

1 July 2020

MA000119-03/2020

Restaurant Industry Award 2020

Extension of the COVID-19 Schedule

On 31 March 2020 a new schedule was added to the *Restaurant Industry Award 2020* 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 MA000119-02/2020](#).

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 27 September 2020.

From 1 July, the schedule includes the following elements:

- The schedule is entitled: Schedule I – Award flexibility during the COVID-19 Pandemic.
- The schedule does not apply to any employee employed by an employer that qualifies for the JobKeeper Scheme if the employee is an ‘eligible employee’ under the relevant rules.
- A direction made under the schedule is only valid if the employee is advised in writing that the employer consents to any dispute arising from the direction being settled in the Commission through arbitration.

Classifications and duties

- As directed by the employer, employees are required to perform all duties that are within their skill and competency regardless of their classification.

Working hours

- An employer may direct an employee to work less than their current ordinary hours of work per week provided:
 - A full-time employee may only be directed to work an average of between 22.8 and 38 ordinary hours per week with payment on a pro rata basis.
 - A part-time employee may only be directed 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.
 - Prior to issuing any such direction, the employer must consult with the affected employee(s) about changes to rosters or hours of work and provide as much notice as possible.
 - The employer must notify the United Workers Union of its intention to implement such arrangements if the affected employees are members of the United Workers Union.
 - The employee continues to accrue annual leave, personal/carer’s leave and other award entitlements on the basis of their ordinary hours prior to the commencement of the schedule.
 - If the employee takes a period of paid annual or personal/carer’s leave, the payment for that leave will be based on the employee’s ordinary hours of work prior to the commencement of the schedule.

- A direction to an employee to work reduced hours under the schedule is only valid if:
 - The employee cannot usefully be employed for the employee's normal days or hours during the period of the direction because of changes to business attributable to the COVID-19 Pandemic or to government initiatives to slow its transmission;
 - The direction is reasonable in the circumstances; and
 - The direction is given in writing.
- An employee given a direction to work reduced hours under the schedule may make a request to engage in reasonable secondary employment, training or professional development. Where such a request is made, an employer must consider and not unreasonably refuse, the request.

Annual leave

- An employer and an employee may agree to the employee taking twice as much annual leave at half the rate of pay for all or part of any period of annual leave.
- An employer may, subject to considering the employee's personal circumstances, make a written request for an employee to take annual leave, provided it is reasonable in the circumstances. Provided that complying with the request will not reduce the employee's annual leave balance below 2 weeks, the employee must consider, and not unreasonably refuse the request.
- The period of annual leave the employer requests to be taken under the schedule must start before 13 September 2020 but may end after that date.
- Employer requests to an employee to take annual leave under the schedule must be necessary to assist the employer to avoid or minimise the loss of employment and must be made either for reasons attributable to the COVID-19 Pandemic or government initiatives to slow its transmission.

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 **27 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

Restaurant and Catering Industry Association T/A Restaurant and Catering Industry Association

(AM2020/36)

RESTAURANT INDUSTRY AWARD 2020

[MA000119]

Restaurant industry

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER BISSETT

MELBOURNE, 29 JUNE 2020

Application to vary modern award to achieve the modern awards objective – Restaurant Industry Award 2020.

A. Further to the decision ([2020 FWCB 3401] issued by the Fair Work Commission on 29 June 2020, the above award is varied as follows:

1. By deleting Schedule I and inserting the following:

Schedule I—Award Flexibility During the COVID-19 Pandemic

- I.1** The provisions of Schedule I 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.
- I.2** Schedule I operates from 1 July 2020 until 27 September 2020. The period of operation can be extended on application.
- I.3** A direction under this Schedule ceases to have effect when it is withdrawn, revoked or replaced by the employer, or on 27 September 2020, whichever is earlier.
- I.4** Schedule I does not apply to any employee employed by an employer that qualifies for the JobKeeper Scheme if the employee is an ‘eligible employee’ as defined in s.9 of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*.

