



DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—Annualised Wage Arrangements (AM2016/13)

RESTAURANT INDUSTRY AWARD 2020 [MA000119]

Restaurants

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
DEPUTY PRESIDENT SAUNDERS

SYDNEY, 5 MAY 2022

Review of annualised wage arrangement provisions in modern awards – Restaurant Industry Award 2020.

A. Further to the decision [[2022] FWCFB 68] issued by the Full Bench of the Fair Work Commission on 5 May 2022, the above award is varied as follows:

1. By deleting clause 20 and inserting the following:

20. Annualised wage arrangements

20.1 Annualised wage instead of award provisions

(a) An employer and a full-time employee may enter into a written agreement for the employee to be paid an annualised wage of an amount that is at least 25% more than the minimum wages prescribed in clause 18 multiplied by 52 for the work being performed in satisfaction, subject to clause 20.1(b), of any or all of the following provisions of the award:

- (i) clause 18—Minimum rates;
- (ii) clause 21.3—Split shift allowance;
- (iii) clause 23—Overtime;
- (iv) clause 24—Penalty rates; and
- (v) clause 25.3—Payment for annual leave.

- (b) The employee must not be required by the employer in any roster cycle to work in excess of:

 - (i) an average of 18 ordinary hours which would attract a penalty rate under clause 24.2(a) of this award per week, excluding any hours worked from 10.00pm to midnight; or
 - (ii) an average of 12 overtime hours per week in excess of ordinary hours

without being entitled to an amount in excess of the annualised wage in accordance with clause 20.1(c).
- (c) If in a roster cycle an employee works any hours in excess of either of the outer limit amounts specified in clause 20.1(b), such hours will not be covered by the annualised wage and must separately be paid for in accordance with the applicable provisions of this award.
- (d) Where a written agreement for an annualised wage arrangement is entered into, the agreement must specify:

 - (i) the annualised wage that is payable;
 - (ii) which of the provisions of this award will be satisfied by payment of the annualised wage;
 - (iii) the outer limit number of ordinary hours which would attract the payment of a penalty rate under the award and the outer limit number of overtime hours which the employee may be required to work in a roster cycle under clause 20.1(b) without being entitled to an amount in excess of the annualised wage in accordance with clause 20.1(c).
- (e) The employer must give the employee a copy of the agreement and keep the agreement as a time and wages record.
- (f) The agreement may be terminated:

 - (i) by the employer or the employee giving 12 months' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (ii) at any time, by written agreement between the employer and the individual employee.

20.2 Annualised wage not to disadvantage employees

- (a) The annualised wage must be no less than the amount the employee would have received under this award for the work performed over the year for which the wage

is paid (or if the employment ceases or the agreement terminates earlier over such lesser period as has been worked).

- (b) The employer must each 12 months from the commencement of the annualised wage arrangement or, within any 12 month period upon the termination of employment of the employee or termination of the agreement, calculate the amount of remuneration that would have been payable to the employee under the provisions of this award over the relevant period and compare it to the amount of the annualised wage actually paid to the employee. Where the latter amount is less than the former amount, the employer shall pay the employee the amount of the shortfall within 14 days.
- (c) The employer must keep a record of the starting and finishing times of work, and any unpaid breaks taken, of each employee subject to an annualised wage arrangement agreement for the purpose of undertaking the comparison required by clause 20.2(b). This record must be signed by the employee, or acknowledged as correct in writing (including by electronic means) by the employee, each pay period or roster cycle.

20.3 Base rate of pay for employees on annualised wage arrangements

For the purposes of the NES, the base rate of pay of an employee receiving an annualised wage under this clause comprises the portion of the annualised wage equivalent to the relevant rate of pay in clause 18 – Minimum rates and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.

2. By deleting the words “annualised salaried” and “annualised salary” wherever they appear in Schedule H—Part-day Public Holidays and inserting “annualised wage arrangement”.
 3. By updating the table of contents and cross-references accordingly.
- B. This determination comes into operation on 1 September 2022. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect in relation to a particular employee until the start of the employee’s first full pay period that starts on or after 1 September 2022.



VICE PRESIDENT

Printed by authority of the Commonwealth Government Printer