



## THE COMPLEXITIES OF CALCULATING OVERTIME FOR AWARD COVERED CASUALS

In October 2020, the Full Bench of the Fair Work Commission (“**Full Bench**”) determined that casual overtime entitlements under nearly 100 modern awards, will need to be calculated either:

1. in substitution for casual loading;
2. in addition to casual loading (cumulative approach); or
3. in addition to the sum of an employee’s minimum hourly rate plus casual loading (compounding approach).

The **compounding approach** means calculating overtime on an employee’s ordinary hour rate *inclusive* of the casual loading (in other words, the casual loading is included in the overtime rate on a compounding basis). For example, overtime calculated at time and a half will effectively become 187.5% of the permanent hourly rate (150% x 125%), while overtime calculated at double time will be 250% (200% x 125%).

The **cumulative approach** means casual loading and the overtime penalty rate are added separately to the minimum permanent rate when calculating casual overtime (in other words the casual loading is to be added on top of the overtime penalty rather than being compounded in the overtime calculation).

The variation for nearly 100 of the modern awards took effect on **20 November 2020** \* as set out in the [Schedule of determinations](#) of *Decision — 4 yearly review of modern awards — common issue — overtime for casuals — final determinations* [\[2020\] FWCFB 5636](#).

The determinations are likely to have significant cost implications for employers with large casual workforces. The determinations also add further complexity for the casual workforce, already reeling under the legacy of the recent WorkPac decisions. However, the Full Bench has made it clear that no further submissions will be accepted in respect to any of the determinations.

What does this mean for the wage theft epidemic that is already gripping Australia?

Employers must consider the determinations that now operate in respect to the applicable modern awards that apply to their respective business and ensure that it is well understood

when casual employees may become entitled to overtime, and how that overtime loading is to be calculated.

Employers must ensure that payroll systems are reviewed for compliance to mitigate against the risk of potential underpayments.

If you are in any doubt as to how this determination may affect your business, please contact Murfett Legal to discuss.

\*The award variations in some modern awards will take effect on 1 March 2021.

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

Note: The above is a summary for general information purposes only. It is not intended to be comprehensive or constitute legal advice. You should seek formal legal or other professional advice in relation to your particular circumstances before relying on the content of this article.

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