

NEW ANNUAL SALARY AWARD PROVISIONS

The Full Bench of the Fair Work Commission (FWC) has decided to insert new model annualised salary clauses in certain modern awards with effect from the start of the first full pay period on or after 1 March 2020

The change is aimed at reducing wage theft and non-compliance with modern awards.

Does this decision affect me?

This decision will affect employers paying annualised salaries to employees covered by a modern award with an annualised salary clause.

The Vehicle Manufacturing Repair Services and Retail Award is not one of the modern awards that will be affected. However, a model clause will be added to the Clerks – Private Sector Award 2010 (Clerks Award). For a full list of modern awards affected contact AAAA Employer Assist.

What are the changes?

The FWC has released draft determinations proposing that the existing clause addressing annualised wages in the Clerks Award will be replaced by the following:

17. Annualised wage arrangements

17.1 Annualised wage instead of award provisions

- (a) An employer may pay a full-time employee an annualised wage in satisfaction, subject to clause 17.1(c), of any or all of the following provisions of the award:
 - (i) clause 16—Minimum weekly wages;
 - (ii) clause 19—Allowances;
 - (iii) clauses 27 and 28— Overtime and penalty rates; and
 - (iv) clause 29.3—Annual leave loading
- (b) Where an annualised wage is paid the employer must advise the employee in writing, and keep a record of:
 - (i) the annualised wage that is payable;
 - (ii) which of the provisions of this award will be satisfied by payment of the annualised wage;
 - (iii) the method by which the annualised wage has been calculated, including specification of each separate component of the annualised wage and any overtime or penalty assumptions used in the calculation; and
 - (iv) the outer limit number of ordinary hours which would attract the payment of a penalty rate under the award and the outer limit number of overtime hours which the employee may be required to work in a pay period or roster cycle without being entitled to an amount in excess of the annualised wage in accordance with clause 17.1(c).
- (c) If in a pay period or roster cycle an employee works any hours in excess of either of the outer limit amounts specified pursuant to clause 17.1(b)(iv), such hours will not be covered by the annualised wage and must separately be paid for

in accordance with the applicable provisions of this award.

17.2 Annualised wage not to disadvantage employees

- (a) *The annualised wage must be no less than the amount the employee would have received under this award for the work performed over the year for which the wage is paid (or if the employment ceases earlier over such lesser period as has been worked).*
- (b) *The employer must each 12 months from the commencement of the annualised wage arrangement or upon the termination of employment of the employee calculate the amount of remuneration that would have been payable to the employee under the provisions of this award over the relevant period and compare it to the amount of the annualised wage actually paid to the employee. Where the latter amount is less than the former amount, the employer shall pay the employee the amount of the shortfall within 14 days.*
- (c) *The employer must keep a record of the starting and finishing times of work, and any unpaid breaks taken, of each employee subject to an annualised wage arrangement for the purpose of undertaking the comparison required by clause 17.2(b). This record must be signed by the employee, or acknowledged as correct in writing (including by electronic means) by the employee, each pay period or roster cycle.*

17.3 Base rate of pay for employees on annualised wage arrangements

For the purposes of the NES, the base rate of pay of an employee receiving an annualised wage under this clause comprises the portion of the annualised wage equivalent to the relevant rate of pay in clause 16—Minimum weekly wages and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.

In summary, employers will be obligated to:

1. Calculate the annual salary in accordance with the clause;
2. Advise the employee in writing (and keep a record of) the annual salary including the provisions of the modern award which are satisfied by the annual salary, the method of calculating the annual salary and the outer limit of hours for which the employee is compensated under the annual salary;
3. Pay the employee (in addition to the annual salary) for any hours worked in excess of the outer limits in accordance with the modern award;



4. Keep a record of start, finish and break times and have the employee sign or acknowledge in writing the record in each pay or roster cycle.
5. Audit the annual salary every 12 months and pay any shortfall within 14 days.

How can I prepare?

Prior to 1 March 2020, employers who pay annualised salaries should:

1. Familiarise themselves with the new model clause;
2. Consider how the model clause impacts their existing arrangements;
3. Consider and update employment contracts for compliance;
4. Consider and update payroll practices including introducing new systems (e.g. that record start, finish and break times) for compliance.

Important Update – Modern Award Review

As part of the Fair Work Commission's four yearly review of modern awards, there will be significant variations to the Vehicle Manufacturing, Repair, Services and Retail Award 2010 (Vehicle Award)

The vehicle manufacturing stream of the Vehicle Award will be incorporated into the Manufacturing and Associated Industries and Occupations Award 2010. A range of technical and drafting issues will also be resolved in the revised Vehicle Award. While the revised drafts are still being considered, variation determinations will commence operation on 4 May 2020.

Employer Assist will update members on these variations. If you have any questions in the meantime, contact Employer Assist to discuss.

Need assistance?

AAAA Employer Assist can assist members with modern award compliance. Please contact AAAA Employer Assist on 1300 735 306.