

Summary of Changes to Clerks Award

The Fair Work Commission (**FWC**) has granted temporary coronavirus-driven variation to the *Clerks – Private Sector Award 2010 (Clerks Award)* by adding Schedule I to the Award. This Schedule will operate during the COVID-19 Pandemic from 28 March 2020 until 30 June 2020. The period of operation can be extended on application to the FWC. However, the changes will not set any precedent in relation to award entitlements after the expiry date.

It is important to note that the changes will not take effect until the start of the employee's first full pay period that commences on or after the 28 March 2020.

The changes to the Clerks Award apply to some 1.56 million people, or 14.3% of employees, and include variations to:

- operational flexibility;
- part time employees working from home;
- casual employee working from home;
- ordinary hours of work for employees working from home;
- annual leave; and
- close down

A summary of the changes follows.

An updated copy of the Clerks Award is available here:

https://www.fwc.gov.au/documents/documents/modern_awards/award/ma000002/default.htm

Operational flexibility (I.2.1 of the Clerks Award)

Where necessary an employer may now direct an employee to perform any duties that are within their skill and competency regardless of their classification under clause 15 and Schedule B to the Clerks Award.

However, an employer may not reduce an employee's pay e.g. in circumstances where an employee is directed to perform duties at a lower pay grade to their current pay grade.

Part time employees working from home (I.2.2 of the Clerks Award)

Where a part time employee and employer have agreed for the employee to work from home, the employer must roster an employee for a minimum of 2 consecutive hours on any shift. The previous requirement was for a minimum of 3 consecutive hours.

Casual employee working from home (I.2.3 of the Clerks Award)

Where a casual employee and employer have agreed for the employee to work from home, a minimum payment of 2 hours' work at the appropriate rate is required – in place of the 3 hour's that was previously required by the Clerks Award.

Ordinary hours of work for employees working from home (I.2.4 of the Clerks Award)

Where a working from home arrangement is in place, and the employee requests and the employer agrees, the spread of ordinary hours of work can be, for day workers, between:

- 6am – 11pm, Monday to Friday (previously 7am to 7pm); and
- 7am – 12.30pm, Saturday (no change).

The spread of hours can no longer be altered, and day workers are not entitled to any penalties, loadings or allowances associated with shiftworkers, including under clause 28 of the Clerks Award.

Agreed temporary reduction in ordinary hours (I.2.5 of the Clerks Award)

Full time and part time employees in a workplace/section of a workplace and the employer may now agree to temporarily reduce ordinary hours of work as long as:

- 75% of the employees in the workplace/section of a workplace approve the reduction by a prescribed vote as set out at I.2.5(h) of the Clerks Award (which involves informing the ASU and FWC, and strict timeframes); and
- for full time employees, their hours are not reduced to fewer than 75% of the hours applicable to the employee immediately prior to the reduction in hours; or
- for full time employees, their hours are not reduced to fewer than 75% of the agreed hours immediately prior to the reduction in hours.

In these circumstances an:

- Employee's ordinary hourly rate must be retained. However, the employer can reduce the employee's weekly wage by the same proportion.
- Employer cannot unreasonably refuse an employee's request to engage in reasonable secondary employment.
- Employer must consider all reasonable request for training, professional development and/or study leave.

In addition, an individual employee and employer can agree to reduce the employee's hours or to move the employee temporarily from full-time to part-time hours of work, with a commensurate reduction in the minimum weekly wage.

While Schedule I is in operation, all relevant accruals and all entitlements on termination of employment will continue to be based on each employee's weekly ordinary hours of work prior to the commencement of Schedule I.

Annual leave (I.2.6 of the Clerks Award)

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

An employer may also now direct an employee to take any annual leave that has accrued, subject to considering the employee's personal circumstances, by giving at least one week's notice (or any

shorter period of notice that may be agreed) – as long as the direction will not result in the employee having less than 2 weeks of accrued annual leave remaining.

Close down (1.2.7 of the Clerks Award)

An employer can now require an employee to take annual leave as part of a close-down of its operations by giving one week of notice or any shorter period of notice agreed between the employer and employee (the previous notice period under the Clerks Award was 4 weeks).

Where the employee has not accrued sufficient notice for the close-down or part of the close-down, the employee must be given unpaid leave for the relevant period. An employee placed on unpaid leave is entitled to count the unpaid leave as continuous service for the purposes of Clerks Award and NES entitlements.

This new clause does not permit an employer to require an employee to take leave for a period beyond the period of operation of Schedule I.