

Circular No. 128/2020

29 June 2020

Children's Services Award 2010 & Educational Services (Teachers) Award 2010: Major decision—4 Yearly Review of Modern Awards

Members would be aware from previous circulars that the Fair Work Commission (**FWC**) is currently finalising its 4 yearly review of all modern awards (**the Review**), which commenced in 2014.

As part of the review process, parties were given an opportunity to file applications for substantive changes to be made to Modern Awards. As there was an overlap in various claims in the *Children's Services Award 2010* (**the Children's Services Award**) and the *Educational Services (Teachers) Award 2010* (**the Teachers Award**), the FWC heard several of the claims together as part of the same proceedings.

On 10 June 2020, the FWC issued a decision concerning the outcome of claims for variation to these Awards.

What are the changes?

Non-contact time for an Educational Leader (in both Awards)

- An employee nominated as an Educational Leader will be provided an additional 2 hours non-contact time per week.

Hats and Sunscreen allowance in the Children's Services Award

- The clothing and equipment allowance clause of the Children's Services Award (Clause 15.2(c)) will be varied to specifically include hats and sunscreen lotion. This will mean that where an employee is required to wear hats and sunscreen, the employer will either supply these, or reimburse the employee for the cost of purchase.

Higher duties in the Children's Services Award

- Clause 18.1(e) will be deleted so that an employee will be entitled to the higher rate where they are required to undertake duties of another employee in circumstances where the other employee is absent from work attending approved training.

Claims rejected

The following claims were rejected by the FWC:

- **Rostering arrangements:** a claim by employers to extend the span for ordinary hours of work to 7.30pm.
- **General increase to non-contact time:** a claim by United Voice to increase non-contact time in both Awards to 4hrs (minimum) per week.
- **Training allowances:** a claim by United Voice to vary the Children's Services Award to require an employer to reimburse an employee for associated costs where they are directed to participate in training, and that such training be treated as time worked.
- **Laundry allowance:** a claim by United Voice for the Children's Services Award to state that where an on-site laundry facility exists, this will not mean that the laundry allowance is not payable

FWC 'provisional views' and other steps

In its Decision, the FWC expressed provisional views that certain other changes should be made to the Awards, that certain proposed variations be addressed at a later time, and that further steps should be taken as part of the Review of the Awards. These included the following:

Coverage for teachers to be included in the Children's Services Award

- Of its own initiative, the FWC has expressed a *provisional view* that the sections of the Teachers Award which deal with teachers in long day care centres be transferred to the Children's Services Award.

Rostering provisions in the Children's Services Award

- The FWC expressed a *provisional view* that clauses 10.4(a) and 21.7(b) in the Children's Services Award be varied to allow for roosting arrangements and changes to roster to be communicated via telephone, direct contact, mail, email, facsimile or any electronic means of communication.
- Provisions which include exceptions for the requirement to provide 7 days' notice for a change in roster in the Childrens Service's Award (i.e. 10.4(d)(iii), 21.7(b)(ii) and 21.7(b)(iii)) will be redrafted in plain language and include practical examples for applying the provisions.

Annual leave claim in the Children's Services Award

- The United Voice sought a variation to the Children's Services Award that would require employers to make top up payments when an employee does not have sufficient annual leave to cover a Christmas vacation period. The FWC did not determine this claim, but instead determined that it would be addressed in separate proceedings by the Plain Language Full Bench.

Casual rate & minimum engagements under the Teachers Award

- The FWC expressed a *provisional view* that Clause 14.5 of the Teachers Award be varied to provide casual employees are paid the minimum classification rate plus 25% casual loading for all time worked; minimum engagement periods consistent with the current award term.

Educational Leader Allowance and Responsible Person Allowance in both Awards

- While the unions sought Educational Leader and Responsible Person allowances in the Awards, the FWC determined that these claims will be dealt with following the conclusion of the Equal Remuneration/Work Value claim regarding the *Educational Services (Teachers) Award 2010* which is currently before the Full Bench.

Next steps?

Approved variations: The FWC has not yet issued determinations with the final wording of the approved variations, nor advised when the variations will take effect. AFEI will send an update to members once the FWC has determined the date for variations to commence.

Provisional views: The FWC has invited parties to make submissions in response to its provisional views by 4pm 30 June 2020. AFEI intends to participate in this process, and welcomes affected members to contact us with any input.

What if I want to know more?

If you have any questions please contact the AFEI Hotline on 02 9264 2000 and one of our advisers can assist you.