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UNPAID PANDEMIC LEAVE AND OTHER SIGNIFICANT AWARD CHANGES

The COVID-19 pandemic has led to lots of new law for employers.

Last week saw the introduction of the new [JobKeeper subsidy and new stand down and direction powers](#) for employers. At the same time the Fair Work Commission (FWC) made the decision to vary nearly 100 awards to include unpaid “pandemic leave” and the option for employees to their annual leave at half pay spread over a longer period.

Which awards are affected?

The FWC selected 99 modern awards (described as “phase 1”). Among those awards included in phase 1 are the *Registered and Licensed Clubs Award 2010*, the *Legal Services Award 2020*, the *Clerks - Private Sector Award*, the *Commercial Sales Award*, the *Contract Call Centres Award*, the *Higher Education Industry-Academic Staff-Award* and the *Higher Education Industry-General Staff-Award*.

The FWC estimates that around 4.36 million private sector employees will have access to the new provisions.

In determining the awards to be included in phase 1, the FWC favoured industries that were considered to be most at risk in the short and medium term, awards that have a significant proportion of award-reliant employees, and awards with a high proportion of small businesses.

Awards in the construction, maritime, and mining resource sectors were not included in phase 1.

A full list of the awards can be accessed via this link:

https://www.fwc.gov.au/documents/decision_summaries/2020fwcfb1837_summary.htm

What are the new changes?

Pandemic Leave

Employees covered by one of the affected awards will be entitled to unpaid “pandemic leave” of up to two weeks if they are required to self-isolate and can no longer work, or where they are otherwise prevented from working by any other measures taken by the government or medical authorities in response to the pandemic.

Employees will have to provide notice to their employer that they are taking pandemic leave (and the reason) as soon as practicable, but this may be at a time after the leave has already started.

Employers can request evidence from an employee who has taken pandemic leave in order to prove that leave was taken for the reason given.

Annual Leave at Half Pay

The other change is to allow employees to take their annual leave at half pay so that they double the time off work. For example, an employee who would normally take two weeks of annual leave on full pay can take four weeks of leave at half the rate of pay.

The right to take annual leave in this way is subject to the employer agreeing. The agreement between the parties must be recorded in writing and a copy of the agreement must be kept by the employer.

If an employee elects to take their annual leave in this way (and the employer agrees) the relevant leave must start before 30 June 2020.

Temporary Application

These new changes to awards only operate from 8 April 2020 until 30 June 2020. The period of operation can be extended by the FWC on application.

Other recent changes to awards

The FWC recently made changes to the following awards prior to the introduction of phase 1:

- *Clerks - Private Sector Award 2010*
- *Hospitality Industry (General) Award 2010*
- *Restaurant Industry Award 2010*

Broadly speaking, the changes provide additional award flexibility in relation to an employee's hours of work and the duties they can be required to perform subject to the employer having agreement of at least 75% of employees and the reduction in hours sought not exceeding 25% of the existing hours worked by the employees.

For employers:

- (a) whose employees are cover by these awards;
- (b) whose business is impacted by the pandemic; and
- (c) who wish to introduce a reduction in staff hours as a means of preserving jobs,

they may be better to rely on the new directions powers introduced by the Federal Government into the Fair Work Act ([see our separate article](#)) in lieu of relying in these new award provisions as the award provisions are more restricted in application. It would be prudent to seek specific advice prior to taking any action in this regard.

Further information

Pigott Stinson regularly advises clients in relation to a range of employment law matters. If you have any questions regarding the recent variation of awards, the JobKeeper legislation or employment law general, please [email](#) or [contact](#) the author, Leonie Kyriacou.

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