

Article Information

Author: Tim Lange, John Evans
Service: Employment & Labour

Not just award rate increases: Looking under the hood of the Annual Wage Review result

With less than 20% of Australian workers engaged on enterprise agreements (EAs), the proportion whose minimum conditions and wages are directly set by Modern Awards is significant, and the Fair Work Commission (FWC) annual wage case result is closely watched.

In 2022, the FWC has decided an overall significant increase, although applied unevenly depending on the classification of employees.

However, the impact of the decision can still extend to sophisticated employees with EAs in a number of ways:

- EA rates can be automatically lifted where the decision has raised Award base rates above the equivalent EA base rate, exposing employers to later underpayment claims; and
- The decision will fuel a demand for a similar percentage rate increase in EA bargaining, without any particular analysis of how far above minimum rates existing EAs already are and without willingness to make productivity trade-offs, requiring deft bargaining strategies and deliberate use by employers of good-faith-bargaining obligations on unions.

In a long anticipated decision on the back of a significant increase in consumer prices and inflation, the FWC has handed down its Annual Wage Review decision, deciding to implement the following wage increases from 1 July 2022:

	Percentage increase	Dollar value
National Minimum Wage	5.2%	\$812.60 per week or \$21.38 per hour
Minimum Award Wages	4.6%*	*Wage rates below \$869.60 per week will be increased by \$40 per week Wage rates above \$869.60 per week will receive a 4.6% increase

A lagging recovery from the last two years of pandemic related restrictions persuaded the FWC to delay these increases until 1 October 2022 for certain industries. The delayed operative date of the increases applies to the following Awards:

- Aircraft Cabin Crew Award 2020
- Airline Operations – Ground Staff Award 2020
- Air Pilots Award 2020
- Alpine Resorts Award 2020
- Hospitality Industry (General) Award 2020
- Airservices Australia Enterprise Award 2016
- Marine Tourism and Charter Vessels Award 2020
- Registered and Licensed Clubs Award 2020
- Restaurant Industry Award 2020

- Airport Employees Award
2020

Impact on Enterprise Agreement Covered Employees

While the impact on employers and employees covered by Modern Awards, or employed at the national minimum wage is clear, the FWC's decision also impacts base rates in EAs where those have slipped below the equivalent Modern Award rate as a result of this increase.

The *Fair Work Act 2009 (FW Act)* provides that base rates of pay under an EA during its operation must not be less than the relevant Modern Award rate or the national minimum wage order rate. If Award rates move significantly (even after the Better-Off-Overall-Test has been met on the initial approval), the equivalent EA rate also automatically moves.

In those circumstances, employers will need to raise the base rates paid to agreement covered employees to match the increased minimum Award rates. Employers should review their enterprise agreements that are currently in operation (both in term and nominally expired) to assess whether base rates under those agreements will need to be increased to match the incoming increased rates.

EAs also commonly have wage increases that commit to increases that match or exceed the FWC's annual wage review. Those with EAs that have that formulation will also need to have the increased rates updated, noting that some increases may not need to occur until 1 October 2022 if the underlying Award is one of the several with a delayed date for the increases.

A failure to ensure that employees covered by an agreement are being paid a rate equal to the relevant Modern Award rate or national minimum wage order rate risks an exposure to underpayments and other breaches of the FW Act.

Impacts on Bargaining

The minimum wage case is specifically focussed on the position of the least-well paid Australians. Despite that, it is often wrongly pointed to by unions as the yardstick by which any future bargained-for EA increases should be set for some of the best-paid workers.

The Reserve Bank of Australia Governor, Phillip Lowe, has made a similar point by reference to the inflation rate in a speech on 21 June 2022, where he said pushing inflation-beating wage increases for all workers could cause detriment to the Australian economy, stating that "if wage increases become common in the four and five percent range, then. . . it's going to be harder to return inflation to two and a half percent" and "in the '70s we got into trouble because wages growth responded mechanically to the higher inflation rate".

The FW Act includes mechanisms in the good-faith-bargaining rules which can be used to draw out unions on the distinction and whether a wage demand is just a simplistic application of a minimum wage decision increase in circumstances for which it was not designed or justified. While that does not prevent a wage demand being pressed, ultimately it will help to explain to a relevant workforce why a particular wage position that is less than the percentage minimum wage increase is being taken by the employer.

Conclusion

Minimum wage decisions have an impact well beyond employees on minimum Award rates of pay, and expose employers with EAs to underpayment claims and intense future bargaining demands.

If your organisation has any questions about the impact these changes may have on your operations, please contact a member of Piper Alderman's Employment Relations team for assistance.