

# RECAPPING THE MODERN AWARD REVIEW: WHAT IS HAPPENING NOW?

Date: 17 February 2020

## **Australia Labour, Employment and Workplace Safety Alert**

By: Michaela Moloney, Nick Ruskin, Paul Hardman, John Rodney, John Monroe

A lot has happened since the Fair Work Commission (FWC) commenced its review of modern awards in 2014. Now, 6 years later, the FWC is close to completing the mammoth task of reviewing the operation of each modern award and making variations to ensure that they comply with the "modern awards objective".

## **WHEN IS THIS HAPPENING?**

On 4 February 2020, the first tranche of the revised modern awards (the "2020 Awards") commenced operation. These will be followed by a second tranche on 4 May 2020 and a third on a date still to be determined.

In addition to the award-specific changes which are commencing in 2020, throughout this process the FWC has also made a number of general changes to all or the majority of modern awards, many of which have taken effect progressively since around 2016.

## **WHAT IS HAPPENING?**

New modern awards will be created and others have been substantially rewritten, including a number that are now intended to be in plain language aimed at making them easier to understand. However, whatever industry you belong to, the underlying entitlements will have changed.

The "common issues" in which the FWC has made changes include:

- Abandonment of employment
- Annual leave, including cashing out, taking leave in advance, and dealing with "excessive leave"
- Annualised salaries
- Time Off In Lieu (TOIL)
- Casual conversion and minimum periods of casual engagement
- Family and Domestic Violence leave
- Family friendly work arrangements
- Termination of employment, including deductions, payments on termination and redundancy provisions
- Overtime and penalty rates, such as clarifying how different rates interact and in particular the entitlements (if any) of casual employees to overtime rates.

These issues, along with a range of specific penalties, allowances, leave arrangements and other entitlements may have changed in each award, depending on the variations sought and the specific circumstances of the industry or occupation. For example, K&L Gates has assisted a number of clients, both employers and employer associations, to vary entitlements ranging from:

- which classifications apply to their employees
- the minimum qualifications employees must hold
- introducing new holiday shut down provisions
- changing which award applies to their specific sector
- allowing employers to make fairer employee deductions from an employee's salary on termination
- lowering the minimum engagement period for some employees
- clarifying overtime rates payable to certain employees.

## HOW DOES IT AFFECT US?

Of course, this is most relevant to businesses employing employees on modern award terms and conditions, which are the minimum permitted conditions for their relevant industries and occupations.

However, it is also affecting employers who are entering into new enterprise agreements. Because these agreements must pass the Better Off Overall Test, and make each employee better off than they would be under the relevant award, when businesses do not keep up with these changes it delays or prevents the approval of agreements that have been negotiated with employees and unions.

## WHAT NOW?

Employers need to:

- a. Understand the changes that have been made to their awards. K&L Gates has been working closely with a number of clients in responding to the changes brought about by the modern review, including providing easy to understand advice about how to interpret and apply any new provisions.
- b. Ensure they are negotiating valid agreements. K&L Gates can assist employers at all stages of the enterprise bargaining process, from when bargaining commences through to getting an agreement over the line with the FWC.

Attached to this update is a handy fact sheet to help bring you up to date on some of the common variations to awards that have taken effect during the award review period. .

We have prepared a handy fact sheet to help bring you up to date on some of the common variations to awards that have taken effect during the award review period. Click [here](#) to view it.

For advice about what these changes mean for your business, or about what specific changes have occurred in your industry, please feel free to contact us.

## KEY CONTACTS



**MICHAELA MOLONEY**  
PARTNER

MELBOURNE  
+61.3.9640.4430  
MICHAELA.MOLONEY@KLGATES.COM



**NICK RUSKIN**  
PARTNER

MELBOURNE  
+61.3.9640.4431  
NICK.RUSKIN@KLGATES.COM



**PAUL HARDMAN**  
PARTNER

BRISBANE  
+61.7.3233.1248  
PAUL.HARDMAN@KLGATES.COM



**JOHN RODNEY**  
SPECIAL COUNSEL

SYDNEY  
+61.2.9513.2313  
JOHN.RODNEY@KLGATES.COM



**JOHN MONROE**  
SPECIAL COUNSEL

MELBOURNE  
+61.3.9205.2141  
JOHN.MONROE@KLGATES.COM

---

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.