

## Review of annualised salary arrangements

**As part of the modern award review process, the Fair Work Commission has issued a decision regarding the review of annualised salary arrangements provisions in 19 modern awards.**

The decision to introduce model clauses relating to annualised salary arrangements is intended to provide employees with a stronger 'safety net' by imposing obligations on employers to ensure that employees who are paid an annualised salary are better off compared to entitlements they would otherwise receive under the relevant modern award.

AMMA members paying employees an annualised salary under the provisions of the affected modern awards need to be aware of the practical and regulatory implications the decision presents.



### The decision

The decision handed down on [27 February 2019](#) follows an earlier decision on this issue made on [20 February 2018](#) and sets out the proposed model clauses pertaining to annualised salary arrangements to be inserted into the modern awards. The clauses will only be inserted into modern awards which already contained annualised salary clauses, not all modern awards more generally.

There are four model clauses being introduced, one is applicable for employees who work relatively stable hours and another for employees who work highly variable hours or significant ordinary hours that attract penalty rates under the relevant modern award.

The other two model clauses are only applicable to annualised salary provisions under the *Marine Towing Award 2010* and *Hospitality Industry (General) Award 2010* which require a minimum percentage increment to be added to the base award rate.

The arrangements will only apply to full-time employees and take effect from 1 March 2020.

On 4 July 2019, the Fair Work Commission issued a further [decision](#) on transitional arrangements for the new annualised salary provisions determining the new requirements will **take effect from 1 March 2020**.

The inclusion of the new model clauses in relevant modern awards will also become a future BOOT (Better Off Overall Test) issue for enterprise agreements which are underpinned by a modern award which includes the new clause.

The model clauses will introduce a number of compliance requirements on employers engaging employees on annualised salary arrangements.

- Employers must advise employees in writing and keep records of:
  - How the annualised salary has been calculated, breaking it down into separate components and factoring in any overtime or penalty assumptions used;
  - The outer limit number of ordinary hours which would attract penalty rates under the modern award; and
  - The outer limit number of overtime hours which the employee may be required to work in a pay period or roster cycle without receiving any excess payment above the annualised salary.
- Employers are required to make an additional payment to employees if they work hours in excess of the outer limits specified in their annualised salary arrangements.
- Employers must keep a record of start and finishing times and unpaid breaks taken by employees. The record must then be signed by employees each pay period or roster cycle.
- Each 12 months from the commencement of the annualised salary arrangement, the employer must conduct a reconciliation to calculate whether the employee has been better off on the annualised salary compared to the relevant modern award. Where there has been a shortfall, this must be paid back to the employee within 14 days.



### What does this mean for employers?

The modern awards containing annualised salary arrangement provisions that have application for AMMA members include:

- Hydrocarbons Industry (Upstream) Award 2010 (clause 20)
- Marine Towing Award 2010 (clause 13)
- Mining Industry Award 2010 (clause 17)
- Oil Refining and Manufacturing Award 2010 (clause 20)
- Salt Industry Award 2010 (clause 18)
- Rail Industry Award 2010 (clause 18)
- Clerks – Private Sector Award 2010 (clause 17)
- Hospitality Industry (General) Award 2010 (clause 27)

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### What do employers need to do?

#### ***Before the model clauses are introduced***

- Review the coverage provisions of the above awards to determine whether the proposed model clauses will apply to employees within your operations. This will determine the scope of the impact the introduction of the model annualised salary clauses has on your business.
- Review current annualised salary arrangements and identify the number of ordinary hours an employee would work and the outer limit number of penalty rate and overtime hours an employee may be required to work in a pay period or roster cycle. This will assist in determining what entitlements under the relevant modern award are incorporated in the annualised salary. Employers should consider historical working patterns for employees, upcoming business activities and the financial impact of additional payments for hours worked by an employee beyond the outer limits specified in the annualised salary arrangements.
- Implement a time recording system that comprehensively captures start and finish times and all breaks taken by employees engaged on annualised salary arrangements. This may require employers to procure new time recording software or consider an appropriate method within their current payroll system to accurately record hours worked by employees receiving an annualised salary.
- Redraft annualised salary clauses in employment contracts (and where relevant enterprise agreements that are in the process of being negotiated) that cover the introduction of the model clauses in the relevant modern awards.

#### ***After the model clauses are introduced***

- Issue contract variations to employees who are affected by the new annualised salary provisions. Ensure that new employment contracts issued include the updated annualised salary clauses.
- Maintain comprehensive records of hours worked by employees engaged on an annualised salary for annual reconciliation purposes. The model clause requires the time keeping records be signed by the employee, however it is yet to be determined whether sign-off by electronic means is accepted.
- Conduct annual reconciliations to ensure employees engaged under annual salary arrangements are paid all entitlements owed to them had their salary been calculated under the provisions of the relevant modern award.
- If enterprise agreements which are in the process of being renegotiated are underpinned by the relevant modern awards, ensure that the draft enterprise agreement includes annualised salary clauses which will pass the BOOT.



### What next?

Despite the imposition of inflexible practices such as comprehensive time recording and annual reconciliations against award provisions, the Fair Work Commission determined that the inclusion of the model annualised salary clauses is necessary to meet the modern awards objective.

While employers may find the introduction of administrative requirements to be burdensome, it is intended for the new arrangements to be less onerous than calculating wages weekly, fortnightly or monthly under the award provisions.

AMMA will continue to monitor the transition arrangements for the introduction of the model clauses and provide further advice to members. For more information contact [policy@amma.org.au](mailto:policy@amma.org.au).

AMMA Workplace Relations Consultants can assist to interpret this decision and how it pertains to your business. For advice on your annualised salary arrangements contact [consulting@amma.org.au](mailto:consulting@amma.org.au).