

Modern Awards are Changing

Coronavirus related changes are coming...**FLEXIBILITY** and **PROTECTION** are key



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MESSAGE FROM THE PRINCIPAL

BY HOLLY EDMONDSON

The law is rapidly changing due to the Coronavirus COVID-19 pandemic. There have already been recent changes to some Modern Awards.

On 1 April 2020, the Fair Work Commission provided a Statement of variations it proposes to make to 103 further Modern Awards.

The Fair Work Commission's aim is to ensure as many employees are retained in employment as possible, by providing greater flexibility for working conditions, and some protection to employees' jobs when the employees are required to comply with government (or medical) directions.

It also seeks to encourage employees that should be self-isolating, to do so, to minimise the spread of the Coronavirus COVID-19.

Employers need to be aware of the changes that have already been made, and the further changes that have been proposed.



WHAT RECENT CHANGES ARE ALREADY LEGALLY ENFORCEABLE?

There have already been some recent Coronavirus-related changes to three Modern Awards: (1) Hospitality Industry (General) Award 2010; (2) Clerks – Private Sector Award 2010; and (3) Restaurant Industry Award 2010.

The changes to these Modern Awards provide more flexibility to the conditions of employment in the industries and occupations covered under those awards, in light of the problems the Coronavirus was presenting. Employers ought to review these changes to ensure they are complying with the current law, otherwise they may expose themselves to employment claims.

"IF EMPLOYERS GET THIS WRONG, THEY COULD BE EXPOSED TO \$10,000'S IF NOT \$100,000'S IN CLAIMS!"

WHAT CHANGES MAY BE COMING?

The Fair Work Commission has proposed changes to 103 further Modern Awards, with amendments specific to the difficulties arising out of the Coronavirus pandemic. The following proposed variations are intended to be in force temporarily until 30 June 2020 (unless later extended):

1. If a part time, full time or casual employee is required to work at the employer's premises, but as a result of the Coronavirus is required to self-isolate, or is otherwise not able to attend work due to a government direction or due to medical advice or authority, the employee will be entitled to take up to 2 weeks' unpaid 'pandemic leave'. This leave entitlement will not apply to employees required to care for others who are following a government direction to self-isolate.
2. Employees being permitted (by written agreement between the employer and employee) to take double the amount of annual leave at half pay.

These proposed variations are not currently legally enforceable, and so employers are not yet required to comply with these proposals. However, if no objections are raised by 6 April 2020, the proposed variations will become legally enforceable.

If any objections are raised a hearing will take place on 8 April 2020 to determine if these proposed variations will become legally enforceable.



WHY HAVE THESE CHANGES BEEN MADE AND PROPOSED?

The effect of the *Fair Work Act 2009* (Cth) in the context of the Coronavirus epidemic, is that employees are either not entitled to paid leave, or they are unlikely to have leave balances available to them whilst adhering to government directions to try to 'flatten the curve'.

For example, if a full time or part time employee is required to self-isolate for 14 days because of the enforceable government direction that has been made, but they do not actually have the Coronavirus (or any other illness or injury), they are not entitled to paid personal leave under the *Fair Work Act*.

Further, where casual employees are not entitled to sick leave, and the *National Employment Standards* provide for only 10 days' paid personal leave per year for permanent employees, it is not likely that employees will have sufficient paid leave balances accrued to cover time off for things such as self-isolation.

WHAT SHOULD EMPLOYERS DO?

Employers should make sure they are **carefully reviewing** and complying with the *Fair Work Act*, any applicable Modern Award or Enterprise Agreement, and the employee's contract of employment, when considering making any changes to employment arrangements.

If employers take steps without complying with the *Fair Work Act* and other relevant employment instruments, they could be facing costly employment claims from employees!

We recommend that if employers are unsure of their legal obligations that they seek advice from an Employment Lawyer.



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