

## **ANNUALISED SALARY AND ANNUALISED WAGE ARRANGEMENTS**

Many employees receive annualised salaries and such arrangements can lawfully be made even though the applicable award (or enterprise agreement) may not have an annualised salary clause. This can occur when there is a suitable contract of employment in place which identifies the entitlements which are “off set” against the annualised salary. However, if an employee is covered by an award or enterprise agreement that contains an annualised salary clause, employers are required to comply with those provisions.

From 1 March 2020, the existing annualised salary or annualised wage clauses will change in 19 awards. Please note the updated clause is not the same for all 19 awards.

Impacted awards include the:

- > Banking, Finance and Insurance Award 2020
- > Broadcasting and Recorded Entertainment Award 2020
- > Clerks - Private Sector Award 2020
- > Contract Call Centres Award 2020
- > Horticulture Award 2020
- > Hospitality Industry (General) Award 2020
- > Hydrocarbons Industry (Upstream) Award 2020
- > Legal Services Award 2020
- > Local Government Industry Award 2020
- > Manufacturing and Associated Industries and Occupations Award 2020
- > Mining Industry Award 2020
- > Oil Refining and Manufacturing Award 2020
- > Pastoral Award 2020
- > Pharmacy Industry Award 2020
- > Rail Industry Award 2020
- > Restaurant Industry Award 2020
- > Salt Industry Award 2020
- > Supported Employment Services Award 2020
- > Telecommunications Services Award 2020
- > Water Industry Award 2020
- > Wool Storage, Sampling and Testing Award 2020

Updated annualised salary provisions are pending in the following awards:

- > Health Professionals and Support Services Award 2020
- > Marine Towage Award 2020

## Key changes

The employer must advise the employee in writing and maintain records of:

- > The annualised salary;
- > The award entitlements the annualised salary will satisfy;
- > How the annualised salary was calculated;
- > The outer limit number of hours to be paid at any relevant penalty rate; and
- > The outer limit number of overtime hours the employee may be required to work per pay period or roster cycle\*

*\*Note: If the employee works additional hours of overtime in excess of the hours considered in the annualised salary, the employee must be remunerated separately for the additional overtime hours worked.*

An employer must keep record of the employee's start and finish times as well as the time and duration of unpaid breaks. Importantly, these records need to be provided to the employee each pay period or roster cycle and acknowledged. In addition, the employer is required to conduct an audit every 12 months to calculate what the employee would have received had the employee not been paid under an annualised salary under the applicable award. If a shortfall is identified, these monies must be paid to the employee within 14 days.

As outlined above, the changes to the annualised salary clauses changes do not apply equally to all affected modern awards. In addition to the requirements above, before implementing an annualised salary arrangement, employees covered by the following modern awards must agree to the arrangement:

- > Broadcasting and Recorded Entertainment Award 2020
- > Local Government Industry Award 2020
- > Manufacturing and Associated Industries and Occupations Award 2020
- > Oil Refining and Manufacturing Award (Non-clerical)
- > Pharmacy Industry Award 2020
- > Rail Industry Award 2020
- > Horticulture Award 2020
- > Pastoral Award 2020
- > Health Professionals Award 2020

Further, in addition to the record keeping requirements and need to obtain agreement from the employee before entering in to the arrangement, employees covered by the following awards, who are non-managerial staff must also be paid a specified percentage above the minimum weekly wage set in the applicable modern award:

- > Marine Towage Award 2020
- > Restaurant Industry Award 2020
- > Hospitality Industry (General) Award 2020

## Frequently Asked Questions

### **What do I need to do?**

If your employee is covered by a modern award listed above and is receiving an annualised salary, you will need to take steps to ensure the salary is compliant by 1 March 2020. You will also need to make sure you are able to comply with the record keeping requirements.

If you want to introduce an annualised salary, you will need to comply with the additional steps before and during the arrangement.

### **Can I use a contract and rely on an off set clause?**

Simply relying on a 'off set' clause in a contract of employment is insufficient. The Full Court has held such a clause will only be valid if it the monies paid meet the sum the employee would receive in accordance with the applicable modern award. It is also important that the clause is sufficiently drafted to include all the award obligations you intend to offset.

### **How often do I need to review the arrangement?**

Many awards require payments to be made within a pay period or roster cycle. This means, you must ensure the sum of the employee receives in that pay period or roster cycle is at least equal to what the employee is entitled to in the award.

There is a requirement to conduct annual audits in order to ensure the employee has not been disadvantaged. Capturing and maintaining data which can be used for this purpose is vital and a requirement of the modern awards and Fair Work Act (Cth) 2009.

### **What are the risks of getting it wrong?**

There are many risks of haphazardly adopting an annualised salary. You must make sure you comply with record keeping obligations and you must consistently check that your employee is receiving at least the relevant award minimum entitlements.

A failure to comply will expose your business to underpayments claims as well as penalties for breaches of the modern award and Fair Work Act (Cth) 2009.

## Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

There have been numerous incidences where the Victorian Chamber has saved a business considerable time and money by assisting in the redundancy process. Restructures leading to redundancies can be a complex area of workplace relations, and there are a number of potential risks for employers to be aware of. In the context of a redundancy strategy, employees may still claim an entitlement to severance payments or be able to bring a discrimination claim against their employer, even if they remain employed in a post-restructure position, which makes this area especially problematic.

We highly recommend you consider seeking assistance in determining a restructure strategy that ensures, as far as possible, that the process is dealt with in accordance with the legislative requirements.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on (03) 8662 5222.

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