



Short-term variations to most modern awards: Unpaid pandemic leave and annual leave flexibility

SUMMARY

The Fair Work Commission (FWC) has varied most modern awards to:

- Give an employee an entitlement to take up to 14 days of unpaid pandemic leave if the employee is required to self-isolate or is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic; and
- Enable an employee to reach agreement with their employer to take twice as much annual leave for half the pay.

The new entitlements have been included in 99 modern awards, and will operate until 30 June 2020, unless extended by the FWC.

The FWC's decision

On 8 April 2020, the FWC decided to vary most modern awards on its own initiative to insert a new schedule entitled: 'Additional measures during the COVID-19 pandemic'.

The schedule provides an entitlement to unpaid 'pandemic leave' and the flexibility for employees to take twice as much annual leave at half pay, by agreement with their employer.

Which awards have been varied?

The 99 modern awards set out in **Attachment A** have been varied.

When do the award variations take effect, and how long do the variations operate for?

The award variations take effect from the start of the first full pay period to commence on or after **8 April 2020**.

The award variations operate until 30 June 2020, but this date could be extended by the Commission.

What are the terms of the new unpaid pandemic leave entitlement?

The terms of the new unpaid pandemic leave clause are as follows:

X.2.1 Unpaid pandemic leave

- 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.*
- 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 30 June 2020, 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.

What are the terms of the new annual leave flexibility?

The new award clause allows an employee to take twice as much annual leave at half the pay, by agreement with their employer, as follows:

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 30 June 2020, 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);¹ 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.

¹ The bracketed words will only appear in those awards which currently provide for annual leave loading.



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Do you require further advice?

For further information or assistance, please contact the the Ai Group Workplace Advice Line on 1300 55 66 77. The Advice Line is experiencing a very high volume of calls at the present time. Members can email workplaceadvice@aigroup.com.au to receive a call back. Thank you for your patience and understanding.

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.

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

Stephen Smith
Head of National Workplace Relations Policy

FURTHER INFORMATION

For further information or assistance, please contact the Ai Group Workplace Advice Line on 1300 55 66 77

ATTACHMENT A – MODERN AWARDS THAT HAVE BEEN VARIED TO INCLUDE THE NEW ENTITLEMENTS

Aboriginal Community Controlled Health Services Award 2010
Aged Care Award 2010
Air Pilots Award 2010
Aircraft Cabin Crew Award 2010
Airline Operations-Ground Staff Award 2010
Airport Employees Award 2010
Alpine Resorts Award 2010
Aluminium Industry Award 2020
Ambulance and Patient Transport Industry Award 2020
Amusement, Events and Recreation Award 2010
Animal Care and Veterinary Services Award 2020
Aquaculture Industry Award 2020
Architects Award 2010
Asphalt Industry Award 2010
Banking, Finance and Insurance Award 2020
Book Industry Award 2020
Broadcasting, Recorded Entertainment and Cinemas Award 2010
Business Equipment Award 2010
Car Parking Award 2020
Cement, Lime and Quarrying Award 2020
Cemetery Industry Award 2020
Children's Services Award 2010
Cleaning Services Award 2010
Clerks - Private Sector Award 2010
Commercial Sales Award 2010
Concrete Products Award 2010
Contract Call Centres Award 2010
Corrections and Detention (Private Sector) Award 2020
Cotton Ginning Award 2020
Dry Cleaning and Laundry Industry Award 2010
Educational Services (Post-Secondary Education) Award 2010
Educational Services (Schools) General Staff Award 2010
Educational Services (Teachers) Award 2010
Fast Food Industry Award 2010
Fitness Industry Award 2010
Food, Beverage and Tobacco Manufacturing Award 2010
Funeral Industry Award 2010
Gardening and Landscaping Services Award 2020
General Retail Industry Award 2010

Graphic Arts, Printing and Publishing Award 2010
Hair and Beauty Industry Award 2010
Health Professionals and Support Services Award 2010
Higher Education Industry-Academic Staff-Award 2010
Higher Education Industry-General Staff-Award 2010
Horse and Greyhound Training Award 2010
Horticulture Award 2010
Hospitality Industry (General) Award 2010
Journalists Published Media Award 2010
Labour Market Assistance Industry Award 2010
Legal Services Award 2020
Live Performance Award 2010
Local Government Industry Award 2010
Mannequins and Models Award 2010
Manufacturing and Associated Industries and Occupations Award 2010
Marine Tourism and Charter Vessels Award 2010
Market and Social Research Award 2020
Meat Industry Award 2010
Medical Practitioners Award 2020
Miscellaneous Award 2010
Nursery Award 2020
Nurses Award 2010
Passenger Vehicle Transportation Award 2010
Pastoral Award 2010
Pest Control Industry Award 2010
Pharmaceutical Industry Award 2010
Pharmacy Industry Award 2010
Poultry Processing Award 2010
Premixed Concrete Award 2020
Professional Diving Industry (Recreational) Award 2010
Professional Employees Award 2010
Racing Clubs Events Award 2010
Racing Industry Ground Maintenance Award 2020
Rail Industry Award 2010
Real Estate Industry Award 2020
Registered and Licensed Clubs Award 2010
Restaurant Industry Award 2010
Road Transport (Long Distance Operations) Award 2010
Road Transport and Distribution Award 2010
Salt Industry Award 2010
Seafood Processing Award 2020



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Security Services Industry Award 2010
Silviculture Award 2020
Social, Community, Home Care and Disability Services Industry Award 2010
Sporting Organisations Award 2020
State Government Agencies Award 2020
Storage Services and Wholesale Award 2010
Sugar Industry Award 2010
Supported Employment Services Award 2010
Surveying Award 2020
Telecommunications Services Award 2010
Textile, Clothing, Footwear and Associated Industries Award 2010
Timber Industry Award 2010
Transport (Cash in Transit) Award 2010
Travelling Shows Award 2020
Vehicle Manufacturing, Repair, Services and Retail Award 2010
Waste Management Award 2010
Water Industry Award 2020
Wine Industry Award 2010
Wool Storage, Sampling and Testing Award 2010