is regularly rostered to work ordinary hours on a Saturday or Sunday will be paid a loading of half a normal day's wage for a full day's work in addition to the Saturday/Sunday rate for all ordinary hours worked on 25 December with a minimum of four hours pay. Such an employee will also be entitled to the benefit of the substituted public holiday.*

Timber Award 2010

36.5 (d) *Christmas Day loading*

If employees are rostered to work on a Saturday or Sunday that is a Christmas Day and are required to work, the employee will receive the normal Saturday or Sunday rate plus a loading of one-half of a normal day's wages for the full day's work and be entitled to the substitute day.

Waste Management Award 2010

32.1 *If Christmas Day falls on a Saturday or Sunday and by force of the NES another day is observed as a public holiday, a full-time worker who is regularly rostered to work ordinary hours on a Saturday or Sunday will be paid a loading of 50% of the relevant minimum wage calculated hourly in addition to the Saturday/Sunday rate for all ordinary hours worked on 25 December with a minimum of four hours pay. Such employee will also be entitled to the benefit of the substituted public holiday.*