

FAIR WORK COMMISSION OF AUSTRALIA

DECISION

SHORT-TERM AWARD VARIATIONS



INTRODUCTION

Late last week the Fair Work Commission proposed to vary 103 of the federal Awards at its own initiative. Their proposed variations sought to interleave 'unpaid pandemic leave' and 'annual leave at half pay' clauses into those Awards. The variations were proposed as a result of the COVID-19 pandemic and its effects on workplaces and employees. Submissions from employer organisations were welcomed to be filed by 4pm Monday, 6 April 2020.

Upon a review of the provisional views of the Full Bench, and having rapidly sought a cross-section of member views on the proposal, the RMC stated its in principle support for the proposed amendments, and corresponded with Justice Ross accordingly. The RMC did request that any related decision of the Commission not preclude parties from applying for further amendments to Awards that may address the particular needs of the industry. This was agreed to and evidenced within the body of the decision.

On the 8th April, the Full Bench of the Commission handed down its decision on those proposed amendments that will be interleaved into most of the federal Awards, including those that may apply to member businesses:

- a. *Book Industry Award 2010*
- b. *Broadcasting, Recorded Entertainment and Cinemas Award 2010*
- c. *Business Equipment Award 2010*
- d. *Graphic Arts, Printing and Publishing Award 2010*
- e. *Journalists Published Media Award 2010*
- f. *Road Transport and Distribution Award 2010*

THE INCOMING SCHEDULE

The amending clauses will be interleaved as a Schedule in each of the affected Awards and will operate from 8th April 2020 until 30th June 2020. They include:

1. UNPAID PANDEMIC LEAVE

This clause will permit employees who are required by government or medical authorities to self-isolate, or otherwise be prevented from working due to measures taken by government in response to the COVID-19 pandemic to take two (2) weeks' 'unpaid pandemic leave'.

An affected employee must give their employer notice if taking such unpaid pandemic leave and is required to provide evidence to their employer of such a requirement if requested.

The employer and employee may agree that the employee may take more than two (2) weeks' unpaid pandemic leave.

Any period of unpaid pandemic leave' must start before 30th June 2020, but may end after that date.

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Leave taken under this clause does not affect any other paid or unpaid leave entitlement of the employee and counts as service for the purposes of entitlements under the Award and the National Employment Standards.

2. ANNUAL LEAVE AT HALF PAY

Under this clause, instead of an employee taking paid annual leave on full pay, the employee and their employer may agree to the employee taking twice as much leave on half pay. For example, an employee can request to take two weeks annual leave on the same pay they would have received for one week's annual leave (including annual leave loading if applicable).

Any period of annual leave at half pay taken under this clause must start before 30 June 2020, but may end after that date.

INTERACTION WITH JOBKEEPER LEGISLATION

Although at the time of writing this bulletin the ink has not fully dried on the JobKeeper legislation, these Award amendments should work concurrently with that legislation. The Minister for Industrial Relations confirmed that legislation introducing the proposed JobKeeper subsidy program will ensure that the payment will be made to qualifying employees where they are taking unpaid leave, including the pandemic leave proposed by the award variations.

The Minister also confirmed that the JobKeeper payments will be available to both full-time and part-time employees, as well as casual employees who have been with their eligible employer on a regular and systematic basis for at least the previous twelve (12) months.

WHAT DO I NEED TO DO?

RMC Members should consider the amendments to relevant Awards, determine a company view on 'annual leave at half pay', and what evidence will be required if an employee applies for 'unpaid pandemic leave', and determine how to address them in their workplaces and payroll systems.

After consideration of the amendments to the Awards, and should members have any questions, please feel free to contact Charles Watson, GM – IR, Policy & Governance.

CONTACT

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9th April 2020

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