

Employment and Industrial Relations Client Alert

29 July 2010

Phasing in of penalties under the Social, Community, Home Care and Disability Services Industry Award 2010

A recent amendment to the Social, Community, Home Care and Disability Services Industry Award means that penalty rates and loadings will not be phased in until 1 July 2011.

Most modern awards contain transitional provisions that require employers to phase in the rates of pay and penalty rates contained in the modern award over a four-year period between 1 July 2010 and 1 July 2014. However, FWA has recently updated the transitional provisions contained in the Social, Community, Home Care and Disability Services Industry Award 2010 (**'SCHCADSI Award'**) to specify that the transitional provisions will not take effect until 1 July 2011, a year later than most awards.

While wage rates under the SCHCADSI Award were always going to be deferred until 2011 prior to FWA's decision, the penalty rates and loadings were set to come into effect on 1 July 2010, along with most awards. Phasing in of the modern award rates now does not begin until 1 July 2011 for both wage rates and penalty rates.

This means that the minimum rate of pay, penalty or loading that an employee must be paid will remain at what the employee was entitled to under an award on 31 December 2009. The rates in the SCHCADSI Award will not be used for the purposes of phasing in until 1 July 2011.

Only penalty rates and loadings that fall within the transitional provisions will be deferred until 2011. These are:

- casual or part-time loading;
- Saturday, Sunday, public holiday, evening or other penalty; and
- shift allowance/penalty.

All overtime rates and non-shift related allowances and penalties contained in the SCHCADSI Award commenced on 1 January 2010.

This decision will affect employers who have employees that are covered by the SCHCADSI Award. This includes employees in the:

- crisis assistance and supported housing sector;
- social and community services sector;
- home care sector; and
- family day care scheme sector.

If you have any questions about employee entitlements under modern awards, please contact the Employment and Industrial Relations team at Russell Kennedy on (03) 9609 1555.

DISCLAIMER

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.