

Employment and Industrial Relations Alert

29 September 2009

Phasing in of Modern Award Entitlements

On 2 September 2009 the Full Bench of the Australian Industrial Relations Commission (“**AIRC**”) published a decision relating to the phasing in of modern award entitlements. While the *Fair Work Act 2009* (Cth) (“**FW Act**”) provides for modern awards to commence on 1 January 2010, the AIRC has recognised that there are concerns about the impact of changes in relation to minimum wages, casual and part-time loadings, weekend and public holiday penalties, and shift allowances (“**Entitlements**”). The AIRC has determined that to mitigate the impact of those changes, those provisions of the majority of modern awards which deal with Entitlements will not commence operation until 1 July 2010, at which point they will be phased in over five years. From 1 January 2010 until 30 June 2010, the Entitlements will be based on the current award rates or the relevant pay scales.

Reductions

Reductions to Entitlements will be phased in as follows. From the first pay period after 1 July 2010, the employee must be paid the modern award rate, **plus** 80% of the difference between the modern award and the current award (or in the absence of a current award, the Federal Minimum Wage (“**FMW**”)). This percentage decreases by 20% each year from 1 July 2010 until 1 July 2014, when the modern award rate is payable. For example, an employee with an entitlement to a 50% shift loading under a current award, who is entitled to a 20% shift loading under the modern award will receive 20% **plus** 80% of the difference between the two loadings (30%) which equals 44%. This loading will apply from 1 July 2010 to 30 June 2011. From 1 July 2011, the loading will be 38%.

Increases

Increases to Entitlements will be phased in as follows. From 1 July 2010, the employee must be paid the modern award rate, **minus** 80% of the difference between the modern award rate and the current award rate or the FMW. This percentage decreases each year by 20% from 1 July 2010 until 1 July 2014, when the modern award rate is payable. For example, an employee with an Entitlement to a 20% shift loading under a current award who is entitled to a 50% shift loading under modern award will receive the 50% shift loading, minus 80% of the difference between the modern award rate and the current award rate (30%) which equals 26%. This loading will apply from 1 July 2010 to 30 June 2011. From 1 July 2011, the loading will be 32%.

No existing entitlements

Where an employee did not previously have an Entitlement, the Entitlement under the modern award will be implemented at increments of 20% per year until 1 July 2014. This situation applies to both employees who were covered by a current award which does not contain a particular penalty or loading, or to employees who have not previously been covered by a current award, whose conditions are only regulated by the FMW. So, if an employee who currently has no entitlement to shift loading is then covered by a modern award with a 50% shift loading, the employee will receive a 10% loading between 1 Jul 2010 and 30 June 2011, a 20% loading from 1 July 2011 to 30 June 2012, etc.

Application of phasing schedule

Not all modern awards will contain the phasing in schedules. Some modern awards will commence operation in their entirety from 1 January 2010. Employers must therefore ensure that they seek advice on the commencement of modern award/s which will apply to their organisations, and the minimum rates for all Entitlements, to ensure that they are compliant from 1 January 2010 if required.

For further information please contact a member of Russell Kennedy’s Employment & Industrial Relations Team on (03) 9609 1555

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The information contained in this alert is intended as general commentary and should not be regarded as legal advice. Should you require specific advice on this topic, please contact the author directly.