



INDUSTRIAL CIRCULAR: 5/2020

Date: 14 April 2020

Subject: **Legislative and Award changes as a result of the Coronavirus**

April 8, 2020 was a momentous day in the industrial relations calendar. The Federal Government introduced into the Parliament and passed its **JobKeeper** legislative package to the Covid 19 coronavirus pandemic. This includes **amendments** to the Fair Work Act 2009 (FWA) to provide some practical assistance around the operation of the JobKeeper scheme. **These amendments to the FWA will automatically cease on 28 September 2020.**

On the same day, the Fair Work Commission (FWC) **varied 99 modern awards**, including the Road Transport & Distribution Award 2010, the Road Transport (Long Distance Operations) Award 2010 and the Waste Management Award 2010 (the Transport Awards) to provide some flexibility in the management of staff during this coronavirus pandemic. The Clerks Award had been varied previously.

At this stage, these new Award provisions will apply to June 30, 2020 but could be extended.

Fair Work Act Amendments

Essentially, these amendments apply only to employers who qualify for the **JobKeeper** scheme which are:

- A business under \$1B revenue, where revenue drops by more than 30%;
- A business over \$1B revenue, where revenue drops by 50% or otherwise approved by the Australian Tax Office (ATO).
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In summary, these new laws provide for:

- Increased flexibility around employees' hours of work via a new JobKeeper stand down direction, performance of duties and location of work;
 - This could include a stand down of the employee, reduced hours of work or a direction to where an employee's work should be performed away from the normal location;
 - Employers and employees to agree on increased flexibility around annual leave arrangements and days and times of work - for example, this could entail double leave at half pay or agreement to work on different days or times of the week;



- An employer can direct an employee to take annual leave provided a minimum leave balance of 2 weeks' is maintained;
- These provisions are subject to some safeguards around consultation/agreement with employees or their representatives and any direction must not be 'unreasonable in all the circumstances'.
- Any issues/disputes arising can be referred to the FWC for resolution, including by arbitration.

Fair Work Commission Award Variations

The FWC has **varied 99 modern awards**, including the Transport Awards, to introduce:

1. Up to 2 weeks unpaid pandemic leave if the employee is required by government or medical authorities or acting on the advice of a medical practitioner to 'self-isolate' and therefore is prevented from working;
 - An employer is entitled to ask for reasonable evidence to support any such request;
 - This leave must start prior to 30 June, but can finish after that date;
 - Any absence on pandemic leave counts as service for Award and NES related standards.
2. The ability to take double annual leave on half pay which must be recorded in writing and start before June 30, 2020 but can finish after that date;

The FWC had previously varied the **Clerks (Private Sector) Award 2010** for the period from 28 March to 30 June 2020 to provide for:

- Alteration to the spread of hours if an employee is working from home, thus avoiding potential overtime costs;
- Reduced minimum hours for part-timers and casuals;
- Directing employees to take annual leave with a week's notice or shorter period as agreed;
- Temporary reduction in working hours of full time employees, subject to agreement;

If you are considering changes around work arrangements for your clerical employees, it is recommended that you view the actual variations to the Clerks Award at:

https://www.fwc.gov.au/documents/documents/modern_awards/award/ma000002/default.htm

For any further information or details around the matters mentioned herein, please contact Paul Ryan, our industrial adviser on (03) 9646 8590, or email reception@vta.com.au