



Mediation and Employment Relations Service

135 Fullarton Road Rose Park SA 5067 Phone: 08 8331 2422
 Email: chas@mers.com.au Website: www.mers.com.au

SADA Member Update March 2017

MARCH 2017 IR NEWS

By CHAS CINI

1. Calculating Casual Workers working on Public Holidays and Overtime.

Casual workers are paid only when they perform actual work (engaged by the hour). They will receive their casual loading rate for each hour worked, unless their applicable award specifies when loading is not applicable.

The Pastoral Award 2010 does not exclude the loading when overtime is worked but it is not increased by the overtime rate as shown by the table below.

The following is the formula is used to calculate overtime and public holidays (based on the current award rates);

	FLH Lv 1	FLH 2	FLH Lv 3	FLH 4	FLH Lv 5	FLH 6	FLH 7	FLH 8		
Fulltime	\$ 17.70	\$ 18.21	\$ 18.47	\$ 18.91	\$ 19.25	\$ 19.56	\$ 20.61	\$ 22.14		
Casual Loading 25%	\$ 4.43	\$ 4.55	\$ 4.62	\$ 4.73	\$ 4.81	\$ 4.89	\$ 5.15	\$ 5.54		
Total Casual Rate	\$ 22.13	\$ 22.76	\$ 23.09	\$ 23.64	\$ 24.06	\$ 24.45	\$ 25.76	\$ 27.68		
Overtime at time and a half										
Fulltime	\$ 17.70	\$ 18.21	\$ 18.47	\$ 18.91	\$ 19.25	\$ 19.56	\$ 20.61	\$ 22.14		
Plus 50%	\$ 8.85	\$ 9.11	\$ 9.24	\$ 9.46	\$ 9.63	\$ 9.78	\$ 10.31	\$ 11.07		
Casual Loading 25%	\$ 4.43	\$ 4.55	\$ 4.62	\$ 4.73	\$ 4.81	\$ 4.89	\$ 5.15	\$ 5.54		
Casual Overtime at t.5	\$ 30.98	\$ 31.87	\$ 32.32	\$ 33.09	\$ 33.69	\$ 34.23	\$ 36.07	\$ 38.75		
Overtime at Double Time and Public Holidays										
Fulltime	\$ 17.70	\$ 18.21	\$ 18.47	\$ 18.91	\$ 19.25	\$ 19.56	\$ 20.61	\$ 22.14		
Plus 100%	\$ 17.70	\$ 18.21	\$ 18.47	\$ 18.91	\$ 19.25	\$ 19.56	\$ 20.61	\$ 22.14		
Casual Loading 25%	\$ 4.43	\$ 4.55	\$ 4.62	\$ 4.73	\$ 4.81	\$ 4.89	\$ 5.15	\$ 5.54		
Casual Overtime at t.5	\$ 39.83	\$ 40.97	\$ 41.56	\$ 42.55	\$ 43.31	\$ 44.01	\$ 46.37	\$ 49.82		
Please note that the overtime rate of time and a half and double time is based on the fulltime rate plus casual loading										

Please note that the current Pastoral Award 2010 does not prescribe **penalty rates** on Saturday afternoon or Sunday. The old SA Pastoral Industry Award provision of 50% on Saturday afternoon and 100% on Sundays **ceased on 1st July 2010**.

Overtime will apply if the employee has worked more than 152 hours over a consecutive four weeks' cycle.



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2. Calculating Allowances

Allowances need to be taken as a step by step approach in accordance with the particular award. In this example the Pastoral Industry Award 2010 applies for Farm and Livestock Hands.

The Leading Hand and First aid allowances apply for “all purposes” of the award. The Award does not define “all purpose” but the general interpretation of 'all purpose' is an allowance that is deemed to be payable for all purposes of the award. It is included in the calculation of entitlements prescribed in the award or agreement, including overtime and penalty rates and periods of paid leave such as annual leave, sick leave, and public holidays. It effectively is used in calculating all entitlements (except expense related allowances eg tool, travelling meal, etc refer to in Cl 17.4).

The calculation is based on the FLH Lv 2 as it is the “standard rate” on which these allowances are calculated. The Level 2 rate applies when calculating the standard rate.

Assuming for a moment that the worker is a FLH level 5 her currently weekly wage is \$731.50 pw or \$19.25 phr. The Level 2 is \$692.10 pw or \$18.21 phr. .

The calculations are based on the Level 2 and not any higher level.

i. Leading Hand Allowance

The LHA (Clause 17.4 (a) There is 15% per **week** for supervising 2-6 workers. Therefore the formula is 115% of the **weekly** FLH **Lv 2** or \$20.94 per hour x 38 hrs = \$20.94 pw extra on top of the FLH 5 (or whatever the level is).

- ii. First Aid Allowance - Clause 17.4 (d) states “must be paid a **daily** allowance of 14% of the standard rate to carry out such work”. 14% of \$18.21 is \$2.5494 **per day**. Not all workers work the same hours per day but it is a **DAILY** rate payable regardless of the number of hours worked.

