

MA000029 PR715726

The attached document replaces the document previously issued with the above code on 20 March 2020.

Duplicate clause 30.9(k) in item A.5 renumbered as clause 30.9(l).

Associate to Vice President Hatcher

Dated 25 June 2020



DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—Construction awards (AM2016/23)

JOINERY AND BUILDING TRADES AWARD 2010 [MA000029]

Building, metal and civil construction industries

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT HAMILTON
DEPUTY PRESIDENT GOSTENCNIK
COMMISSIONER HARPER-GREENWELL

SYDNEY, 20 MARCH 2020

4 yearly review of modern awards – Group 4 awards – Construction awards – Joinery and Building Trades Award 2010 – substantive matters

A. Further to the Full Bench decisions issued by the Fair Work Commission on 26 September 2018 [\[\[2018\] FWCFB 6019\]](#) and 18 December 2019 [\[\[2019\] FWCFB 8564\]](#), the above award is varied as follows:

1. By deleting clause 24.5(a)(ii) and inserting the following:
 - (ii) Where an employee is directed by their employer to proceed to a distant job and the employee complies with such direction, the employer will:
 - (A) pay the employee the greater of \$72.02 per day or an amount which fully reimburses the employee for all reasonable accommodation and meal expenses incurred; or
 - (B) provide the worker with accommodation and three adequate meals each day; or
 - (C) provide the worker with accommodation and reimburse the employee for all reasonable meal expenses; or
 - (D) where employees are required to live in camp, provide all board and accommodation free of charge.
2. By renumbering clauses 24.5(a)(iii) to (xiv) as clauses 24.5(a)(iv) to (xv).

3. By inserting a new clause 24.5(a)(iii) as follows:

- (iii) Any accommodation provided under clause 24.5(a)(ii) must be in accordance with contemporary living standards taking into account the particular circumstances of the location in which the work is performed and must include reasonable washing, laundry, recreational, kitchen, external lighting, communications and fire protection facilities.

4. By deleting renumbered clause 24.5(a)(xv) and inserting the following:

- (xv) For the purposes of clause 24.5(a), economy return fare means the total cost of the most common method of public transport between the employee's usual residence and the distant job and return.

5. By inserting clause 30.9 as follows:

30.9 Time off instead of payment for overtime

- (a) Clause 30.9 does not apply to casual employees.
- (b) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (c) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 30.9.
- (d) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

NOTE: An example of the type of agreement required by this clause is set out at Schedule I. There is no requirement to use the form of agreement set out at Schedule I. An agreement under clause 30.9 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

- (e) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 30.9 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (f) Time off must be taken:
- (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (g) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 30.9 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (h) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (f), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (i) The employer must keep a copy of any agreement under clause 30.9 as an employee record.
- (j) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (k) 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 30.9 will apply, including the requirement for separate written agreements under paragraph (c) for overtime that has been worked.

NOTE: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act).

- (l) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 30.9 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

NOTE: Under section 345(1) of the Act a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 30.9.

6. By deleting the words “at least 60%” appearing in clause 31.1(b) and inserting “a majority”.

7. By inserting Schedule I as follows:

Schedule I—Agreement for time off instead of payment for overtime

Name of employee: _____

Name of employer: _____

The employer and employee agree that the employee may take time off instead of being paid for the following amount of overtime that has been worked by the employee:

Date and time overtime started: ___/___/20___ am/pm

Date and time overtime ended: ___/___/20___ am/pm

Amount of overtime worked: _____ hours and _____ minutes

The employer and employee further agree that, if requested by the employee at any time, the employer must pay the employee for overtime covered by this agreement but not taken as time off. Payment must be made at the overtime rate applying to the overtime when worked and must be made in the next pay period following the request.

Signature of employee: _____

Date signed: ___/___/20___

Name of employer
representative: _____

Signature of employer
representative: _____

Date signed: ___/___/20___

8. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation from 1 July 2020. In accordance with s.165(3) of the Fair Work Act 2009 this determination does not take effect until the start of the first full pay period that starts on or after 1 July 2020.



VICE PRESIDENT

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