



INDUSTRIAL RELATIONS NEWSLETTER

NEWSLETTER — 3-06-10/4

This is an important update on the new system of Awards applicable to employers and the changes that have been implemented since 1 January 2010.

- **Modern Awards**
- **Transitional Provisions**
- **National Employment Standards**

Our website: go to for the awards www.johntamplinconsulting.com.au

A Fair Work Information Statement must be given to every new employee commencing on or after 1 January 2010. Employers should keep a written record as evidence of when it was done.

A copy of that Information Statement is in the December 2009 newsletter www.johntamplinconsulting.com.au

MODERN AWARDS

From 1 January 2010 the system of having State awards and Federal awards both applicable to an incorporated Company (Pty Ltd) came to an end.

There have been some significant changes and decisions by Fair Work Australia and clarification as to the processes of transition from pre-modern awards to the new awards.

This was to be expected as the move to a new system of awards and how they apply was not going to be implemented without some clarifying decisions by Fair Work Australia and that process will continue for some time.

For example, the office of the Fair Work Ombudsman recently published a Guidance Note dated 31 May 2010 and some of the information in that Guidance Note does not conform to the advice that was previously given to us by that Department.

Further, a Full Bench of the Fair Work Australia Tribunal on 25 June 2010 brought down a decision regarding overtime provisions and the variances between the different awards in that there are no transitional provisions applicable.

That decision has the effect that as of 1 January 2010 the overtime rates in the modern awards applied from that date and replaced the provisions of the previous awards applicable to employees.

There was an indication of an appeal against the decision which has delayed our advice and this newsletter.

The same outcome applies to other award terms such as locomotion/vehicle allowance in the Commercial Travellers Award of NSW and the Advertising Sales Representatives Award of NSW. There are no transitional provisions applicable and the effect is that as of 1 January 2010 the vehicle allowance was \$0.74 cents per kilometre.

Almost all modern awards include provisions regarding the transition process and the terms of the Award that form a term of the transition process, for example the modern awards refer to the transitional provisions applying to the following entitlements:

- minimum wages, including piecework rates and applicable industry allowances;
- casual and part-time loadings;
- Saturday, Sunday and public holiday penalty rates;
- evening and other penalty rates;
- shift allowances.

The subsequent decisions and interpretations narrowed the scope of what was meant by the above wording to mean that the transitional provisions do not apply to other entitlements in a modern award such as allowances (other than industry allowance) and overtime.

The increases are absorbable and that means that if an employer was paying \$20.00 more than the minimum award rate before 1 July 2010 and the minimum wage was increased by \$10.00 as of 1 July 2010 the modern award does not require the employer to pay an additional amount.

However employers must be cautious as, in general and there is a significant amount of case law regarding the matter, over award payments can only offset entitlements to which the payment is directed.

For example the payment of a higher wage than the award minimum does not offset the payment of penalties or loadings specified in the award unless it is clear that the individual employee and the employer intended to do so and that should be in writing so as to have an evidentiary trail.

TRANSITIONAL PROVISIONS

Classifications of employees for transitional purposes.

Almost all modern awards include provisions to “transition” employers and employees from their pre-modern award entitlements to the modern award system.

The classification of an employee is to be assessed against the modern award.

An employee who fell within Grade 1 of the Clerical and Administrative (State) Award of New South Wales and whose duties and skills fall within level 1 of the new Clerks Private Sector Award 2010 then the employee translates to level 1 of the new award.

But the new Clerks Private Sector Award 2010 has 3 periods of employment in the level 1 classification and 3 different rates of pay so the period of employment also affects the rate of pay.

The difference between the previous award and the new award is the transitional amount and the previous rate for a grade 1 clerical employee was \$582.87 and the new award rate for a level 1 year 1 including the recent \$26.00 is \$606.00 so the transitional amount is \$23.22. If 80% of that is deducted it becomes a transitional increase of \$4.64 for a level 1 year 1 employee covered by the new Clerks Private Sector Award 2010.

This amount is absorbable into over award payments.

There has also been a change to the casual loading and it will increase by 1% each year up to a total of 25%.

If you have queries concerning what provisions of the relevant modern award may or may not apply to your workplace, contact us as soon as possible.

NATIONAL EMPLOYMENT STANDARDS

We refer you to previous newsletters. If you have misplaced your copy contact us or go to our website and the November newsletter. www.johntamplinconsulting.com.au

If you require any clarification then please contact John Tamplin on 0417 552 801 or Maria Loutsopoulos on 0416 047 943.

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