

Summary of Changes to Restaurant Award

The Fair Work Commission (**FWC**) has granted temporary coronavirus-driven variation to the *Restaurant Industry Award 2010* (**Restaurant Award**) by adding Schedule I to the Award. This Schedule will operate during the COVID-19 Pandemic from 31 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.

The changes were made in consideration of the impact on the restaurant industry, including that:

- “The restaurant and catering industry is currently materially impacted by COVID-19;
- Restaurants, cafes and food court outlets can no longer trade, save for the provision of takeaway and/or delivery services.
- [Employees] still attending work are adopting new work patterns to reduce the level of exposure to colleagues and clients.
- Some workplaces are closing to enable them to transition their business from a traditional restaurant model to a takeaway delivery business. These closures will necessitate placing employees on leave for a period, whilst the business explores transition to a new business model.
- The businesses have no choice in this matter, given the directives issued by the Federal Government and supported by State Government public health orders.”

An updated copy of the Restaurant Award is available here:

https://www.fwc.gov.au/documents/documents/modern_awards/award/ma000119/default.htm

Classifications and duties (I.2.1 of the Restaurant 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 provided the duties are safe and the employees have the correct qualifications.

In these circumstances, an employee is entitled to higher duties rates.

Hours of Work (I.2.2 of the Restaurant Award)

An employer now has the right direct:

- a full-time employee to work an average of between 22.8 and 38 ordinary hours per week; or
- a part time employee to work an average of between 60% and 100% of their guaranteed hours per week, or an average of between 60% and 100% of the guaranteed hours per week over the roster cycle.

Before an employer can direct an employee in this way, the employer must:

- consult with the affected employee/s in accordance with the consultation provisions (clause 8A of the Restaurant Award) about changes to rosters or hours of work and provide as much notice as practicable; and
- if the employee is a United Workers Union member, notify the Union of its intention to implement these arrangements.

It is important to note that when an employee takes a period of annual or personal leave, they will continue to accrue annual leave and personal leave, and any other applicable accruals under the Restaurant Award, based on each full-time or part-time employee's ordinary hours of work prior to the commencement of Schedule L.

Annual leave (1.2.3 of the Restaurant Award)

An employer is now able to, subject to considering an employees' personal circumstances, direct the employee to take annual leave with 24 hours' notice.

In addition, an employee and employer can agree to take twice as much annual leave at half pay for all or part of any period of annual leave.

Close down (1.2.4 of the Restaurant Award of the Restaurant 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 Restaurant 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 Restaurant 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 L.

Dispute resolution (1.2.5 of the Restaurant Award)

A dispute regarding the operation of Schedule L may be referred to the Fair Work Commission in accordance with Clause 9 - Dispute Resolution of the Restaurant Award.