



New regulation to streamline enterprise agreement variations during the COVID-19 crisis

SUMMARY

A new regulation has been made by the Australian Government to assist employers and employees in varying enterprise agreements during the COVID-19 crisis.

Many enterprise agreements were reached in better times and contain provisions which are impeding businesses in responding to the COVID-19 crisis. Where changes to an enterprise agreement are agreed upon between the employer and the employees, the new regulation will enable the changes to be implemented without delay.

The new Regulation

Previously a copy of any proposed variation to an enterprise agreement needed to be circulated by the employer to the employees at least one week prior to a vote to approve the variation. The *Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020* shortens the period that the employees must have access to a copy of a proposed variation from one week to one day.

Importantly, employees are still required to have genuinely agreed to the proposed variation.

The Regulations operate for six months from 17 April 2020 and are automatically repealed at that time.

Enterprise agreement variations that may be agreed upon, include COVID-19 schedules for enterprise agreements

Enterprise agreement variations that may be agreed upon between employers and employees, may include, for example:

- Delaying or cancelling future wage increases that are scheduled to be paid under the terms of the agreement;
- Implementing less onerous consultation requirements for workplace changes;
- Implementing more flexible working hours arrangements;
- Removing restrictions on part-time employment;
- Implementing more flexible leave arrangements; and
- Giving the employer more rights to direct employees to take accrued leave.

Most awards have recently been varied to include a COVID-19 schedule to implement particular flexibilities aimed at preserving the ongoing viability of businesses and preserving jobs during the COVID-19 pandemic (e.g. Schedule I in the *Clerks – Private Sector Award 2010*). An employer and its employees covered by an enterprise agreement may wish to consider varying the agreement to include a COVID-19 schedule that overrides any inconsistent provisions in the agreement.

Any variation to an enterprise agreement needs to pass the Better Off Overall Test, which involves a comparison between the terms of the enterprise agreement and the terms of the relevant award/s, and meet various other requirements set out in the *Fair Work Act 2009*. Variations must also be approved by the Fair Work Commission (FWC).

Members considering varying an enterprise agreement are urged to contact the team of professional workplace relations advisers at Ai Group for advice and assistance.

FWC fast-track process for varying enterprise agreements during the COVID-19 crisis

The FWC has implemented a fast-track process for urgent applications to vary enterprise agreements to deal with the impacts of COVID-19. Applications can be filed by emailing COVID-19Applications@fwc.gov.au. Ai Group is able to provide whatever assistance Members may require.

Live Online Event: Variations to your Enterprise Agreement – Responding to COVID-19

Tuesday 21 April 11.30am-12.15pm AEST

In our live and free interactive webinar, we will cover:

- An explanation of the new regulation which has been introduced by the Government and what it means for you;
- How to vary your enterprise agreement;
- Key issues to consider in the context of varying your enterprise agreement, including:
 - Whether seeking a reduction, delay or removal of any impending wage increases may be appropriate;
 - Key changes you may be able to seek in relation to annual leave and other flexibilities to manage your operations effectively;
 - Options concerning different stand down arrangements which may be included in your agreement; and
 - Managing disputes and consultation under these terms; and
- How to manage the relationship with employees and/or union(s) in relation to these proposed changes.

Participants will again be able to submit questions directly to our panel in real time during the event.

Register [here!](#)

Do you require further advice?

For further information or assistance, please contact the Ai Group Workplace Advice Line on 1300 55 66 77 or email us at workplaceadvice@aigroup.com.au and an adviser will call you back.

For detailed advice about COVID-19 workplace relations issues, including enterprise agreement variations, the lawyers and advisers at [Ai Group](#) and [Ai Group Workplace Lawyers](#) are available to assist you.

Ai Group has set up a [special section on our website](#) to provide access to Ai Group advice and assistance relating to the COVID-19 pandemic.

A handwritten signature in black ink, appearing to read 'S. Smith'.

Stephen Smith
Head of National Workplace Relations Policy

FURTHER INFORMATION

For further information or assistance, please contact the Ai Group Workplace Advice Line on 1300 55 66 77