



MEMBERS UPDATE

————— **AUGUST 2024** —————

Welcome to the August 2024 member's update

In this month's members update we look at:

- Rosters and overtime - Retail Award
- Fixed term contract - Live Performance Award
- QLD – Long service leave outside Australia
- Portable long service leave - community services
- Reminder: Casual Conversion - 26th August 2024
- Reminder: Right to disconnect change



Rosters and overtime – General Retail Industry Award

From the first full pay period starting on or after 5 July 2024, the Fair Work Commission has changed the wording in the General Retail Industry Award for overtime for part time employees and rostering.

Rosters

If an employee works 6 days in one week of a 2-week roster cycle, then the employee can only work ordinary hours on a maximum of 4 days in the other week of that cycle.

This means that an employee can work up to 4 days in the first week and 6 days in the second week. Previously, the week of up to 4 days had to follow the week of 6 days. There is no change to the total number of days an employee can work in a fortnight.

Overtime for part-time employees

Part-time employees now get overtime rates if they work outside the spread of ordinary hours in the award.

The spread of ordinary hours under the award hasn't changed.

Part-time employees get overtime rates if they work:

- more than their agreed 'guaranteed hours' (the agreed number of hours to be worked on each day of the week)
- outside the spread of ordinary hours.

Type of business	Monday - Friday	Saturday	Sunday
Newsagency	5am - 9pm	5am - 6pm	5am - 6pm
Video hire shop	7am - midnight	7am - midnight	9am - midnight
Retailers* trading after 9pm Monday to Friday or after 6pm on weekends (for those late night trading days only)	7am - 11pm	7am - 11pm	9am - 11pm
All other retailers*	7am - 9pm	7am - 6pm	9am - 6pm

<https://www.fairwork.gov.au/employment-conditions/hours-of-work-breaks-and-rosters/hours-of-work/when-overtime-applies>

Action items

- Part time employees under the Retail award to make sure their contracted hours are within the span of hours.

Fixed term contract - Live Performance Award

The Fair Work Commission has varied the Live Performance Award to allow more performers to be employed under fixed term contracts in certain circumstances. This includes:

- performers
- company dancers

- musicians

This change took effect from 16 July 2024.

The change was made to allow for greater and more flexible use of fixed term contracts to reflect the nature of live productions. For example, a live performance running for a season and being extended.

From 6 December 2023, new rules began applying around engaging employees on fixed term contracts. This means that certain rules have to be followed to ensure a fixed term contract remains lawful. There are some exceptions to these rules.

QLD – Long service leave outside Australia

The Full Bench of the Queensland Industrial Relations Commission handed down its judgment in *Fox v Infosys Technologies Ltd* [2024] QIRC 109 (Fox). To claim long service leave in Queensland, an employee must reach 10 years of continuous service 'wholly in the State or partly in and partly outside the State'.

An industrial inspector from the Office of Industrial Relations in Queensland brought an unpaid wages claim against Infosys Technologies Ltd (Infosys) on behalf of ex-employee, Mr Narendra Gade. Infosys is an Indian company which provides IT solutions and operates from 247 locations across 54 countries, including Australia. Mr Gade is an Indian national who worked firstly in India before he was transferred to Victoria and requested to transfer to Queensland.

The employee reached his 10-year anniversary with Infosys on 5 March 2022, a couple of weeks before he began working in Queensland. He resigned from Infosys while in Melbourne, with his notice of resignation expiring while he worked in Brisbane from 28 March 2022 to 14 April 2022.

The Full Bench found that the employee was entitled to long service leave despite only having worked in Queensland for 18 days because, on the proper construction of the IR Act, employees need only work their 10 years of continuous service 'partly in and partly outside the State'. This interpretation has a retrospective operation, with an employee's service across national and international jurisdictions adding up to the required 10 years of continuous service.

The Full Bench also found that the employees' entitlement to long service leave in Queensland could not be offset by any similar entitlements under Indian law. In effect, the employee was able to 'double dip' their long service leave entitlements in both India and Queensland.

In reaching this outcome, the Full Bench distinguished long service leave entitlements in the IR Act from Victoria's and New South Wales's long service leave laws, which require a 'substantial connection' between an employee's continuous service and the State in which they seek to claim long service leave.

Action items

- Review your employees who are based in QLD and have overseas service.

Portable long service leave - Community Services

On 20 June 2024, the New South Wales Parliament passed the Community Services Sector (Portable Long Service Leave) Bill 2024 introducing a new portable long service leave scheme for workers in the community service sector.

The Bill will impact up to 250,000 community sector workers in NSW by providing them with:

- access to six weeks of long service leave after 7 years of employment, rather than two months of

- leave after 10 years of service under the Long Service Leave Act 1955 (NSW);
- allowing workers to accrue long service leave based on their engagement in community services work, meaning that long service leave may accrue across multiple employers, rather than time employed by a single employer; and
- having one central agency, the NSW Long Service Leave Corporation to administer long service leave, including records and leave payments.

Employers will be required to pay a levy to the NSW Long Service Leave Corporation to cover their long service leave obligations.

The Bill will bring NSW in line with the portable long service leave schemes already in place for the community service sectors in the Australian Capital Territory, Victoria and Queensland.

It is expected that the scheme will commence from 1 July 2025.

<https://www.parliament.nsw.gov.au/bill/files/18609/Passed%20by%20both%20Houses.pdf>

Reminder: Casual Conversion - 26th August 2024

Starting from 26th August 2024, new rules will be introduced to facilitate the conversion of casual employees to permanent employment. This will replace the current casual conversion rules.