This allowance has two criteria :-

- i. the worker is **DESIGNATED** by you (in writing) to perform first aid and
- ii. holds a **CURRENT and RECOGNISED** First Aid Certificate.

If for example the worker works 5 days pw the formula is \$2.5494 ÷ 38 (to achieve an hourly rate) x 5days = \$0.34 phr.



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2. Long Service Leave

a) Overview

Long Service is covered by the Long Service Leave Act 1987 (SA).

b) Which workers are eligible for Long Service Leave?

All workers whether fulltime, parttime, or casual are eligible.

A break does not count when the worker is re-employed by the employer within two months.

It may not be a break if the employer asks the worker to call the employer next season. It is best that the employer tells the worker “I will call you if we need you next year” as that will constitute a break because the worker is not given an expectation of ongoing employment. (S 6)

c) Basis for calculation

In SA the Act recognises only **COMPLETED** years of service at the time of commencement of the leave. Incomplete years are to be discarded.

d) When is it due?

Long Service Leave is **only** available after completion of 10 years’ employment with the one employer unless, and **only** if, the employment is **TERMINATED** between the 7th and 10th years when pro rata Long Service Leave is payable.

e) Effect of termination due to serious and wilful misconduct.

An worker whose employment is terminated for misconduct between the 7th and 10th years **is ineligible** for pro rata long service leave on termination. (S 5).

Misconduct may include (but not limited to theft, wilful poor animal husbandry behaviour, wilful property damage, fraud, serious breaches of company policies etc).

f) Payment for Long Service Leave.

Payment is to be calculated at the **worker's ordinary weekly rate of pay** applicable **immediately before** the payment is made (but not so as to include any amount representing the value of accommodation provided to the worker). (S 8).

Payment is to be at the rate of pay at the time of taking leave.



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g) What is the entitlement?

Long Service Leave is calculated at the rate of 1.3 weeks for each completed year. Therefore, after 10 years the amount owing is 13 weeks and continues to accrue at the rate of 1.3 weeks per completed year.

h) When is payment to be made?

Payment may be made (S 8)

- i. in advance for the whole period of leave; or
- ii. on the same days as payment of wages would have been made if the worker remained at work (in which case payment must, at the written request of the worker, be made by cheque posted to an address specified by the worker); or,
- iii. in some other way agreed between the employer and the worker.

i) How do you calculate casual entitlements?

A casual employee whose hours have fluctuated over previous three years are to have their **ordinary weekly** hours averaged over the previous three years and multiplying those hours by 1.3 for each completed year. For example a casual employee who completed 10 years and over the past three years averaged 30 hours per week and earned \$20 phr is entitled to the following formula;

$10(\text{yrs}) \times 1.3 \text{ wks} = 13\text{weeks} \times (\$20 \text{ phr} \times 30\text{hrs pw}) = 13 \text{ weeks} \times \600 pw or \$7,800 (less income tax).

The payment is **exclusive** of overtime (and for the purposes of this paragraph a person who is employed on a casual basis is not to be regarded as being paid at a penalty rate);

and

if the employer provides accommodation during employment but not while the worker is on leave, the worker's ordinary weekly rate of pay **will be increased** by an amount representing the weekly value of that accommodation (that value being determined, where possible, by reference to the fair and reasonable monetary value of that accommodation). It is suggested for all purposes that the value of accommodation is established before commencement of the leave.



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j) Can I direct an employee to take Long Service Leave? (S 7)

Yes.

Long service leave should be granted by an employer to a worker as soon as practicable (taking into consideration the needs of the employer's business or undertaking) after the worker becomes entitled to the leave.

- a) Long service leave should be taken in one continuous period.
- b) The employer should give a worker at least 60 days' notice of the date from which leave is to be taken.

The employer may deduct from any amount payable to the worker on the termination of service for the difference

- a) between the amount paid to the worker in respect of the long service leave taken and
- b) the amount of payment in advance still owing on the termination of service if the worker had not taken leave in advance.

3. Review into Modern Awards

The Review has been underway for sometime and is nearing completion.

a) Minimum Engagement

The Pastoral Award 2010 prescribes a minimum engagement of 3 hours.

Clause 10.3 states in relation to **part time** employees An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.

Clause 10.4 states in relation to **casual** employees that on each occasion a casual employee, other than a casual pieceworker, is required to attend for work, casual employees are entitled to a minimum payment of three hours' work at the appropriate rate.

This means part time and casual employees must be paid a minimum of three hours for each shift (not each day).

This does not apply to fulltime employees.



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b) Penalty Rates

On 23 February 2017, the Fair Work Commission (“FWC”) Full Bench announced a reduction in penalty rates for Sundays and public holidays for a number of modern awards in the hospitality and retail sectors. The public holiday penalty reductions will be effective from 1 July 2017.

The Sunday penalty reductions will be transitioned over a period to be determined by the FWC in May 2017 following submissions from interested parties.

