

12 May 2020

MA000089-01/2020

Vehicle Manufacturing, Repair, Services and Retail Award 2010

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

The Fair Work Commission (FWC) has granted an application by Ai Group and the Motor Trades Associations to add a new schedule to the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* (Award) to assist employers and employees deal with the effects of the COVID-19 pandemic.

Following a hearing on 8 May, a Full Bench of the FWC handed down a decision on 11 May granting the proposed variations.

The award variations were able to be implemented so promptly because agreement was reached with the ACTU and the relevant unions in the industry on the terms of the award variations.

The new schedule only applies to the vehicle repair, services and retail stream of the Award. This is because the employers in the 'vehicle manufacturing' stream will be covered by the *Manufacturing and Associated Industries and Occupations Award 2020* from 29 May 2020 as an outcome of the 4 Yearly Review of Modern Awards. (A separate Member Advice is being distributed about this coverage change).

Key features of the new schedule include:

- The schedule is entitled: **Schedule J – 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 30 June 2020. This date can be extended by the FWC. Any directions made under the schedule will cease to have effect on this date unless they are withdrawn, revoked or replaced by the employer at an earlier time.
- 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 a number of clauses in the Award to implement a relatively high degree of flexibility and to give employers more discretion in certain areas.
- As directed by the employer, employees may be required to perform all duties that are within their skill and competency regardless of their classification.
- If an employee cannot be usefully employed for their normal hours or days as a result of business changes attributable to the COVID-19 pandemic or government initiatives to slow the virus an employer may direct employees to work fewer hours. A number of conditions and limitations apply as set out in the attached Determination.
- An employer may request an employee to take any annual leave that has accrued, subject to considering the employee's personal circumstances, by giving at least 72 hours' notice. A request to take annual leave must not result in an employee having less than two weeks of accrued annual leave remaining. An employee must consider and may not unreasonably refuse a request. 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.
- An employer may close down its operations (or part of its operations) for a period up to the date of expiry of the schedule (currently 30 June 2020). In such circumstances, the employer may require an employee covered by the Award to take annual leave by giving at least one week's notice or any shorter period of notice that may be agreed. Where an employee has not accrued sufficient annual leave to cover the close-down period, the employee must be allowed to take any accrued annual leave and be granted unpaid leave for the remainder of the close-down. Where an employee is placed on unpaid leave during the close-down, the period of unpaid leave will count as service for the purposes of relevant entitlements under the Award and the National Employment Standards in the *Fair Work Act 2009*. A close-down under the Schedule must be for reasons attributable to the COVID-19 pandemic or Government initiatives to slow the transmission of COVID-19.
- Any directions made under the schedule are required to be in writing and cannot be unreasonable in all the circumstances. An employer must also advise the employee in writing that the employer consents to any dispute that may arise from a direction issued under the schedule being settled by the Commission through consent arbitration.

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 11 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.



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

Victorian Automobile Chamber of Commerce and Ors

(AM2020/22)

VEHICLE MANUFACTURING, REPAIR, SERVICES AND RETAIL

AWARD 2010

(ODN AM2008/62) [MA000089]

Vehicle manufacturing, repair services and retail industry

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT MASSON
COMMISSIONER LEE

MELBOURNE, 11 MAY 2020

Application to vary the Vehicle Manufacturing, Repair, Services and Retail Award 2010 – COVID-19 Pandemic – application approved – variation determination made.

A. Further to decision [[2020] FWCFB 2367] issued by the Full Bench on 11 May 2020, the above award is varied as follows:

1. By inserting Schedule J as follows:

J.1 - Award flexibility during the COVID-19 Pandemic

- (a) The provisions of Schedule J 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.
- (b) Schedule J operates from 11 May 2020 until 30 June 2020. The period of operation can be extended on application to the Fair Work Commission.
- (c) A direction under this Schedule ceases to have effect when it is withdrawn, revoked or replaced by the employer, or on 30 June 2020, whichever is earlier.
- (d) Schedule J does not apply to any employee employed:
 - (i) 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*; or

- (ii) under Sections 2, 3 or 4 of this Award (Vehicle Manufacturing Employees, Drafting, Planning and Technical Employees and Supervisory Employees).
- (e) Any direction or request given by an employer under this Schedule must be given in writing and does not apply to the employee if the direction is unreasonable in all of the circumstances.
- (f) Any dispute regarding the operation of Schedule J may be referred to the Fair Work Commission in accordance with Clause 9—Dispute Resolution.
- (g) 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 9.5—Dispute Resolution and section 739(4) of the Act.

J.2.1 Classifications and duties RS&R employees

- (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 33—Classifications and minimum weekly wages and Schedule B—Vehicle Industry RS&R - Skill Level Definitions, provided that the duties are safe, reasonably within the scope of the employer's operations, and the employee is licensed and qualified to perform them.
- (b) Clause 33.6—Higher duties will apply to employees engaged on duties carrying a higher rate than their ordinary classification.
- (c) An employer must not reduce an employee's pay if the employee is directed to perform duties in accordance with clause J.2.1.
- (d) An employee given a directive under this clause will revert to their duties prior to the commencement of Schedule J once the directive ceases to have effect in accordance with Clause J.1.(c), unless otherwise agreed between the employer and employee.

