

Article Information

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Urgent update on COVID-19 Industrial Issues - Commission allows changes to the Clerks Award in response to COVID-19 industry worries

The Full Bench of the Fair Work Commission handed down a decision over the weekend amending the Clerks - Private Sector Award 2010 to allow Australian businesses to legally reduce staff hours and mandate the taking of leave during close down periods, in response to industry concerns during the COVID-19 pandemic.

The amendments come into effect from 28 March until 30 June 2020, unless extended.

The key take home for businesses from the decision are as follows:

Changes to Hours and Duties

- The spread of ordinary hours for day workers working from home by agreement with the employer, can now be between 6am and 11pm Monday to Friday and 7am to 12.30pm on Saturday, subject to an employee request approved the employer. Affected employees will not be entitled to any shiftworker penalties, loadings or allowances under the Award for working these extended hours. The usual requirements under the award that ordinary hours of work are to be worked continuously and that an agreement from a majority of employees to approve a change to the spread of hours will not operate for these employees.
- The minimum shift for part-time employees and the minimum payment for engagements by a casual employee, have been reduced from three to two hours when working from home.
- Where necessary, employers can direct employees to perform any duties that are within their skill and competency, regardless of their classification under the Award.

Workforce approved temporary reduction in ordinary hours

- An employer can reach agreement with the workforce (or part of a workforce) to temporarily reduce hours to 75% of those previously worked, so long as 75% of full time and part time employees in the relevant section, vote in favour of the temporary reduction. If planning to undertake a vote, employers must notify any organisation of which their employees are known members, the Australian Services Union and the Fair Work Commission.
- Where such an agreement is able to be reached, the employer must not refuse an employee's request to engage in reasonable secondary employment and should consider all reasonable requests for training, development and study leave.
- Also, all entitlements and accruals on termination of employment will be based on the employee's ordinary hours of work prior to these reduction hours.

Close Down

- If an employer closes down all of its operations, it can require an employee to take annual leave by giving one week's notice (or less by agreement), instead of the previous four weeks.
- Once an employee has used all their accrued annual leave during the close down, they can be given unpaid leave for

the remainder of the closedown.

- Where an employee is placed on unpaid leave, the period of unpaid leave will count as service and the usual NES and award entitlements will continue to accrue during this period.
- An employer is not permitted to require an employee to take leave for a period beyond 30 June 2020.

Annual Leave

- An employer can direct an employee to take annual leave, subject to considering the employee's personal circumstances and providing one week's notice (or a shorter period which may be agreed). However a direction to take annual leave cannot result in the employee having less than two weeks annual leave remaining.
- Employees may take up to twice as much annual leave, at a proportionately reduced rate for any part or all of a directed period away from work, including a close down.

None of the changes to the award, prevent an employer and an individual employee reaching an agreement to reduce hours or to have an employee move temporarily from full-time to part-time hours of work.

The determination issued by the decision can be found [here](#).

If you have any questions about how these changes may affect your business, get in touch with the Piper Alderman Employment Relations team today.