The new penalties in those industries will apply from 1 July 2017, but subject to a phased transition period yet to be determined but to be within two to five years.

This recent decision to reduce penalty rates on Sundays and Public Holidays only applies to 4 out of the 122 awards. It does not apply to Pastoral Award 2010 but if you have family members in the Retail, Hospitality (not Restaurants), Pharmacy or, Takeaway Industries the changes are outlined below;

Award Holiday	Change to Sunday Penalty (from → to)	Change to Public from → to)
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Fast Food Industry Award 2010

	(Level 1 only):	(all workers)
Full-time & part-time	150% → 125%	250% → 225%
Casual:	175% → 150%	275% → 250%

General Retail industry Award 2010

Full-time & part-time	200% → 150%	250% → 225%
Casual:	200% → 175%	275% → 250%

Hospitality Industry Award 2010

Full-time & part-time:	175% → 150%	250% → 225%
Casual:	no change	275% → 250%

Pharmacy Industry Award 2010

(7:00 am – 9:00 pm only)		(all hours)
Full-time & part-time:	200% → 150%	250% → 225%
Casual:	200% → 175%	275% → 250%



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Implications

At this stage it is not known if the reduction in the Sunday and Public Holiday penalty rates will be reduced on the same day that there is expected to be a wage increase (the usual anniversary date for increases). However, the Fair Work Commission is currently seeking submissions of how to transition the new penalty rates over between two and five years to minimise the impact on affected employees' income.

Four Yearly Modern Reviews

As part of the four yearly reviews of Modern Awards, the FWC is continuing its current Review which can be expected to be finalised by the middle of This year.

4. Superannuation Contributions

The employer contribution will remain at 9.5% until 30th June 2018 but will be adjusted as follows after that;

- 1st July 2018 – 10%
- 1st July 2019 - 10.5%
- 1st July 2020 - 11%
- 1st July 2021 - 11.5%
- 1st July 2022 – 12%

Please note that SGC is only calculated on ordinary time (not overtime etc) and in some instances is not payable when the employee is on workers compensation.

5. Work Health and Safety

Late last year the farming commodities assisted Safework SA to create the Farmers WHS Policies and Procedures. You can access a FREE copy of the “Farmers’ Guidebook To Work Health And Safety” in electronic form at https://www.safework.sa.gov.au/uploaded_files/Farmers_Guidebook.pdf or, for a hard copy (postage extra).

6. Contractor or Employee Arrangements

There continues to be arrangements in the community that are not compliant with the true contractor arrangements. It is not sufficient for a “contractor” to say that he or she has an ABN and will provide a Tax Invoice to be a true contractor.



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If it is found to be a sham arrangement, the Employer may be responsible for payments equal to the award conditions (not just wages), Workers Compensation levies, Superannuation and in some instances back payment of income tax not deducted and, payroll tax.

The Return to Work SA (previously WorkCover) the Agents (Employers Mutual or Gallagher Bassett) will require information to determine if the injured person is an employee or contractor. A sham contractor arrangement will establish if the “contractor” was an employee when a workers’ compensation claim is lodged. The Workers Compensation Agent will ask questions such as the following;

1. Does your company have a contract with Jill Brown? If yes, please attach copies.
2. Does your company pay Jill Brown as a person or to a company? Please attach any payments made to Jill Brown
3. Does Jill Brown have an ABN which is attached to payments made by you/your company? If so, please provide details.
4. Is Jill Brown required to pay her own tax?
5. Is Jill Brown required to pay her own super contributions?
6. Do you supply Jill Brown with tools to perform her duties or does she supply her own?
7. When Jill Brown is contracted to you, do you dictate the hours and days when she works or can she schedule her own hours?
8. When Jill Brown is contracted to you, is she obliged to present for work? Does she need to seek your permission for absences etc.?
9. Is Jill Brown paid a wage or salary by you or is she paid a fee for a project? (i.e. paid at a rate of \$25 per hour until completion or paid \$200 to paint a fence - agreed rate for completion of project)
10. Are you providing and maintaining all of the equipment used by Jill Brown to complete services required by you or, is she responsible for that herself?
11. Can Jill Brown provide services to anyone else without your permission or is she contracted to you exclusively?
12. Does Jill Brown wear your company uniform, have your company business cards, email addresses or is she free to use her own branding etc.?
13. Does Jill Brown pay for and provide her own tools **AND** materials to use whilst contracted by you? If so, does the cost of materials exceed 4% of the total amount payable to Jill Brown for her services?

Other questions might include is Jill Brown responsible for the cost of repairs to tools and equipment she might damage in the course of providing her services? Do you give her instructions of how to perform her duties?



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It is highly recommended that you review any contractor arrangements you may have in place as it will only take one workplace accident or a Government Agency Audit to result in the risk of underpayment of wages, superannuation, workers compensation levies and, possible income tax and payroll implications.

Currently Return to Work SA is auditing the food production industry which includes farming commodities.

If you have any queries please do not hesitate to contact me on 8331 2422.