



## LawTalk Blog

# Changes to Modern Awards to deal with the COVID-19 pandemic

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Recently the unions and the Fair Work Commission have been working furiously to introduce and implement significant temporary changes to various Modern Awards in an attempt to provide employers and employees with increased flexibility to cope with the financial and industrial implications of the current, circumstances we are facing due to the Coronavirus outbreak.

These changes all take effect immediately and will remain in place up to 30 June 2020, although that period can be extended if necessary.

Which Awards do the changes affect:

- Clerks Private Sector Award
- Hospitality Industry (General) Award
- Restaurant Industry Award.

However, it is anticipated that similar changes will be introduced to other Modern Awards.

My employment is governed by a Modern Award, what are the changes I need to be aware of?

## Clerks Private Sector Award changes due to COVID-19

Employers can now:

1. Direct employees to perform alternative duties within their skill and competency. If the work is at a higher classification from that employees' usual duties, the employer is required to pay them the appropriate rate.
2. For casual and part time employees who are working from home- provide a minimum shift of 2 hours (reduced from the previous minimum of 3 hours).
3. For permanent (part time and full time) employees, if at least 75% of employees (or a group of employees if, for example, only some employees in the workplace are covered by this award) agree, reduce ordinary hours of work by up to 25%. A vote must be taken for this to occur and the employer is required to notify the Fair Work Commission.
4. Direct an employee to take annual leave upon one weeks' notice (reduced from the previous two weeks' notice). In addition, employees can take any accrued annual leave at half pay for twice the period.

In addition:

1. The range of "ordinary hours of work" for employees working from home is changed to: between 7 a.m. and 11p.m. on weekdays and 7a.m. and 12.30 p.m. on Saturdays.
2. An employer must not unreasonably refuse to allow an employee who is working reduced hours to engage in reasonable secondary employment.

The amendments do not prevent employers and individual employees agreeing to reduce hours of work or move from full time to part time (even if no vote is taken as outlined at 3 above). Any such agreement must be recorded in writing.

Any employees who are working reduced hours after a vote as outlined at point 3 above, are entitled to continue to accrue paid leave based on their previous, usual ordinary hours of work. Furthermore, if any employees working reduced hours are dismissed, their termination entitlements (such as payment in lieu of notice and accrued leave) are to be paid based upon their previous, usual hours of work.

Finally, if an employer closes down its business and operations before 30 June 2020 they can direct employees to take annual leave or, if the employee does not have sufficient leave to cover the whole period of the close down, unpaid leave.

## Hospitality Industry (General) Award changes due to COVID-19

The Hospitality Industry (General) Award covers employees who work in:

- hotels
- motels
- guest houses

- serviced apartments
- caravan parks
- hostels
- resorts
- holiday flats and units
- casinos
- function and convention facilities
- other tourist accommodation
- wine bars and taverns

In the following occupations:

- food and beverage attendants
- guest service employees (cleaners, laundry attendant, parking attendants)
- office and clerical staff
- security staff
- store persons
- maintenance staff
- gardeners
- leisure attendants
- casino / gaming staff.

The changes to this award are similar to those made to the Clerks Private Sector Award and include:

1. Employers can direct employees to perform alternative duties within their skill and competency. If the work is at a higher classification from that the employees' usual duties, the employer is required to pay them the appropriate rate.
2. Full time employees can be directed to work between 22.8 and 38 ordinary hours per week, paid on a pro-rata basis, with overtime applicable on a pro-rata basis.
3. Part time employees can be directed to work reduced hours up to 60% of their usual hours on an average per week over the roster period.
4. Employers can direct a permanent employee to take annual leave upon 24 hours' notice, subject to consideration of the employees' personal circumstances. In addition, employees can, with their employer's agreement, take any accrued annual leave at half pay for twice the period.

Employers are required to consult with employees before introducing such changes and notify any applicable union of the intention to introduce the changes.

Employees who work reduced hours under the amended award provisions will continue to accrue paid leave based on their previous, usual ordinary hours of work. Furthermore, if employees are directed to take leave, they will be paid based on their previous, usual hours of work.

## Restaurant Industry Award changes due to COVID-19

As the name suggests, the Restaurant Industry Award applies to the restaurant industry and covers staff in the following categories:

- food and beverage attendants
- kitchen attendants
- cooks, clerical staff
- store persons
- security staff and handy persons

The changes to the Restaurant Industry Award incorporate some of the same changes as made to the Hospitality Industry (General) Award, namely:

1. Employers can direct employees to perform alternative duties within their skill and competency. If the work is at a higher classification from that the employees' usual duties, the employer is required to pay them the appropriate rate.
2. Full time employees can be directed to work between 22.8 and 38 ordinary hours per week, paid on a pro-rata basis, with overtime applicable on a pro-rata basis.
3. Part time employees can be directed to work reduced hours up to 60% of their usual hours on an average per week over the roster period.
4. Employers can direct a permanent employee to take annual leave upon 24 hours' notice, subject to consideration of the employees' personal circumstances. In addition, employees can, with their employer's agreement, take any accrued annual leave at half pay for twice the period.

In addition, the changes to this award allow an employer to require permanent employees to take paid annual leave upon one weeks' notice (unless a lesser period is agreed) if closing the business. If the employee does not have sufficient paid annual leave for the whole close down period, they are entitled to take unpaid leave for the balance. In that case, any time on unpaid leave will count as 'service' for the purposes of calculating entitlements to annual leave, personal leave, notice, etc.

As detailed above, it is anticipated that, over coming weeks, similar changes will be made to many other Modern Awards. We will keep you updated in this regard.

Do you have any questions about Modern Awards or any other aspects of employment? Whether COVID-19 related or not, please contact [Margaret, Anthony or Carly](#) from [Andersons Workplace Law Team](#).

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