- I.5** If an employer or employee becomes entitled to Jobkeeper payments for an employee, the terms of Schedule I will not apply in relation to that employer and that employee.
- I.6** Any dispute regarding the operation of Schedule I may be referred to the Fair Work Commission in accordance with Clause 34 – Dispute resolution.
- I.7** Any direction given by an employer under this Schedule is not valid unless the employee is advised in writing that the employer consents to a dispute arising from the direction being settled by the Fair Work Commission through arbitration in accordance with Clause 34 – Dispute resolution and section 739(4) of the Act.
- I.8** During the operation of Schedule I, the following provisions apply:

I.8.1 Classifications and duties

- (a) As directed by their employer, where necessary employees will perform any duties that are within their skill and competency regardless of their classification under clause 14—Classifications and Schedule A—Classification Structure and Definitions, provided that the duties are safe and the employee is licensed and qualified to perform them.
- (b) Clause 18.8—Higher duties will apply to employees engaged on duties carrying a higher rate than their ordinary classification.

I.8.2 Hours of Work—Full-time and part-time employees

- (a) Subject to clause I.8.2(c), and despite clause 9—Full-time employment and requirements for notice in clause 15.3 (Rosters), an employer may direct a full-time employee to work an average of between 22.8 and 38 ordinary hours per week. The employee will be paid on a pro-rata basis. The arrangements for working ordinary hours in clause 15—Ordinary hours of work and rostering arrangements will apply on a pro-rata basis.
- (b) Subject to clause I.8.2(c), and despite clause 10.4(a) (Part-time employment), and the requirements for notice in clause 15.3 (Roster), an employer may direct 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.
- (c) A direction under clause I.8.2(a) or (b) may only be given if:
- (i) the employee cannot usefully be employed for the employee’s normal days or hours during the period of the direction because of changes to the business attributable to:
 - (A) the COVID-19 pandemic; or
 - (B) government initiatives to slow the transmission of COVID-19; and

- (ii) the direction is reasonable in all the circumstances; and
 - (iii) the direction is given in writing.
- (d) Prior to any employer issuing any direction under clause I.8.2(a) or (b) an employer must:
- (i) consult with the affected employee/s in accordance with clause 33 — Consultation about changes to rosters or hours of work and provide as much notice as practicable; and
 - (ii) if the affected employee/s are members of the United Workers Union, notify the United Workers Union of its intention to implement these arrangements.
- (e) An employee given a direction under clause I.8.2(a) or (b) will continue to accrue annual leave and personal leave, and any other applicable accruals under this Award, based on each full-time or part-time employee's ordinary hours of work prior to the commencement of Schedule I.
- (f) If an employee given a direction under clause I.8.2(a) or (b) takes a period of paid annual leave or personal leave, the payment for that leave will be based on the full-time or part-time employee's ordinary hours of work prior to the commencement of Schedule I.
- (g) An employee given a direction under clause I.8.2(a) or (b) may make any of the following requests, and the employer must consider the request and must not unreasonably refuse the request:
- (i) a request to engage in reasonable secondary employment;
 - (ii) a request for training; or
 - (iii) a request for professional development.

I.8.3 Annual leave

- (a) Subject to clause I.8.3(c) and I.8.3(f) and despite clauses 25.4, 25.5 and 25.6 (Annual leave), an employer may, subject to considering an employee's personal circumstances, request the employee in writing to take paid annual leave.
- (b) 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.

- (c) An employer may only make a request under clause I.8.3(a) where it is reasonable in all the circumstances.
- (d) A period of leave must start before 13 September 2020 but may end after that date.
- (e) 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.
- (f) During the period of operation of Schedule I, instead of taking paid annual leave at the rate of pay required by s.90 of the *Fair Work Act 2009 (Cth)*, an employer and an employee may agree to the employee taking twice as much annual leave at half the rate of pay for all or part of any period of annual leave.
- (g) Clause I.8.3(a) does not prevent an employer and an employee agreeing to the employee taking annual leave at any time.

2. By updating the table of contents and 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

Printed by authority of the Commonwealth Government Printer