



DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—Casual employment and Part-time employment

(AM2014/196 and AM2014/197)

RESTAURANT INDUSTRY AWARD 2010

[MA000119]

Restaurant industry

VICE PRESIDENT HATCHER

SENIOR DEPUTY PRESIDENT HAMBERGER

DEPUTY PRESIDENT KOVACIC

DEPUTY PRESIDENT BULL

SYDNEY, 12 DECEMBER 2017

4 yearly review of modern awards – Part-time employment and Casual employment – Restaurant Industry Award 2010.

A. Further to the decision issued on 5 July 2017 in AM2014/196 and AM2014/197 ([\[2017\] FWCFB 3541](#)), it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009* that the *Restaurant Industry Award 2010* be varied as follows:

1. By deleting clause 12 and insert the following:

12. Part-time employment

12.1 An employer may employ part-time employees in any classification in this award.

12.2 A part-time employee is an employee who is employed in a classification in **Schedule B—Classification Structure and Definitions** and who:

- (a) is engaged to work at least 8 and less than 38 ordinary hours per week or, where the employer operates a roster, an average of at least 8 and fewer than 38 hours per week over the roster cycle;
- (b) has reasonably predictable hours of work; and
- (c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

- 12.3** At the time of engagement the employer and the part-time employee will agree in writing upon:
- (a) the number of hours of work which is guaranteed to be provided and paid to the employee each week or, where the employer operates a roster, the number of hours of work which is guaranteed to be provided and paid to the employee over the roster cycle (**the guaranteed hours**); and
 - (b) the days of the week, and the periods in each of those days, when the employee will available to work the guaranteed hours (**the employee's availability**).
- 12.4** Any change to the guaranteed hours may only occur with the written consent of the part-time employee.
- 12.5** The employer may roster the working of the employee's guaranteed hours and any additional hours in accordance with clause 31.6, provided that:
- (a) the employee may not be rostered for work for any hours outside the employee's availability; and
 - (b) the employee must have two days off each week.
- 12.6** Where a part-time employee has over a period of at least 12 months regularly worked a number of ordinary hours that is in excess of the guaranteed hours, the employee may request in writing that the employer agree to increase the guaranteed hours. If the employer agrees to the request, the new agreement concerning guaranteed hours will be recorded in writing. The employer may refuse the request only upon reasonable business grounds, and such refusal must be provided to the employee in writing and specify the grounds for refusal.
- 12.7** Where there has been a genuine and ongoing change in the employee's personal circumstances, the employee may alter the days and hours of the employee's availability on 14 days' written notice to the employer. If the alteration to the employee's availability cannot reasonably be accommodated by the employer within the guaranteed hours then, despite clause 12.4, those guaranteed hours will no longer apply and the employer and the employee will need to reach a new agreement in writing concerning guaranteed hours in accordance with clause 12.3(a).
- 12.8** All time worked in excess of:
- (a) 38 hours per week or, where the employee works in accordance with a roster, an average of 38 hours per week over the roster cycle; or
 - (b) the maximum hours limitations specified in clause 31.2; or
 - (c) the employee's rostered hours;
- will be overtime and paid for at the rates prescribed in **clause 33.2—Overtime rates**.

- 12.9** An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 13.
- 12.10** A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.
- 12.11** A part-time employee who immediately prior to 1 January 2018 has a written agreement with their employer for a regular pattern of hours is entitled to continue to be rostered in accordance with that agreement, unless that agreement is replaced by a new written agreement made in accordance with clause 12.3.

2. By deleting clause 13 and inserting the following:

13. Casual employment

- 13.1** A casual employee is an employee engaged as such and must be paid a casual loading of 25%. The casual loading is paid as compensation for annual leave, unpaid personal/carer's leave, notice of termination, redundancy benefits and the other entitlements of full-time or part-time employment.
- 13.2** A casual employee may be engaged to work:
 - (a) for a maximum of 12 hours per day or per shift;
 - (b) for a maximum of 38 hours per week or, where the casual employee works in accordance with a roster, an average of 38 hours per week over the roster cycle (which may not exceed 4 weeks).
- 13.3** On each occasion a casual employee is required to attend work they are entitled to a minimum payment for two hours' work.
- 13.4** A casual employee must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.
- 13.5** All time worked in excess of the hours prescribed in clause 13.2 will be overtime and paid for at the rates prescribed in **clause 33.2—Overtime rates**

3. By deleting clause 24.1(a) and inserting the following:

24.1 Meal allowance

- (a) An employee required to work overtime for more than two hours without being notified on the previous day or earlier that the employee will be so required to work will be supplied with a meal by the employer or paid a meal allowance of **\$12.71**.

4. By deleting clause 33.1 and inserting the following:

33.1 Requirement to pay overtime rates

- (a) Full-time employees shall be paid at overtime rates for any work done outside of the spread of hours or rostered hours set out in **clause 31—Hours of work**.
- (b) Part-time employees shall be paid at overtime rates in the circumstances specified in clause 12.8.
- (c) Casual employees shall be paid at overtime rates in the circumstances specified in clause 13.5.

B. This determination comes into operation from 1 January 2018. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period that starts on or after 1 January 2018.

VICE PRESIDENT

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