



## CLERKS AWARD FLEXIBILITY DURING THE PANDEMIC

On 28 March 2020 the Fair Work Commission made a determination to vary the *Clerks Private Sector Award 2010* (**Award**) in order to introduce temporary flexibility provisions in light of the COVID-19 pandemic and the associated public health orders.

The new flexibility provisions aim to provide employers with the flexibility to resource their businesses appropriately in the current climate whilst maintaining compliance with the Award and allowing businesses to continue active operations and retain employees.

The determination inserted a temporary Schedule into the Award which operates from 28 March 2020 until 30 June 2020 (**Period**) and addresses the following matters:

### Operational Flexibility

During the Period an employer will be able to direct an employee to perform any task within their skill and competency (regardless of classification or normal work duties), provided the duties are safe and the employee is licensed and qualified to perform the tasks.

If an employee is directed to work above their usual classification for more than one day, the employer will need to pay the employee at the higher rate of pay.

However, an employer cannot reduce an employee's pay where the employee is directed to perform tasks below their usual classification.

### Part-time and Casual Employees Working From Home

An employer is now only required to roster a part-time employee who is working from home for a minimum of 2 consecutive hours on any rostered shift (rather than 3).

Casual employees working from home must be paid for a minimum of 2 hours' work at the appropriate rate (rather than 3).



## Ordinary Hours of Work for Employees Working From Home

An employer can make an agreement with an employee (who is working from home) to change their span of ordinary hours to allow the employee to work between:

- 6am and 11pm, Monday to Friday
- 7am and 12.30pm on Saturday.

The employer does not need to agree with a majority of its employees to make a change to the spread of ordinary hours.

## Temporary Reduction in Ordinary Hours

The employer can temporarily reduce its permanent employees' hours of work to not less than 75% (up to a 25% reduction) of their full-time ordinary hours or agreed part-time hours immediately prior to the reduction.

This can be for the whole business or a section of the business.

If the employer wants to reduce its employees' hours, the employees will need to vote in favour of the reduction of hours. At least 75% of the full-time and part-time employees in the business or section of the business must approve the temporary reduction.

The Fair Work Commission has established a process for the vote to be valid.

The ordinary hourly rate of pay must be maintained; it is the weekly wage that is to be reduced by the relevant percentage.

If an employee's ordinary hours of work are reduced, the employer cannot unreasonably refuse an employee's request to engage in reasonable secondary employment and must consider all reasonable requests for training, professional development and/or study leave.

Employees are entitled to continue to accrue paid leave and termination of employment entitlements based on their ordinary hours of work prior to the temporary reduction (not the reduced hours).

## Directions to Take Annual Leave

An employer can now direct its employees to take annual leave with only **one week's notice** or a shorter agreed period (including any close-down).

However, the employer can only direct an employee to take annual leave if the employee still has **at least 2 weeks of leave left** after the direction.

Employees can now take up to twice as much annual leave at a proportionately reduced rate for any agreed or directed period of annual leave (including during a close-down).

Murfett Legal can provide advice on the flexible working options that are now available under the Award.

We are also able to assist with any of your employment or safety related issues that your business is trying to navigate through and adapt to in a COVID-19 landscape.

For further information or assistance contact Murfett Legal on [+61 8 9388 3100](tel:+61893883100).

Author: [Kate Walawski](#) (Partner | Employment & Workplace Relations)

Email: [kate.walawski@murfett.com.au](mailto:kate.walawski@murfett.com.au)

Murfett Legal is a leading law firm in WA, providing services in litigation, corporate and commercial, employment and workplace relations, insolvency, debt collection, business restructuring, Wills & estates, property, leasing, settlements, liquor licensing and intellectual property.