

22 May 2020

MA000003-01/2020

Fast Food Industry Award 2010

New schedule to assist businesses to deal with the COVID-19 pandemic

The Fair Work Commission (FWC) has added a new schedule to the *Fast Food Industry Award 2010* (Award) to assist employers and employees deal with the effects of the COVID-19 pandemic, in response to an application from Ai Group.

Following hearings on 5 May and 15 May, a Full Bench of the FWC handed down a decision on 19 May granting the new schedule.

Key features of the new schedule include:

- The schedule is entitled: **Schedule H – Award flexibility during the COVID-19 Pandemic.**
- The provisions of the schedule are aimed at preserving the ongoing viability of businesses and preserving jobs during the COVID-19 pandemic.
- The schedule operates up to 31 July 2020. This date can be extended by the FWC.
- The schedule does not apply to an employer that qualifies for the JobKeeper Scheme in respect of employees who are eligible for that scheme.
- The schedule varies part-time employment and annual leave provisions in the Award to implement a relatively high degree of flexibility.
- An employer and an employee may agree to flexible part-time employment arrangements with ordinary hours of work for the employee able to be flexed up and down within agreed parameters and within limits prescribed in the schedule, without the payment of overtime penalties. The schedule includes various conditions and safeguards.
- An employer may request that an employee takes any annual leave that has accrued, subject to considering the employee's personal circumstances, by giving at least 72 hours' notice. An employee is not permitted to unreasonably refuse. A request to take annual leave must relate to a period of leave that commences before 16 June 2020, but the leave may extend beyond this date. An employer may not request that an employee take a period of leave if it results in an employee having less than two weeks of accrued annual leave remaining.
- The flexible part-time employment and annual leave arrangements in the schedule can only be used for reasons attributable to the COVID-19 pandemic or to Government initiatives to slow the transmission of COVID-19, and if implemented to assist the employer to avoid or minimise the loss of employment.

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 is the operative date?

The variations come into effect from the first full pay period that starts on or after 19 May 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.

A handwritten signature in black ink, appearing to read 'S. Smith', written in a cursive style.

Stephen Smith
HEAD OF NATIONAL WORKPLACE RELATIONS POLICY



DETERMINATION

Fair Work Act 2009

s.157 – Application to vary modern awards if necessary to achieve modern awards objective

The Australian Industry Group
(AM2020/20)

FAST FOOD INDUSTRY AWARD 2010
[MA000003]

Fast food industry

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT MASSON
COMMISSIONER LEE

MELBOURNE, 19 MAY 2020

Application to vary the Fast Food Industry Award 2010.

A. Further to the decision [[2020] FWCFB 2316] issued by the Full Bench on 19 May 2020, the above award is varied as follows:

1. By inserting the following definition in clause 3.1 in alphabetical order:

Jobkeeper payment means a jobkeeper payment payable to an entity under section 14 of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*

2. By inserting Schedule H as follows:

Schedule H—Award flexibility during the COVID-19 Pandemic

H.1 The provisions of Schedule H are aimed at preserving the ongoing viability of businesses and preserving jobs during the COVID-19 pandemic and not to set any precedent in relation to award entitlements after its expiry date.

H.2 Schedule H operates from 19 May 2020 until 31 July 2020.

H.3 Schedule H applies to:

H.3.1 employers who do not qualify for Jobkeeper payments and their employees; and

H.3.2 employees who do not qualify for Jobkeeper payments and their employers in relation to those employees.

H.4 If an employer or employee becomes entitled to Jobkeeper payments for an employee, the terms of Schedule H will not apply in relation to that employer and that employee.

H.5 Schedule H is intended to assist in the continuing employment of employees.

H.6 During the operation of Schedule H, the following provisions apply.

H.7 Flexible part-time employment

While Schedule H is in operation and subject to written agreement between an employee and their employer in accordance with clause H.7.2, the following provisions will, in relation to that employee, operate instead of clause 12 of the award until 31 July 2020:

H.7.1 A part time employee is an employee who:

- (a) Works at least 8 but less than 38 hours per week;
- (b) Has reasonably predictable hours of work; and
- (c) Receives on a pro-rata basis, equivalent pay and conditions to those of full-time employees.

H.7.2 The employer and the part-time employee will agree in writing upon:

- (a) The number of hours of work which are guaranteed to be provided and paid to the employee each week or, where the employer operates a roster, the number of hours of work which are guaranteed to be provided and paid to the employee over the roster cycle (**the guaranteed minimum hours**); and
- (b) The days of the week, and the periods in each of those days, when the employee will be available to work the guaranteed minimum hours (**the employee's agreed availability**).

H.7.3 The employer and the employee must have genuinely made the agreement mentioned in clause H.7.2 without coercion or duress.

