

**Clerks Private Sector Award  
Annualised salary/wage arrangements  
New onerous obligations**

As part of the 4-yearly review of modern awards, a Full Bench of the Fair Work Commission (**FWC**) has finished its investigation of annualised wage/salary arrangements in a number of modern awards. **From 1 March 2020**, certain Modern Awards will contain 1 of 4 new 'Model Clauses' which will expand an employer's record-keeping, payment and reconciliation obligations with respect to employees who are paid an annual salary. These Model Clauses will replace the current annual salary provisions. The changes are aimed at ensuring that employees are less likely to be underpaid. They do however, place additional obligations on employers as set out below.

Employers who deal with the *Clerks – Private Sector Award 2010 (Clerks Award)*, like most VACC members who employ clerical and administrative employees, will have to comply with the new 'Model Clause 1' from 1 March 2020, (**as explained below**).

The *Vehicle Manufacturing, Repair Services and Retail Award 2010* did not have annualised salary provisions and therefore **remains unaffected** by the above decision of the Fair Work Commission.

**Current annualised salaries provision under the Clerks Award (clause 17)**

Retail Motor Industry employers may currently pay employees covered by the Clerks Award an annualised salary which in its totality compensates an employee for their weekly ordinary and overtime hours worked, various allowances and annual leave loading.

The new clause in the Clerks Award will be called an '**annualised wage**'.

As a result of the new annualised wage requirements prescribed by the Full Bench, employers must ensure that they advise an employee in writing of the annual wage payable and the provisions of the Clerks Award that are satisfied by the payment of the annualised wage.

The annualised wage must not be less than the amount of wages and allowances the employee would have received working their hours in accordance with their existing terms and conditions of employment under the Clerks Award and must be reviewed annually to ensure full compliance with the Clerks Award. Annualised wages are to be payable in equal sized and regular instalments.

**Requirement from 1 March 2020 - New Model Clause (Clerks Award)**

From 1 March 2020, in addition to the above requirements, employers will be required to **advise employees in writing** and **keep a record** of:

- the annualised wage payable
- the provisions of the Clerks Award covered by the annualised wage

- the method by which the annualised wage is calculated, including specifying each separate component and any overtime or penalty assumptions used in the calculation; and
- the outer limit number of ordinary hours which would attract payment of a penalty rate under the Clerks Award (for example working ordinary hours on a Saturday) and the outer limit number of overtime hours which the employee may be required to work in a pay period or roster cycle without being entitled to an amount in excess of the annualised wage.

Retail Motor Industry employers must ensure that any hours worked in excess of the stipulated outer limit hours are paid separately as additional hours, in accordance with the Clerks Award.

Employers must also calculate the amount of remuneration payable to the employee under the Clerks Award and compare it to the amount of annualised wage actually paid to the employee (**reconciliation**). Where employees have been paid less under the annualised wage arrangement than they would have received under the Clerks Award, employers must pay employees the shortfall within 14 days.

An employer also has an obligation to keep a record of start and finish times and any unpaid breaks taken in order to perform the reconciliation described above. The employee must sign or acknowledge this record as correct in writing **each pay period or roster cycle**.

### **What do members have to do?**

Members who use the new annualised wage arrangements for certain employees will need to consider and ensure that the annualised wages clause in contracts of employment are sufficiently precise and compliant with the new annualised wage clause.

VACC members who employ clerical and administrative employees must ensure that they re-confirm with their relevant employees in writing the annualised wage arrangements and ensure that these written documents are kept as employment records for 7 years. It is also important that accurate reconciliations are completed annually (from the commencement of the annualised wage) and any shortfalls identified and rectified promptly.

Administratively this may be quite burdensome for employers as employees will need to sign or at least acknowledge records of their start and finish times and unpaid breaks each pay period/cycle.

It is critical that employers develop a system that ensures acknowledgement is obtained accurately and efficiently each pay period. Electronic means are also an acceptable and efficient method to obtain this agreement.

### **Advice for Members**

The Full Bench decision has significantly increased the regulatory and administrative burden for employers. Members need to consider whether the benefit of paying an annualised salary for clerical staff is worth carrying these additional obligations. For further assistance please contact the Industrial Relations Department on 03 9829 1123.



**W J Chesterman**  
**Manager Industrial Relations**

**VACC**

Level 7 | 464 St Kilda Road | Melbourne Vic 3004

P: 03 9829 1123 | E: [ir@vacc.com.au](mailto:ir@vacc.com.au) | W: [vacc.com.au](http://vacc.com.au)