



DRAFT DETERMINATION

Fair Work Act 2009

s.157—FWC may vary etc. modern awards if necessary to achieve modern awards objective

Health sector awards—Pandemic Leave

(AM2020/13)

AGED CARE AWARD 2010

[MA000018]

Aged care industry

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT CLANCY
DEPUTY PRESIDENT DEAN
COMMISSIONER SPENCER
COMMISSIONER LEE

SYDNEY, XX MONTH 2020

Health sector awards – Pandemic Leave – Aged Care Award 2010.

A. Further to the Full Bench Decision [[2020] FWCFB XXXX] published on XX Month 2020, the above award is varied as follows:

1. By inserting Schedule Y as follows:

Schedule Y—Industry Specific Measures During the COVID-19 Pandemic

Y.1 Subject to clause Y.2.4, Schedule Y operates from 29 July 2020 until 29 October 2020. The period of operation can be extended on application.

Y.2 Paid pandemic leave

Y.2.1 Subject to clauses Y.2.2 to Y.2.9, an employee is entitled to take up to 2 weeks' paid pandemic leave on each occasion the employee is prevented from working (including working from home):

- (a) because the employee is required by government or medical authorities to self isolate or quarantine;
- (b) because the employee is required by their employer to self isolate or quarantine;
- (c) because the employee is required on the advice of a medical practitioner to self isolate or quarantine because they are displaying symptoms of COVID-19 or are

suspected to have come into contact with a person suspected of having contracted COVID-19;

- (d) because the employee is in isolation or quarantine while waiting for the results of a COVID-19 test; or
- (e) because of measures taken by government or medical authorities in response to the COVID-19 pandemic.

Y.2.2 Except where clause Y.2.1(b) applies, the employee must give their employer notice of the taking of leave under clause Y.2.1 and of the reason the employee requires the leave, as soon as practicable (which may be a time after the leave has started).

Y.2.3 Where an employee is required on the advice of a medical practitioner to self isolate pursuant to clause Y.2.1(c), an employee who has given their employer notice of taking leave under clause Y.2.1 must, if required by the employer, produce a medical certificate.

Y.2.4 Except where Y.2.1(b) or Y.2.3 apply, an employee who has given their employer notice of taking leave under clause Y.2.1 must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a reason given in clause Y.2.1.

Y.2.5 A period of leave under clause Y.2.1 must start before 29 October 2020, but may end after that date.

Y.2.6 An employee cannot take paid pandemic leave under clause Y.2.1 if the employee could instead take paid personal/carer's leave.

NOTE: Personal/carer's leave is provided for in the [NES](#). Section 97 of the Act sets out the circumstances in which an employee may take personal/carer's leave. An employee who is prevented from working for one of the reasons set out in Y.2.1 may not be entitled to take personal/carer's leave if they are not unfit for work because of a personal illness or injury.

Y.2.7 An employee cannot take paid pandemic leave under clause Y.2.1 if the employee becomes entitled to workers compensation benefits as a result of contracting COVID-19.

Y.2.8 An employee will not be entitled to paid pandemic leave unless they agree to undertake a COVID-19 test at the earliest opportunity.

Y.2.9 A casual employee is not entitled to leave under clause Y.2.1 unless engaged on a regular and systematic basis.

Y.2.10 Leave taken under clause Y.2.1 does not affect any other paid or unpaid leave entitlement of the employee and counts as service for the purposes of entitlements under this award and the [NES](#).

Y.2.11 For a full-time employee, leave taken under clause Y.2.1 shall be paid at the employee's base rate of pay for the employee's ordinary hours of work in the period of the leave.

NOTE: The base rate of pay has the meaning given in section 16 of the [Act](#).

Y.2.12 For a part-time employee, pay for leave taken under clause Y.2.1 will be the greater of:

- (a) their agreed ordinary hours of work under clause 10.3(b); or
- (b) the average of their weekly ordinary hours of work for the previous 6 weeks;

Y.2.13 For a casual employee, pay for leave taken under clause Y.2.1 shall be calculated on the average weekly pay received by the employee in the previous 6 weeks, or where the employee has been employed for less than 6 weeks, for the duration of their employment.

NOTE 1: A employee covered by this award who is entitled to the benefit of Schedule Y has a workplace right under section 341(1)(a) of the [Act](#).

NOTE 2: Under section 340(1) of the [Act](#), an employer must not take adverse action against an employee because the employee has a workplace right, has or has not exercised a workplace right, or proposes or does not propose to exercise a workplace right, or to prevent the employee exercising a workplace right. Under section 342(1) of the [Act](#), an employer takes adverse action against an employee if the employer dismisses the employee, injures the employee in his or her employment, alters the position of the employee to the employee's prejudice, or discriminates between the employee and other employees of the employer.

NOTE 3: Under section 343(1) of the [Act](#), a person must not organise or take, or threaten to organise or take, action against another person with intent to coerce the person to exercise or not exercise, or propose to exercise or not exercise, a workplace right, or to exercise or propose to exercise a workplace right in a particular way.

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

B. This determination comes into operation on 29 July 2020. 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 29 July 2020.

VICE PRESIDENT