

COVID-19 – VARIATION TO THE CLERKS AWARD

On Saturday, 28 March 2020, the Fair Work Commission granted a variation to the Clerks Award that provides more flexibility to work at home, take leave and reduce hours. The variation, sought by the Ai Group and ACCI with the support of the ASU, inserts Schedule 1 into the Award in response to the crisis generated by COVID-19.

The variation to the award applies to about 1.56 million people or 14.3% of employees. Schedule 1 commenced on 28 March 2020 and will operate until 30 June 2020. It will take effect from the beginning of the employee's first full pay period that starts on or after 28 March 2020.

The variations include:

Operational flexibility

An employer may direct employees to perform any duties that are within their skill and competency regardless of their classification, provided that the duties are safe and the employee is licenced and qualified to perform them. The employer must not reduce the employee's pay if they perform these duties.

Part-time and casual employees working from home

If a part-time employee is working from home by agreement with their employer, the employer is required to roster them on for a minimum of 2 consecutive hours per shift.

If a casual employee is working from home by agreement with their employer, the employer is required to pay the employee a minimum of 2 hours work at the appropriate rate.

Span of ordinary hours

For employees working from home by agreement with their employer, where an employee requests and the employer agrees, the span of ordinary hours for day workers is between 6am and 11pm Monday to Friday and 7am until 12.30pm on Saturday.

Day workers are not shift workers for purpose of any penalties, loadings or allowances under the Award including for the purposes of clause 28.

Agreed temporary reduction in ordinary hours

An employer and the full-time and part-time employees may agree to temporarily reduce ordinary hours of work to no less than 75% of the hours they were working immediately prior to the reduction. The reduction may apply to the whole workplace or a section of the workplace.

At least 75% of the full-time and part-time employees must approve the agreement to temporarily reduce the ordinary hours of work.

The approval of the agreement is to be determined by a vote of employees, which in order to be valid, must comply with the following:

- If any of the employees are members of a union, the union is to be informed before the vote.
- Prior to the vote, the employer must provide the employees with contact details of the Australian Services Union so that they may seek advice if they wish.

- The employer must notify the Fair Work Commission at clerksaward@fwc.gov.au that there is to be a vote under Schedule 1 of the Award. The email must include the email addresses of each employee who will be participating in the vote. The Fair Work Commission will then email the employees the COVID-19 Information Sheet prior to the vote. The Fair Work Commission will list the name of the business on a Register which the Australian Services Union will be able to access while Schedule 1 is in operation.
- The vote may not be held for at least 24 hours after the three steps above have been carried out.

Accruals and entitlements during temporary reduction of ordinary hours

Where there has been an agreed reduction in hours, the employees will maintain their ordinary hourly rate but their weekly wage will be reduced in proportion with the reduction. The employees' accruals and entitlements will however continue to be based on the employees' ordinary hours of work prior to 28 March 2020.

Requests for training, professional development and study leave

If an employee's hours are temporarily reduced by agreement, the employer must not unreasonably refuse an employee's request to engage in reasonable secondary work and must consider all reasonable requests for training, professional development and/or study leave.

Employer and employee may still reach individual agreement

Regardless of whether there has been a vote to reduce a workplace's ordinary hours of work, an employer and individual employee may enter into an agreement in writing to reduce the employee's hours or move temporarily from full-time work to part-time work.

Annual leave

An employer and employee may agree for an employee to take up to twice as much leave at a proportionately reduced rate for all or part of any agreed or directed time away from work, including during a close-down.

An employer can direct an employee to take annual leave with at least one week's notice unless the employer and employee agree on a shorter period. The employer must consider the employee's personal circumstances and ensure the employee has at least two weeks leave remaining.

Close-down

An employer may direct an employee to take annual leave as part of a close-down with one week's notice unless the employer and employee agree on a shorter period. If any employees do not have sufficient annual leave to cover the close-down they may use their annual leave and take the remainder as unpaid leave. Any unpaid leave taken during a close-down will count as service for the purposes of accruing entitlements under the Award and NES.

For more information, please contact VACC Industrial Relations.



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