J.2.2 Temporary reduction of hours of work—full-time and part-time employees

- (a) An employer may only implement a temporary reduction in hours of work under this clause if the employee cannot be usefully employed for their normal days or hours as a consequence of business changes attributable to the COVID-19 pandemic or government initiatives to slow the spread of the virus.
- (b) Subject to Clauses J.2.2(a), (d), (e) and (g), and despite clause 11—Full time employment, 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 Clauses 37

and 44.1 (which pertain to ordinary hours of work) will apply on a pro-rata basis.

- (c) Subject to Clauses J.2.2(a), (f) and (g), and despite Clauses 12.3, 12.4, 12.5 and 44.2 (which pertain to part-time employment), an employer may direct a part-time employee to work an average of between 75% and 100% of their agreed hours per week, or an average of between 75% and 100% of their agreed hours per week over the roster cycle.
- (d) Subject to Clause J.2.2(e), a full-time employee at Level 1-5 may not have their hours reduced pursuant to Clause J.2.2(b) where the amount payable under the reduced hours falls below \$1,115.70 a fortnight (not including any tool, meal or leading hand allowances paid under Part 4 – Allowances and Related Matters), as a consequence of the reduction.
- (e) A full-time Vehicle Industry Tradesperson at Level 1 or 2 may not have their hours reduced pursuant to Clause J.2.2(b) where the amount payable under the reduced hours falls below \$1,500.00 a fortnight (not including any tool, meal or leading hand allowances paid under Part 4 – Allowances and Related Matters), as a consequence of the reduction.
- (f) A part-time employee who prior to the commencement of this schedule had an agreed pattern of hours under Clause 12 that would have entitled the employee to earn over \$836.78 a fortnight in respect of those hours, may not have their ordinary hours reduced pursuant to Clause J.2.2 (c) to a point that would cause them to receive less than \$836.78 a fortnight (not including any tool, meal or leading hand allowances paid under Part 4 – Allowances and Related Matters), as a consequence of the reduction.
- (g) Prior to any employer issuing any direction under Clauses J.2.2(b) or (c) an employer must:
 - (i) consult with the affected employee/s in accordance with Clause 8A— 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 a union, notify the relevant union of its intention to implement these arrangements.
- (h) Where the amount paid to an employee under this clause is less than the normal weekly pay an employee received prior to a directed reduction in hours under this clause, the employee can have their weekly pay increased, by agreement with the employer, to the normal weekly pay they received prior to a directed reduction in hours by access to accrued paid annual leave or any other form of accrued paid leave (other than personal/carer's leave where the employee is not entitled to take this leave).
- (i) An employee given a direction under Clauses J.2.2(b) or (c) 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 J.

- (j) Nothing in Schedule J prevents an employer and an individual employee agreeing in writing (including by electronic means) to reduce the employee's hours or to move the employee temporarily from full-time to part-time hours of work, with a commensurate reduction in the minimum weekly wage.
- (k) If an employee given a direction under Clauses J.2.2(b) or (c) 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 J.
- (l) If an employee who has been given a direction under Clauses J.2.2(b) or (c) is made redundant while working reduced hours, any applicable redundancy payment will be calculated based on each full-time or part-time employee's ordinary hours of work prior to the commencement of Schedule J.
- (m) An employee given a directive under this clause will revert to their ordinary hours of work prior to the commencement of Schedule J once the directive ceases to have effect in accordance with Clause J.1.(c).

J.2.3 Annual leave

- (a) Subject to Clause J.2.3(g) and despite Clauses 29.4, 29.5 and 29.6 (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 J.2.3.
- (c) Clauses J.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 June 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.

J.2.4 Close-down

- (a) Clause J.2.4 applies only if the employer has decided to close down for reasons attributable to the COVID-19 pandemic or Government initiatives to slow the transmission of the coronavirus.
- (b) Subject to Clauses J.2.4(a) and (c) and instead of Clause 29.12 (Annual leave), an employer may:
 - (i) require an employee to take paid annual leave as part of a close-down of its operations, or part of its operations, by giving at least one week's notice, or any shorter period of notice that may be agreed; and
 - (ii) where an employee has not accrued sufficient paid leave to cover part or all of the close-down, the employee is to be allowed paid annual leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the close-down.
- (c) Clause J.2.4(b) does not permit an employer to require an employee to take leave for a period beyond the period of operation of Schedule J.
- (d) Where an employee is placed on unpaid leave pursuant to Clause J.2.4(b), the period of unpaid leave will count as service for the purposes of relevant award and NES entitlements.

J.2.5 Secondary jobs/training

- (a) If an employee is directed to take unpaid leave under Clause J.2.4 or work temporary reduced hours under Clause J.2.2 and the employee makes a request to engage in:
 - (i) reasonable secondary employment;
 - (ii) training; or
 - (iii) professional development;

the employer must consider and not unreasonably refuse the request.

2. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation on 11 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 11 May 2020.

PRESIDENT

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