



Effective Workplace Solutions

CLUB INDUSTRY

CLIENT ALERT FEBRUARY 2015

To All of My Valued Clients in the Club Industry in Queensland and NSW,

This Client Alert is provided to bring you up-to-date on 2 matters of vital importance to the industry:

1. Changes to the Part-time provisions in the Award – particularly in respect to the flexible part-time provisions as they applied in NSW and the un-specified provisions in Qld.
2. *Murwillumbah Services Memorial Club Enterprise Agreement* highlighted in FWC innovative EAs project.

I hope you find this to be valuable information – if you need further information please do not hesitate to contact me.

Greg Arnold

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**Enterprise
Agreements – FWC
Project Report
Released**

**Flexible Part-time
arrangements for
Clubs**

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SOLUTIONS**

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NEW PART-TIME PROVISIONS INTRODUCED INTO THE AWARD

As I indicated in my Christmas Newsletter and emails subsequent to that, the flexible part-time provisions and the un-specified part-time provisions as they used to apply in the NAPSAs and transitioned into the modern Award have now been replaced with an Interim Order by the Fair Work Commission (FWC) issued on 24 December 2014. The new provision reads as follows:

“10.4 (b) Interim provision

In respect of part-time employees engaged prior to 1 January 2015, the following provisions shall also apply:

- (i) the pattern of ordinary hours of work for any such employee may, notwithstanding clauses 10.4(a) (iii) and (iv), be set by a roster established in accordance with clause 25 - Roster; and*
- (ii) where the pattern of ordinary hours is set by such a roster, any hours worked in addition to the rostered ordinary hours will be overtime and paid for at the rates prescribed in clause 28 – Overtime”*

The above provisions applied from 1 January 2015 to current part-time staff, however all new part-time staff employed after that date would have to be employed under the “substantive provisions” of the Award at clause 10.4 (a). My understanding is that this provision shall remain in place until such time as the parties are able to reach a longer term agreement in respect to part-time employment.

What does this mean?

There has been some doubt about the wording of this new clause and how it applies in a practical sense, because there seems to me to be a significant departure from the transitional provisions that applied up to 1 January 2015.

It is my view, based upon the ordinary meaning of the words, that:

- (a) You can alter a part-time employees roster, pursuant to Clause 25, by mutual consent at any time or with 7 days notice;
- (b) However, if the alteration of that roster results in additional hours and shifts beyond the “set roster” for that employee, then those additional hours and shifts shall be paid at overtime rates;
- (c) If the alteration to the roster results in lesser hours than the part-time employees “set roster” than the employer is only required to pay the hours worked, even though they are less than the “set roster”.

Based on this, it appears that the employer’s ability to provide and offer additional hours and shifts by mutual consent to part-time employees has now diminished, because those additional hours and shifts will have to be paid at overtime rates. Therefore, if there are additional hours and shifts available, it would be more cost effective for the employer to offer those hours and shifts to casual staff.

The View of the Fair Work Ombudsman (FWO)

Last week I wrote to the FWO in respect to this issue and asked them to clarify the situation and asked for their interpretation of these new provisions and how they would apply in a practical sense.

I also asked the FWO to provide advice on whether or not Individual Flexibility Agreements (IFAs) would be able to be used to remedy the current situation; by providing employers and part-time staff with the ability to access additional hours and shifts and for those hours and shifts to be paid at ordinary rates; subject to the “better off overall test (BOOT).

Apart from an acknowledgment that they have received my correspondence, I am yet to receive that advice from the FWO. As soon as I hear from the FWO I shall advise my clients of that advice.

Please note: the above provisions do not necessarily apply to those Clubs that have existing EAs and IFAs in place that already address this issue.

However, as per my advice in my Christmas Newsletter, an EA can definitely remedy the current provisions.

SUCCESSFUL ENTERPRISE AGREEMENTS

MURWILLUMBAH SERVICES CLUB EA HIGHLIGHTED IN FAIR WORK REPORT ON PRODUCTIVE AND INNOVATIVE ENTERPRISE AGREEMENTS

As reported in the last “*Workplace Matters*”, EWS has assisted Murwillumbah Services Memorial Club (MSMC) to continue to establish enterprise agreements that were productive, innovative and were beneficial to the Club and the staff. The Club was identified by the Fair Work Commission as having innovative provisions and was made part of an FWC project that highlighted productive and innovative provisions in Enterprise Agreements.

We are pleased to advise that that report has now been released. This is another important recognition for the Club which is continually striving to create a great working environment for its staff, but at the same time providing greater productivity and efficiency in its operation. It is also a prime example of how EAs are able to be used to bring about positive outcomes for both parties The Report concentrated on the Club’s training and development provisions and philosophy. Here is a salient extract from the report:

“Asked about whether the clauses had an impact on productivity, the senior executive (Guy Diven CEO) responded that there had been a positive effect on the club’s operations that had resulted from a higher skilled workforce:

If I can use some real live numbers, our revenue last year was up 16%, in a fairly tough environment. Most clubs in our area were tracking at CPI, so we are fairly comfortable with the returns that we are getting. The numbers speak for themselves and we are a people business, that’s just not our staff but also our members, we are member owned. We look after our members, we look after our staff, it all works. [senior executive]

The higher level of skill that employees brought to their work meant Murwillumbah Services Club was able to operate with fewer staff than would otherwise be required:

My catering department for example runs on about 9 or 10 staff. Now if I was in any other environment I would need probably another thirty or forty per cent on top of that, so it is definitely far more productive. [senior executive]

In terms of broader benefits, the senior executive said he believed the clause had helped the club achieve its goal of attracting and retaining quality staff:

We’ve got a number of large venues 20 minutes to the north of us and they are very good operations. For us to be able to attract quality and skilled employees we have to go outside of the box in our thinking and I think we have been able to achieve a fair balance there with the training component. Equally, it is retention. Once again, to be able to retain the highest calibre of staff we’ve got to be able to continually up-skill them. [And] the benefit of that of course is better business with their servicing our members in a better manner and that leads to improved revenues and generally profits. [senior executive]

In relation to the ‘bottom line’ impact of a higher skilled workforce, the senior executive added that:

If you don’t have good staff you don’t have a bottom line. We have seen that over the years. We conduct a lot of in-service or in-house customer service training and the periods we haven’t done that, generally our profits have declined.”

It is interesting to note that Guy Diven has reported to me that in the past 2 years or so, the labour turnover rate at the Club has been zero; that’s impressive and largely unheard of in the hospitality sector. A full copy of the Project Report can be found at <https://www.fwc.gov.au/creating-fair-workplaces/research/promoting-productive-enterprise-agreements-project>

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