

BULLETIN

Industrial Relations



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Important IR Development: Vehicle Manufacturing, Repair, Services and Retail Award interim changes during coronavirus

VACC and the Motor Trades Associations, assisted by the Australian Chamber of Commerce and Industry (ACCI), applied to the Fair Work Commission (FWC) for the inclusion of award flexibility provisions which up to then, were only available to businesses that had qualified for the JobKeeper payment.

As part of the application process, the employer parties had to negotiate the proposed flexibility arrangements with the ACTU and unions.

On 11 May 2020 the FWC approved an interim award variation to the Vehicle Manufacturing, Repair, Services and Retail Award 2010, (VMRSR Award). The award variations apply to:

- businesses who are not eligible for JobKeeper, and
- to non-eligible employees (i.e. employees employed after 1 March 2020) employed by a business qualified to receive the JobKeeper payment
- only to businesses covered by the Repair, Services and Retail sector in Section 1 of the VMRSR Award, not Section 2 - vehicle manufacturing.

The FWC inserted a temporary new 'Schedule J' which is operative only between 11 May 2020 to 30 June 2020. However, this can be extended if it can be demonstrated that businesses in the vehicle industry continue to be adversely affected by the pandemic and are utilising Schedule J.

CHANGES TO THE AWARD

The new temporary Schedule J changes the following award provisions during the coronavirus outbreak:

- [employees' classifications and duties](#)
- [full-time and part-time employees' hours of work](#)
- [annual leave](#)
- [annual leave and close downs](#).

What business are covered by Schedule J of the VMRSR Award?

Repair, services and retail employees covered by in Section 1 of the VMRSR Award. The changes do not apply to employees engaged in vehicle manufacturing under sections 2 - 4 of the **VMRSR Award** (i.e. vehicle manufacturing employees, drafting, planning and technical employees and supervisory employees). This is because from 29 May 2020 these sections of the Vehicle Award will form part of the Manufacturing and Associated Industries and other Occupations Award.

Change in duties under Schedule J of the VMRSR Award

Under Schedule J, employees can direct employees to do any work regardless of their classification subject to the following conditions:

- The work allocated to employees are within their skills and competence and have all the appropriate licenses and qualifications to perform such tasks.
- When an employee works at a higher classification, the employer needs to pay them at the higher rate for the hours worked.
- Employees who do tasks below their usual classification are still paid at their usual pay rate.
- Any direction or request given by an employer under Schedule J needs to:
 - be in writing
 - be reasonable in the circumstances, and
 - have written confirmation that the employer consents to any dispute arising from a direction being settled through the FWC through arbitration in accordance with the dispute settlement procedure in the award and the Fair Work Act.
- An employee who is directed to do different duties returns to their usual duties if:
 - Schedule J stops operating;
 - the employer revokes the direction; or
 - otherwise agreed between an employer.

CHANGE IN FULL-TIME AND PART-TIME EMPLOYEES' HOURS OF WORK

Under Schedule J, employers can temporarily reduce a full-time and part-time employee's hour of work. This can only occur if the employee cannot be usefully employed for their normal days or hours because of business changes related to:

- coronavirus, or
- Government initiatives to slow the spread of coronavirus.

Reduction in full-time employees' hours of work

Employers can reduce a full-time employee's hours to an average of between 38 and 22.8 ordinary hours per week, (i.e. 5 days to 3 days). An employee needs to be paid for the hours they work at the ordinary hourly rate of pay on a pro rata basis.

Some employees cannot have their hours reduced below a minimum amount of fortnightly pay.

- Full-time employees classified at Levels 1 to 5 of the VMRSR Award – these employees need to work enough hours to be paid at least the gross amount of \$1115.70 a fortnight (not including allowances). The \$1115.70 is based on the minimum JobSeeker payment.
- Full-time Vehicle Industry Tradespersons at Level 6 or 7 of the VMRSR Award – these employees need to work enough hours to be paid at least the gross amount of \$1500.00 a fortnight (not including allowances) based on the JobKeeper payment.

Reduction in part time employees' hours of work

Employers can reduce a part-time employee's hours of work down to an average of between 75% and 100% of their usual agreed hours per week (or per week over their roster cycle, if a roster cycle applies).

This means, for example, if an employee usually works 10 hours per week, their employer can reduce their hours to 7.5 per week or an average of 7.5 per week over the roster cycle.

Part-time employees who previously earned more than a gross amount of \$836.78 a fortnight for their agreed hours need to work enough hours to keep getting this amount. They cannot have their hours reduced so that they get less than \$836.78 a fortnight (not including allowances). This amount is 75% of

the minimum full time job seeker payment, (\$1115.70).