H.7.4 An agreement made under clause H.7.2 is not valid unless:

- (a) the employee is also advised in writing that the employer consents to a dispute about the operation of this clause H.7 being settled by the Fair Work Commission through arbitration in accordance with clause 9.5—Dispute Resolution and section 739(4) of the Act; and
- (b) the agreement is made for reasons attributable to the COVID-19 pandemic or Government initiatives to slow the transmission of COVID-19 and is necessary to assist the employer to avoid or minimise the loss of employment.

H.7.5 The employee must not be rostered to work less than 3 consecutive hours in any shift.

H.7.6 The guaranteed minimum hours shall not be less than 8 hours per week.

H.7.7 Any change to the guaranteed minimum hours may only occur with written consent of the part-time employee.

H.7.8 An employee may be offered ordinary hours in addition to the guaranteed minimum hours (**additional hours**) within the employee's agreed availability. The employee may agree to work those additional hours provided that:

- (a) The additional hours are offered in accordance with clause 25—Hours of work and clause 26—Overtime;
- (b) The employee may not be rostered for work outside of the employee's agreed availability;
- (c) agreed additional hours are paid at ordinary rates (including any applicable penalties payable for working ordinary hours at the relevant times);
- (d) An employee will accrue entitlements such as annual leave and personal/carer's leave on agreed additional hours worked;
- (e) The agreement to work additional hours may be withdrawn by a part-time employee with 14 days written notice;
- (f) The employee can refuse to work additional hours when offered on any occasion;
- (g) Additional hours worked in accordance with this clause are not overtime; and
- (h) Where there is a requirement to work overtime in accordance with clause 26, overtime rates will apply.

H.7.9 A part-time employee who immediately prior to the 19 May 2020 has a written agreement with their employer for a regular pattern of hours is entitled to continue to be rostered in accordance with that agreement, unless that agreement is replaced by a new written agreement made in accordance with clause H.7.2. If a part-time employee agrees to such a change, they shall, when Schedule H ceases operation, revert to the previously agreed regular pattern of hours.

H.7.10 If an employee is first employed as a part-time employee during the operation of Schedule H, their employment will be on a casual basis when Schedule H ceases operation unless:

- (a) the employer and employee agree that the employee will be engaged on a part-time basis beyond this period, and

- (b) the employer and employee reach agreement in writing on the matters identified in with clause 12.

H.8 Annual leave

H.8.1 Subject to clause H.8.3 and H.8.7 and despite clauses 28.6, 28.7 and 28.8 (Annual leave), an employer may, subject to considering an employee’s personal circumstances, request the employee in writing to take paid annual leave. Such a request must be made a minimum of 72 hours before the date on which the annual leave is to commence.

H.8.2 If the employer gives the employee a request to take paid annual leave, and complying with the request will not result in the employee having a balance of paid annual leave of fewer than 2 weeks, the employee must consider the request and must not unreasonably refuse the request.

H.8.3 An employer may only make a request under clause H.8.1 where it is reasonable in all the circumstances.

H.8.4 An employee is not required to take leave under clause H.8 unless the employee is advised in writing that the employer consents to a dispute about whether the employer’s request is reasonable in all the circumstances being settled by the Fair Work Commission through arbitration in accordance with clause 9.5—Dispute Resolution and section 739(4) of the Act.

H.8.5 A period of leave under clause H.8 must start before 16 June 2020 but may end after that date.

H.8.6 Clause H.8.1 does not prevent an employer and an employee from agreeing to the employee taking annual leave at any time.

H.8.7 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 is necessary to assist the employer to avoid or minimise the loss of employment.

H.9 Dispute resolution

Any dispute regarding the operation of Schedule H may be referred to the Fair Work Commission in accordance with clause 9—Dispute resolution.

NOTE 1: An employee covered by this award who is entitled to the benefit of the safeguards in clauses H.7 and H.8 has a workplace right under section 341(1)(a) of the [Act](#).

NOTE 2: Under section 340(1) of the [Act](#), an employer must not take adverse action against an employee because the employee has a workplace right, has or has not exercised a workplace right, or proposes or does not propose to exercise a workplace right, or to prevent the employee exercising a workplace right. Under section 342(1) of the [Act](#), an employer takes adverse action against an employee if the employer dismisses the employee, injures the employee in his or her

employment, alters the position of the employee to the employee's prejudice, or discriminates between the employee and other employees of the employer.

NOTE 3: Under section 343(1) of the [Act](#), a person must not organise or take, or threaten to organise or take, action against another person with intent to coerce the person to exercise or not exercise, or propose to exercise or not exercise, a workplace right, or to exercise or propose to exercise a workplace right in a particular way.

3. By updating the table of contents and cross-references accordingly.
- B. This determination comes into operation on 19 May 2020. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after 19 May 2020.

PRESIDENT

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