New Pathway for Casual Conversion

Employees can notify their employer of their intention to convert to permanent employment if they:

- Have been employed for at least 6 months (or 12 months if working for a small business employer).
- Believe they no longer meet the new definition of a casual employee.

Employees can't notify their employer of their intention to change to permanent employment if they:

- are currently engaged in an ongoing dispute with their employer about casual conversion, or
- in the last 6 months:
 - their employer refused a previous notification
 - they've resolved a dispute with their employer about casual conversion.

Example: Casual conversion

Mariana works as a casual cleaner at a large contract cleaning company.

Mariana has been working for her employer for 9 months. Mariana's employer:

- rosters Mariana to work every week from 8am to 1pm, Monday to Friday
- as an increasingly busy cleaning company, has always been able to offer her work
- believes it's reasonably likely Mariana will have ongoing work available in the future
- has part-time employees working in the same role.

Mariana believes that she no longer meets the definition of casual employee.

Mariana tells her manager, Victor, that she intends to change to part-time employment. She provides the notification to him in writing. Victor then organises a meeting with her.

In the meeting, Mariana explains why she believes she can change to part-time work. Victor agrees and they discuss how many hours Mariana would like to work. They also discuss when the change would happen.

Victor responds in writing within 21 days of Mariana providing the notification and agrees to the change to part-time employment. He includes details of her new working hours and when it will take effect.

Casual Employment Information Statement (CEIS)

The Casual Employment Information Statement (CEIS) is a document with information about employment

conditions that an employer must provide to all new casual employees.

The CEIS will now need to be provided to:

- new casual employees before, or as soon as possible after, the start of their employment
- all casual employees employed by non-small businesses as soon as possible after
 - 6 months of employment
 - 12 months of employment and every subsequent period of 12 months of employment
- all casual employees of small businesses as soon as possible after 12 months of employment.

Action items

- Discuss the new process with your business/HR team to ensure compliance. On the 26th August download new CEIS form. <https://www.fairwork.gov.au/employment-conditions/information-statements/casual-employment-information-statement>

Reminder: Right to disconnect change

Eligible employees will have a new 'right to disconnect' outside of work hours. This change starts on:

- 26 August 2024 for non-small business employers
- 26 August 2025 for small business employers.

Employees will have the right to refuse contact outside their working hours unless that refusal is unreasonable. This means an employee can refuse to monitor, read or respond to contact from an employer or a third party.

The right also covers attempted contact outside of an employee's working hours.

Several factors must be considered when determining whether an employee's refusal is unreasonable. This includes:

- the reason for the contact
- whether the employee is compensated or paid extra for:
- being available to be contacted to perform work within a specific period, or
- working additional hours outside their ordinary hours of work
- the nature of the employee's role and level of responsibility
- the employee's personal circumstances, including family or caring responsibilities.

<https://www.fairwork.gov.au/about-us/workplace-laws/legislation-changes/closing-loopholes/right-to-disconnect>

Action items

- Discuss the new process with your business/HR team to ensure compliance.

Payroll Compliance – Cents per Kilometre

An employee's award or agreement will specify the rate at which cents per kilometre should be paid. If an employee is not covered by an award or agreement, the employer should specify the rate, which may be outlined in a company policy.

Cents per kilometre should be processed through payroll. All systems should be configured as two separate codes for cents per kilometres:

1. one that is exempt from PAYG
2. one that is not exempt from PAYG

Cents per kilometres under Single Touch Payroll (STP) Phase 2, should be reported as allowance type CD and does not attract superannuation and must be included in the employee's income statement as a separate total allowance.

The ATO state that the first 5,000 km at up to 88 cents per kilometre is exempt from PAYG. Employers should consult with their payroll system provider to monitor when an employee exceeds 5,000 kilometres, potentially through a reporting feature.

Example: Cents per Kilometre Allowance

Eva uses her personal car to transport work related items to other sites. She is covered under the Clerks award and travels 5,200 km in a financial year. The award states she is entitled to 98 cents per kilometre:

CD – 5,000 km x 88 cents = \$4,400.00 (exempt from PAYG)

CD – 5,000 km x 10 cents = \$ 500.00 (taxed)

CD – 200 km x 98 cents = \$ 196.00 (taxed)

Action items

- Check that two codes have been set up in your payroll system for exempt PAYG and one that is taxable
- Set up a payrun report to check when an employee exceeds 5,000 km
- Check the Cents per kilometre is set up as CD for STP Phase 2

FAQ

Q. How do I tax a Backpays, Bonuses, Commissions, cash out of leave, and similar lump sum payments?

A. Taxing of the above payments need to be as per the Schedule 5 tax table. There are several methods to tax these payments. There is Method A, Method B(i) and Method B (ii).

Method A – This method can be used for all purposes, regardless of the financial year that the payment relates to. This method calculates withholding by apportioning payments made in the current pay period over the number of pay periods in a financial year and applying that average amount to the gross earnings in the current period.

Method B (i) – This method can only be used for back-payments relating to specific periods in the current financial year. This method recalculates withholding for each pay period the payment applies.

Method B (ii) - This method can be used for:

- a) Back payments that relate to a prior financial year or
- b) Any additional payments (including commissions, bonuses or similar payments) that don't relate to a single pay period regardless of the financial year the additional payment applies to.

This method calculates withholding by averaging all additional payments made in the current financial year over the number of pay periods in a financial year and applying that to the average total earnings to date.

<https://www.ato.gov.au/tax-rates-and-codes/payg-withholding-schedule-5-tax-table-for-back-payments-commissions-bonuses-and-like-payments/working-out-the-withholding-amount>

MEMBERS WEBINAR

Our June webinar will be held on **28th August** at **1pm (Sydney time)** This month's topic will be looking at **Understanding STP reporting obligations for Allowances**