Members please note:

- the minimum wage floor for part time employees does not apply where a part time employee was already earning less than the \$836.78 per fortnight, (i.e. there is no obligation to increase the part time employee's gross payment to meet the minimum floor).
- members should know that employers initially sought a reduction of 50% in part time hours by direction, with no minimum wage floor for part time employees (also no minimum wage floor where there was a reduction in full time hours). Unfortunately, the ACTU and Unions would not accept either a 50% reduction in part time hours or a variation to the VMRSR Award without minimum wage guarantees.

Consultation process to reduce an employee's hours

If an employer wants to reduce an employee's hours, they need to discuss the changes with them, making sure they:

- follow the VMRSR Award consultation rules about changes to rosters or hours of work, and
- provide as much notice as possible.

If an employee is a union member, the employer also needs to let the employee's union know that it intends to make the changes.

Leave entitlements while on reduced hours

If an employee receives less pay than normal under a direction, they can agree with their employer to increase their pay to their normal weekly pay by taking paid leave for the difference in hours. For example, an employee who usually works 10 hours a week and has had their hours reduced to 7.5 can agree with their employer to use 2.5 hours of annual leave each week so that they are still paid for 10 hours in total per week.

Members please note:

- An employee who is directed to work less hours still accrues annual leave, personal leave and any other leave based on their normal (pre-reduction) hours.
- If an employee with reduced hours takes annual leave or personal leave, they're paid for their ordinary hours for the time they take leave (their hours before the reduction).
- If an employee with reduced hours is made redundant, their redundancy pay is calculated on their ordinary hours (their hours before the reduction).

Secondary employment, training or professional development while on reduced hours

If an employee is directed to work temporarily reduced hours, they can request to take up:

- reasonable secondary employment
- training, or
- professional development.

Employers need to consider and cannot unreasonably refuse a request.

EMPLOYER REQUESTS TO TAKE ANNUAL LEAVE

Under Schedule J, an employer can request an employee to take annual leave if:

- the reasons for the request relate to the coronavirus pandemic or Government initiatives to slow the transmission of coronavirus;
- it helps the employer to prevent or minimise the loss of employment; and

- the employee will still have at least 2 weeks accrued annual leave left after taking the leave.

Employers need to consider the employee's personal circumstances when making a request. They also need to give at least 72 hours' notice.

Employees need to consider their employer's request to take leave and cannot unreasonably refuse it.

The period of annual leave needs to start before 30 June 2020 but can end after this date.

Employees can take up to twice as much annual leave at a proportionally reduced rate if their employer agrees. For example, if an employee agrees with their employer to take annual leave at half pay, the employee gets paid 1 week of annual leave (including annual leave loading if it applies) but takes 2 weeks off work.

An employee on leave at half pay accumulates annual leave and sick and carer's leave as if they were on leave at full pay.

Employers and employees can still agree for an employee to take leave at any other time.

CLOSE DOWN

Annual leave

Employers can make an employee take annual leave as part of a close down (also known as a shutdown) in certain circumstances. An employer can do this if:

- they give at least 1 week's written notice to employees (or shorter if agreed)
- the close down is because of the coronavirus outbreak or Government initiatives to slow its transmission.

Employers can make an employee use all their accrued annual leave in this circumstance (meaning they don't have to keep a balance of at least 2 weeks). The leave has to be taken between 11 May 2020 and 30 June 2020.

Employees with no accrued Annual leave during a close down

If an employee does not have enough annual leave to cover the period of the close down, the employer can require them to take unpaid leave for the rest of the close down. The unpaid leave can only be taken between 11 May 2020 and 30 June 2020.

Any unpaid leave taken by an employee during a close down counts as service for the purposes of the Vehicle Award and the National Employment Standards.

Secondary employment, training or professional development while on unpaid leave

If an employee is directed to take unpaid leave as a result of a close down, they can request to take up:

- reasonable secondary employment
- training, or
- professional development.

Employers need to consider and cannot unreasonably refuse a request.

EMPLOYEES COVERED BY AN ENTERPRISE AGREEMENT

The changes to the VMRSR Award do not apply to employees covered by an enterprise agreement.

VACC and the Motor Trades Associations took steps to amend the award as some members were reporting significant hardship associated with the COVID-19 pandemic but were unable to access the flexibility provided for under the JobKeeper legislation due to not meeting eligibility requirements.

At the time of writing only 4 Modern Awards has successfully obtained such variations.

It is hoped that the above temporary measures provide as much flexibility as possible to members who are also experiencing hardship associated with COVID-19 yet do not qualify for the JobKeeper regime.

Please contact the IR Department on 03 9829 1123 if you require further information on this award variation.

A handwritten signature in black ink, appearing to read 'W J Chesterman', with a stylized flourish at the end.

W J Chesterman

Manager

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