



Alleged NES Inconsistencies Hair and Beauty Industry Award 2010

Submissions in Reply

20 February 2015

1. In its Statement dated 23 December 2014¹, the Fair Work Commission (FWC) directed parties to lodge submissions in reply in relation to the Alleged NES Inconsistencies matter.
2. Please note the NRA acts for the Hair and Beauty Industry Association in this matter.
3. These submissions relate to the Hair and Beauty Industry Award 2010, and the issue raised by the Fair Work Ombudsman (FWO) regarding clause 34.2(b) of that award.
4. In their Research Paper dated 4 April 2014, the FWO identifies clause 34.2(b) as being problematic, stating:

This clause is arguably more favourable than the NES entitlement as the employee is 'allowed by right' to an absence of a minimum of 48 hours. However, the use of the word 'minimum' implies that an employer can require an employee to be absent for a minimum of 48 hours (rather than it being at the employee's election)

5. The NRA notes that submissions on this matter have previously been made by the Shop, Distributive and Allied Employees' Association (SDA), and Australian Business Industrial and the NSW Business Chamber.

Proposed clause

6. The NRA and SDA have held discussions on the clause proposed by the SDA, and have come to an agreed position on the wording of a possible replacement clause, as follows:

34. Personal/carer's leave and compassionate leave

34.1 Personal/carer's leave and compassionate leave are provided for in the NES.

34.2 Casual employees

(a) Casual employees are entitled to unpaid personal/carer's leave. Casual employees are entitled to be unavailable for work or to leave work to care for a person who is sick and requires care and support or who requires care due to an emergency; and

(b) Casual employees are entitled to unpaid compassionate leave when a member of their immediate family or a member their household:

(i) contracts or develops a serious personal illness that poses a serious threat to his or her life; or

(ii) sustains a personal injury that that poses a serious threat to his or her life; or

(iii) dies.

¹ [2014] FWCFB 9412

(c) Such leave is unpaid. Two days' absence is allowed by right on each particular permissible occasion, with additional absence by agreement.

7. The NRA submits that the above clause rectifies the issue identified by the FWO, while reflecting the provisions contained within the NES. Further, the proposed clause meets the requirements of the modern awards objective as contained in section 134(1) of the *Fair Work Act 2009*.

THE END.