WORKPLACE RELATIONS

FACT SHEET

Changes to Annualised Salary Arrangements

The Fair Work Commission has varied the *Hospitality Industry (General) Award 2020* (**HIGA**) terms that relate to non-managerial annualised wage arrangements under clause 24.

Effective from 1 September 2022, annualised salary arrangements for these employees will be fundamentally altered. Key details of these changes are outlined below.

<u>What is an annualised salary arrangement?</u>

An annualised salary arrangement, is a way of paying an employee whereby an agreement is made that a fixed annual wage is paid, that will remunerate the employee for some or all of the separate payments they would be entitled to under an Award (e.g. hours of work, penalty rates, overtime, allowances, loadings etc.).

The HIGA provides for two different salary arrangements, at clause 24 and 25.

Clause 24 relates to all classifications other than Managerial Staff (Non-Managerial), and clause 25 relates to Managerial Staff only.

<u>Who do the changes apply to?</u>

The changes relate to clause 24 of the HIGA, that is, only in relation to Non-Managerial employees.

No changes have been made to clause 25 of the HIGA, which provides for a Managerial exemption arrangement.

As the changes are being made to the HIGA, employees covered by an Enterprise Agreement are not immediately affected. Although the changes could be relevant in future Enterprise Agreement negotiations and approvals.

Similar changes will also take effect from 1 September in relation to the Restaurant Industry Award 2020* (RIA)*.

<u>What are the changes?</u>

Clause 24 of the HIGA will be changed to:

- Require the separate payment to employees, in addition to the amount of annualised salary paid, when "outer limits" of penalty rates and overtime are exceeded in a particular pay period.
- Require employers to conduct a reconciliation every 12 months or upon termination of employment, calculating the difference between what the employee would have earned in separate entitlements compared to salary paid, with any shortfall being back paid within 14 days.
- Require annualised salary agreements to specify certain details, including the amount of annualised wage, the award entitlements that the salary includes, and the outer limits that apply.
- Require additional records to be maintained.
- No longer require time in lieu for time worked on public holidays to be provided.

Outer limits

The HIGA will introduce "outer limits" of penalty rates and overtime hours.

These outer limits are:

- more than 18 penalty rate hours per week; or
- More than 12 overtime hours per week.

Note that "Penalty Rate Hours" for this clause means ordinary hours worked Saturdays, Sundays, Public Holidays, and midnight – 7:00 am on weekdays, but excludes hours worked between 7:00 pm to midnight on weekdays.

The weekly limits specified may be averaged over a period of up to four weeks, if the employer operates a roster cycle over such a period.

What happens if an employee works beyond the outer limits?

Where the outer limits are exceeded, the HIGA will provide that such hours worked are not covered by the annualised wage, and in addition to the annualised wage payment made, an employer is required to pay the hours worked beyond the relevant HIGA rates of pay.

A copy of the AHA WA HIGA Wage Rates, indicating the relevant base, penalty and overtime rates for each classification level can be accessed on the AHA WA Member portal.

Outer limits – an example

Ramon is a Cook grade 3, employed on annualised salary of $67,000 per year ($1,288.47 per week). Ramon is rostered to work 10 hours on Saturday, and 10 hours on Sunday in addition to 18 hours during the week in day time hours. As Ramon has worked 20 "penalty rate hours", he has exceeded the outer limit by 2 hours. Ramon will be entitled to $1359.49, made up of: $1,288.47 in annualised wage; $71.02 ($35.51 x 2) for the two Sunday penalty hours that were outside the outer limit.

Reconciliation

The HIGA will require employers to conduct reconciliations:

- after each 12 months of the annualised wage arrangement, or
- within any 12-month period upon the termination of employment of the employee or termination of the agreement,

with any shortfalls identified to be paid within 14 days. This new obligation builds upon existing provisions which require an employee not to be disadvantaged by an annualised salary.

When do I have to conduct the first reconciliation?

Upon the new provisions commencing, employers will likely need to enter into a new annualised wage arrangement (see below). On the basis of this arrangement commencing on or around 1 September 2022, the first 12 month period of the salary in which a reconciliation will need to occur will end on or around 1 September 2023, or sooner if the employment is terminated.

Importantly, employers should also take steps to ensure that the existing obligation for an annualised salary not to cause disadvantage have been complied with up until this date.

Changes to requirements of written agreements

The HIGA will require annualised wage agreements to specify:

1. the annualised salary payable;
2. which provisions of the HIGA will be agreed to be absorbed in the annualised salary (noting these are now limited to – minimum rates, allowances, overtime, penalty rates, annual leave loading, and additional public holiday arrangements); and
3. the applicable outer limits.

Updating contracts of employment

For existing employees: We have prepared a template letter amending an existing employee's annual salary arrangement. Please contact the AHA Workplace Relations team to obtain a copy.

For new employees: We have prepared a new contract of employment. Please contact the AHA Workplace Relation team to obtain a copy.

Changes to record keeping

In addition to retaining a record of start and finish times of each working day, employers are required to record any unpaid breaks taken. All these records need to be signed off or acknowledged as correct in writing (e.g. by signing or by electronic means) by the employee, in each pay period or roster cycle.

Public holidays

Unlike the existing clause 24, the new provisions do not require paid time in lieu to be provided when an annualised wage employee works on a public holiday. Instead, these hours will be treated as penalty rate hours, with up to 18 being able to be worked per week. If this outer limit is exceeded, these hours will need to be paid separately at the relevant public holiday penalty rate.

Are there alternatives to salaries?

Yes. The potential cost impact and complexity of these changes may prompt employers to reconsider the practicality and efficiency of paying employees pursuant to an annualised salary arrangements and instead pay employees by another means.

The alternatives available include:

- Paying full-time employees on an hourly rate basis, with penalty rates, overtime, and allowances being paid separately (i.e. wages);

- If hourly arrangements are impractical (e.g. due to market expectations or requirements under other laws, e.g. migration), supplementing hourly rates with a minimum payment guarantee, whereby in addition to award rates for all hours worked, an employee is guaranteed a “top up” payment if award entitlements do not meet a specified weekly, monthly or other periodic threshold.

To minimise administrative burdens and mitigate the potential risk of non-compliance, we would strongly advise members who currently employ pursuant to annualised wage arrangements to consider moving employees off annualised wage arrangements by:

- Ceasing to offer annualised wage arrangements to new employees, instead providing hourly or other alternative terms;
- Consulting with existing employees on annualised arrangements as to whether they would be willing to agree to change their employment terms.

Advice specific to your arrangements

Establishing alternatives other than hourly arrangements, such as minimum payment guarantees will likely require unique adjustments to contracts and payroll procedures. Members should seek specific advice on such arrangements from the AHA Workplace Relations team.

What should employers be doing to prepare?

Employers subject to the HIGA and the RIA that have current employees on non-managerial annualised salary arrangements should:

1. Ensure that payroll systems and processes can accommodate outer limit payments that may need to be made in any given pay period.
2. If not already in place, establish processes to reconcile salaries each year or sooner upon the termination of employment.
3. Ensure that accurate records are being made of working times, including breaks of annualised wage employees, and that these records are signed and acknowledged by the employee as correct in each pay period.
4. For existing salary employees – If you wish to continue using an annualised wage arrangement, prior to 1 September 2022, obtain their agreement to amend their employment terms.
5. For new salary employees – ensure the contract of employment offered contains terms compliant with the new arrangement.
6. Give consideration as to whether it is more practical to cease annualised arrangements and replace them with hourly rate or other arrangements.

Further Information

For further information, please contact the Workplace Relations Team on (08) 9321 7701.