

## Award variations – Unpaid and paid pandemic leave and annual leave flexibility

### SUMMARY

The Fair Work Commission (**FWC**) has extended the operation of Schedule X—Additional Measures During the COVID-19 Pandemic, until 31 December 2021 in 71 awards. Schedule X provides an entitlement to unpaid pandemic leave and the flexibility to take twice as much annual leave at half pay.

The FWC has also decided not to extend the operation of the paid pandemic leave provisions for aged care employees in the *Aged Care Award 2010*, the *Health Professionals and Support Services Award 2020* and the *Nurses Award 2010* beyond 29 March 2021.

### Which modern awards have been varied to extend the operation of the Schedule X?

Schedule X—Additional Measures During the COVID-19 Pandemic, has been extended until **31 December 2021** in the 71 awards listed in **Attachment A**.

### What are the terms of Schedule X?

Schedule X provides an entitlement to unpaid pandemic leave and the flexibility to take twice as much annual leave at half pay. The clauses are as follows:

#### **X.2.1 Unpaid pandemic leave**

- (a) *Subject to clauses X.2.1(b), (c) and (d), any employee is entitled to take up to 2 weeks' unpaid leave if the employee is required, by government or medical authorities or acting on the advice of a medical practitioner, to self-isolate and is consequently prevented from working, or is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic.*
- (b) *The employee must give their employer notice of the taking of leave under clause X.2.1(a) and of the reason the employee requires the leave, as soon as practicable (which may be a time after the leave has started).*
- (c) *An employee who has given their employer notice of taking leave under clause X.2.1(a) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a reason given in clause X.2.1(a).*
- (d) *A period of leave under clause X.2.1(a) must start before 31 December 2021, but may end after that date.*
- (e) *Leave taken under clause X.2.1(a) does not affect any other paid or unpaid leave entitlement of the employee and counts as service for the purposes of entitlements under this Award and the National Employment Standards.*

*NOTE: The employer and employee may agree that the employee may take more than 2 weeks' unpaid pandemic leave.*

### **X.2.2 Annual leave at half pay**

- (a) *Instead of an employee taking paid annual leave on full pay, the employee and their employer may agree to the employee taking twice as much leave on half pay.*
- (b) *Any agreement to take twice as much annual leave at half pay must be recorded in writing and retained as an employee record.*
- (c) *A period of leave under clause X.2.2(a) must start before 31 December 2021, but may end after that date.*

*EXAMPLE: Instead of an employee taking one week's annual leave on full pay, the employee and their employer may agree to the employee taking 2 weeks' annual leave on half pay. In this example:*

- *the employee's pay for the 2 weeks' leave is the same as the pay the employee would have been entitled to for one week's leave on full pay (where one week's full pay includes leave loading under the Annual Leave clause of this award);<sup>1</sup> and*
- *one week of leave is deducted from the employee's annual leave accrual.*

*NOTE 1: A employee covered by this Award who is entitled to the benefit of clause X.2.1 or X.2.2 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.*

### **What has the FWC decided, regarding the paid pandemic leave provisions in the Aged Care Award, the Health Professionals and Support Services Award and the Nurses Award?**

The FWC has decided not to extend the operation of Schedule Y - Industry Specific Measures During the COVID-19 Pandemic, in the *Aged Care Award 2010*, the *Health Professionals and Support Services Award 2020* and the *Nurses Award 2010* beyond 29 March 2021.

Schedule Y was introduced into these three awards to provide paid pandemic leave for aged care employees due to the emergency circumstances of a COVID-19 outbreak in Victorian aged care facilities.

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<sup>1</sup> The bracketed words only appear in those awards which currently provide for annual leave loading.

In deciding not to extend Schedule Y at the present time, the FWC stated that if circumstances in the aged care sector or in the areas of employment covered by the health awards change, the Commission will respond expeditiously.

**Do you require further advice?**

For further information or assistance, please contact Ai Group.

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 and the recovery from the pandemic.

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

**Stephen Smith**  
**Head of National Workplace Relations Policy**

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**ATTACHMENT A – MODERN AWARDS THAT HAVE BEEN VARIED TO EXTEND  
SCHEDULE X TO 31 DECEMBER 2021**

Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020

Aged Care Award 2010

Airline Operations-Ground Staff Award 2020

Airport Employees Award 2020

Alpine Resorts Award 2020

Aluminium Industry Award 2020

Ambulance and Patient Transport Industry Award 2020

Amusement, Events and Recreation Award 2020

Animal Care and Veterinary Services Award 2020

Aquaculture Industry Award 2020

Architects Award 2020

Asphalt Industry Award 2020

Banking, Finance and Insurance Award 2020

Building and Construction General On-Site Award 2020

Business Equipment Award 2020

Car Parking Award 2020

Cement, Lime and Quarrying Award 2020

Cemetery Industry Award 2020

Children's Services Award 2010

Cleaning Services Award 2020

Contract Call Centres Award 2020

Corrections and Detention (Private Sector) Award 2020

Cotton Ginning Award 2020

Dry Cleaning and Laundry Industry Award 2020

Fast Food Industry Award 2010

Fitness Industry Award 2020

Food, Beverage and Tobacco Manufacturing Award 2020

Funeral Industry Award 2020

Gardening and Landscaping Services Award 2020

General Retail Industry Award 2020

Hair and Beauty Industry Award 2010

Health Professionals and Support Services Award 2020

Horse and Greyhound Training Award 2020

Horticulture Award 2020

Hospitality Industry (General) Award 2020

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Joinery and Building Trades Award 2020  
Labour Market Assistance Industry Award 2020  
Legal Services Award 2020  
Local Government Industry Award 2020  
Manufacturing and Associated Industries and Occupations Award 2020  
Medical Practitioners Award 2020  
Meat Industry Award 2020  
Nursery Award 2020  
Nurses Award 2010  
Pastoral Award 2020  
Pest Control Industry Award 2020  
Pharmaceutical Industry Award 2020  
Pharmacy Industry Award 2020  
Poultry Processing Award 2020  
Premixed Concrete Award 2020  
Professional Diving Industry (Recreational) Award 2020  
Professional Employees Award 2020  
Racing Clubs Events Award 2020  
Racing Industry Ground Maintenance Award 2020  
Registered and Licensed Clubs Award 2020  
Restaurant Industry Award 2020  
Salt Industry Award 2020  
Seafood Processing Award 2020  
Security Services Industry Award 2020  
Silviculture Award 2020  
Social, Community, Home Care and Disability Services Industry Award 2010  
State Government Agencies Award 2020  
Storage Services and Wholesale Award 2020  
Sugar Industry Award 2020  
Supported Employment Services Award 2020  
Textile, Clothing, Footwear and Associated Industries Award 2020  
Timber Industry Award 2020  
Waste Management Award 2020  
Water Industry Award 2020  
Wine Industry Award 2020  
Wool Storage, Sampling and Testing Award 2020