

3 July 2020

MA000002-04/2020

Clerks – Private Sector Award 2020

Extension of the COVID-19 Schedule

On 28 March 2020 a new schedule was added to the *Clerks – Private Sector Award* to assist businesses and employees deal with the effects of the COVID-19 pandemic. The schedule varied a number of provisions in the Award to introduce greater flexibility and allowed employers more discretion in certain areas. For further details, see [Compliance Advice MA000002-02/2020](#).

The schedule was set to expire on 30 June 2020 but the Fair Work Commission (FWC) has decided to extend the schedule, with some amendments, until 30 September 2020. The decision was made in response to an application by Ai Group and ACCI and despite strong opposition from the ACTU and the Australian Services Union.

From 1 July, the schedule includes the following elements:

- The schedule is entitled: Schedule I – Award Flexibility During the COVID-19 Pandemic.
- A direction or request given by an employer under the schedule must be given in writing and must not be unreasonable in all the circumstances.
- A direction, request or agreement under the schedule is only valid if the employee is advised in writing that the employer consents to any dispute arising about the matter being settled by the FWC through arbitration.

Spread of ordinary hours for day workers who are working from home

- Where an employee requests and the employer agrees, the spread of ordinary hours of work for day workers on Mondays to Fridays has been extended to between 6.00am and 10.00pm for employees working from home. Day workers are not shift workers for the purposes of any penalties, loadings or allowances under the Award.

Annual leave

- An employer may request an employee to take any annual leave that has accrued, subject to considering the employee's personal circumstances. An employee must consider and may not unreasonably refuse a request.
- The request must be made at least 72 hours before the annual leave is to commence and the request must not result in an employee having less than two weeks of accrued annual leave remaining.
- The period of annual leave must commence before 30 September 2020 but may end after this date.
- A request may only be made if both of the following are satisfied:
 - The request is for reasons attributable to the COVID-19 pandemic or to Government initiatives to slow the transmission of COVID-19; and
 - The request is made to assist the employer to avoid or minimise the loss of employment.
- An employer and an employee may agree to the employee taking up to twice as much annual leave at a proportionately reduced pay rate.

Temporary reduction in hours of work

For those employers who had already implemented a temporary reduction in hours under the provisions of the schedule prior to 30 June 2020, the reduction in hours may continue until 30 September 2020 subject to the requirements and safeguards set out in the schedule. In addition, an employee who has had their hours reduced pursuant to the schedule may request an employer to conduct a further vote to confirm the ongoing reduction in hours. Such a vote must be held within 7 days of any request.

What are the specific terms of the variations to the Award?

The specific terms of the Award variations are separately set out in the **attachment**.

What are the operative dates?

The variations come into effect from the first full pay period that starts on or after **1 July 2020**. They cease to have effect from **30 September 2020**.

Do you require further advice?

For information or assistance relating to the application of the Commission's decision, please contact Ai Group's Workplace Advice Line on 1300 55 66 77.



Stephen Smith
HEAD OF NATIONAL WORKPLACE RELATIONS POLICY



DETERMINATION

Fair Work Act 2009

s.157—FWC may vary etc. modern awards if necessary to achieve modern awards objective

Australian Industry Group, The; Australian Chamber of Commerce and Industry

(AM2020/30)

CLERKS—PRIVATE SECTOR AWARD 2020

[MA000002]

Clerical industry

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER BISSETT

MELBOURNE, 30 JUNE 2020

Section 157(3) of the Fair Work Act 2009 (Cth) – additional measures during COVID-19 pandemic – Schedule X—Additional measures during the COVID-19 pandemic – period of operation expires on 30 June 2020 – Clerks—Private Sector Award 2020 – variation of Schedule I.

A. Further to the decision issued in transcript by the Full Bench on 30 June 2020, the above award is varied as follows:

1. By deleting the words “until 30 June 2020” in clause I.1.1 in Schedule I—Award Flexibility During the COVID-19 Pandemic and inserting the words “until 30 September 2020”.

2. By inserting a new clause I.1.2 in Schedule I—Award Flexibility During the COVID-19 Pandemic as follows:

I.1.2 Any direction or request given by an employer under Schedule I must be given in writing and does not apply to the employee if the direction is unreasonable in all of the circumstances.

3. By inserting a new clause I.1.3 in Schedule I—Award Flexibility During the COVID-19 Pandemic as follows:

I.1.3 Any direction or request given by an employer under Schedule I or any agreement made pursuant to clause I.2.1, from 1 July 2020, is not valid unless the employee is advised in writing that the employer consents to a dispute about the direction, request or agreement being settled by the Fair Work Commission

through arbitration in accordance with clause 40.5— Dispute Resolution and section 739(4) of the Act.

4. By deleting clauses I.2.1—Operational flexibility, clause I.2.2—Part-time employees working from home and clause I.2.3—Casual employees working from home in Schedule I—Award Flexibility During the COVID-19 Pandemic.

5. By renumbering clause I.2.4—Ordinary hours of work for employees working from home as clause I.2.1 in Schedule I—Award Flexibility During the COVID-19 Pandemic.

6. By deleting the word “11.00 pm” in clause I.2.1(a) and replacing it with the word “10.00 pm” in Schedule I—Award Flexibility During the COVID-19 Pandemic.

7. By deleting the cross reference “I.2.5(e)” appearing in clause I.2.1(c) and inserting “I.2.1(a)” in Schedule I—Award Flexibility During the COVID-19 Pandemic.

8. By renumbering clause I.2.5—Agreed temporary reduction in ordinary hours as clause I.2.2 in Schedule I—Award Flexibility During the COVID-19 Pandemic.

9. By inserting new clauses I.2.2(i) to (k) in Schedule I—Award Flexibility During the COVID-19 Pandemic as follows:

- (i) This clause only applies to employers who implemented a temporary reduction in ordinary hours under Schedule I in this Award before 30 June 2020.
- (j) Any employee who has had their hours of work reduced pursuant to this Schedule I prior to 1 July 2020 may request an employer to conduct a further vote to confirm the ongoing reduction in hours pursuant to this Schedule I. Such a vote must be held within 7 days of any request. The vote must comply with the requirements in clause I.2.2(h).
- (k) If any vote requested under clause I.2.2(j) does not approve of the ongoing reduction of hours or is not held within 7 days of the making of the request, the operation of clause I.2.2 with respect to the relevant employees will cease to be effective 7 days from the date when the request was made.

10. By deleting clause I.2.6—Annual leave in Schedule I—Award Flexibility During the COVID-19 Pandemic and inserting a new clause I.2.3 as follows:

I.2.3 Annual leave

- (a) Subject to clause I.2.3(f) and despite clauses 32.6, 32.7 and 32.8 (Annual leave), an employer may, subject to considering an employee’s personal circumstances, request an employee to take paid annual leave, provided that the request does not result in the employee retaining a balance of less than 2 weeks annual leave after the leave is taken. Such a request must be made a minimum of 72 hours before the date on which the annual leave is to commence.

- (b) An employee must consider and may not unreasonably refuse a request to take annual leave made pursuant to clause I.2.3.
- (c) Clauses I.2.3(a) and (b) do not prevent an employer and an employee agreeing to the employee taking annual leave at any time.
- (d) Employers and individual employees 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.
- (e) The period of annual leave must commence before 30 September 2020 but may end after this date.
- (f) An employer can only request that an employee take annual leave pursuant to this clause if the request is made for reasons attributable to the COVID-19 pandemic or Government initiatives to slow the transmission of COVID-19 and to assist the employer to avoid or minimise the loss of employment.

11. By deleting clause I.2.7—Close down in in Schedule I—Award Flexibility During the COVID-19 Pandemic.

12. By updating the cross-references accordingly.

B. This determination comes into operation on 1 July 2020. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect in relation to a particular employee until the start of the employee's first full pay period that starts on or after 1 July 2020.

PRESIDENT

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