

27 August 2015

NAT 016/15

### Accident Pay Decision – 4 Yearly Review of Awards

#### SUMMARY

A decision has been handed down by a Full Bench of the Fair Work Commission (FWC) in relation to union claims for accident pay entitlements to be included in 37 awards. The FWC has decided to include accident pay entitlements in 22 of the awards with effect from 15 October 2015. The FWC has decided not to include accident pay entitlements in 15 of the 37 awards (including the *Manufacturing and Associated Industries and Occupations Award 2010*, the *Clerks – Private Sector Award 2010*, the *Food, Beverage and Tobacco Manufacturing Award 2010*, the *Graphic Arts, Printing and Publishing Award 2010*, the *General Retail Industry Award 2010* and several other awards).

The terms of the accident pay clauses which will be inserted into the relevant awards have not yet been finalised by the FWC. Ai Group will distribute a member advice on the relevant individual awards when the specific terms of the variations have been settled by the FWC.

As explained in [Nat 006/15](#) and [Nat 002/15](#), for over 12 months a major case has been continuing in the FWC regarding accident pay entitlements in modern awards, as part of the 4 Yearly Review of Awards.

Accident pay entitlements require employers to make up an injured employee's pay to cover the difference between the amount paid by the relevant workers' compensation authority and the employee's ordinary time earnings, for a specified period such as 26 weeks.

Originally the case related to whether or not transitional provisions which preserved the accident pay entitlements in pre-modern awards until 31 December 2014 should be retained. In late 2014, the FWC decided not to retain the transitional provisions and consequently these provisions were deleted from over 100 modern awards. The FWC also decided that the existing accident pay provisions in the *Black Coal Mining Industry Award 2010* would have ongoing effect.

During the course of the abovementioned FWC proceedings regarding the transitional accident

pay provisions, in late 2014 the Australian Council of Trade Unions (ACTU) and various individual unions filed new claims for ongoing accident pay entitlements for all employees covered by 37 modern awards. Ai Group strongly opposed the unions' new claims during seven days of hearings before the Full Bench. We also filed expert evidence and several detailed submissions.

In a decision of 18 August 2015, the Full Bench put the 37 modern awards which were the subject of the unions' new claims into the following four categories:

1. Those modern awards where there was a clear national standard of accident make-up pay in the pre-modern awards which formed the basis for the making of the modern award.
2. Those modern awards where a significant proportion of the employees had an entitlement to accident make-up pay under the relevant pre-modern awards.

3. Those modern awards where only a limited proportion of the employees covered had an entitlement to accident make-up pay under the relevant pre-modern awards.
4. Those modern awards where there is no award history of accident make-up pay entitlements.

The FWC has decided to include accident pay entitlements in 22 awards which it allocated to categories 1 and 2 above. The FWC has decided not to include accident pay entitlements in 15 awards which it allocated to categories 3 and 4 above.

### Which awards will contain accident pay entitlements?

Accident pay entitlements will be included in the following awards:

- *Air Pilots Award 2010*
- *Airline Operations - Ground Staff Award 2010*
- *Black Coal Industry Award 2010* (as decided in late 2014 – see above)
- *Building and Construction General On-Site Award 2010*
- *Business Equipment Award 2010*
- *Concrete Products Award 2010*
- *Dry Cleaning and Laundry Industry Award 2010*
- *Fast Food Industry Award 2010;*
- *Horticulture Award 2010*
- *Hydrocarbons Industry (Upstream) Award 2010*
- *Joinery and Building Trades Award 2010;*
- *Labour Market Assistance Industry Award 2010*
- *Mannequins and Models Award 2010;*
- *Marine Towage Award 2010*
- *Mobile Crane Hiring Award 2010*
- *Oil Refining and Manufacturing Award 2010*
- *Professional Diving Industry (Industrial) Award 2010*
- *Stevedoring Industry Award 2010;*
- *Storage Services and Wholesale Award 2010*
- *Textile, Clothing Footwear and Associated Industries Award 2010*

- *Timber Industry Award 2010*
- *Vehicle Manufacturing, Repair, Services and Retail Award 2010*
- *Wine Industry Award 2010*

### Which awards will not contain accident pay entitlements?

Accident pay entitlements will not be included in the following awards:

- *Clerks - Private Sector Award 2010*
- *Contract Call Centres Award 2010*
- *Electrical Power Industry Award 2010*
- *Food, Beverage and Tobacco Manufacturing Award 2010*
- *Gardening and Landscaping Services Award 2010*
- *General Retail Industry Award 2010*
- *Graphic Arts, Printing and Publishing Award 2010*
- *Hair and Beauty Industry Award 2010*
- *Legal Services Award 2010*
- *Local Government Industry Award 2010*
- *Manufacturing and Associated Industries and Occupations Award 2010*
- *Pharmacy Industry Award 2010*
- *Rail Industry Award 2010*
- *Social, Community, Home Care and Disability Services Industry Award 2010*
- *Water Industry Award 2010*

### What are the terms of the accident pay provisions that will be inserted into the relevant awards?

The terms of the accident pay clauses which will be inserted into the relevant awards have not yet been finalised by the FWC.

Ai Group will distribute a member advice on the relevant individual awards when the specific terms of the variations have been settled by the FWC.

### What will be the operative date for the award variations?

The FWC has decided that the award variations will take effect from 15 October 2015.

## Other major cases during the 4 Yearly Review of Awards

The 4 Yearly Review of Awards involves the FWC individually reviewing each modern award, as well as hearing a large number of common issue cases dealing with entitlements across the award system.

There are 122 industry and occupational awards in the modern award system and these have been divided into four broad groups and further split into subgroups. At this stage no awards have been finalised given the large number of interpretation issues that have arisen due to the FWC's decision to re-draft each award.

In addition to the Accident Pay Case discussed above, there are a number of other common issue cases which are underway or scheduled during the 4 Yearly Review of Awards including:

- **Annual Leave Common Issue Case**

As discussed in Member Advice [NAT 008/15](#), a Full Bench of the FWC handed down a decision in this case on 11 June 2015. Ai Group was successful in convincing the FWC to give employers new rights to direct employees to take excessive accrued annual leave, and to allow cashing-out of annual leave for award-covered employees by agreement with their employer. The decision provides important new rights for employers and important flexibilities for employers and employees. Awards have not yet been varied to reflect the Full Bench's decision.

- **Award Flexibility Common Issues Case**

As discussed in Member Advice [Nat 011/15](#), a Full Bench of the FWC handed down a decision in this case on 16 July 2015. Ai Group was successful in convincing the FWC to insert time-off-in-lieu of overtime (TOIL) provisions into nearly all modern awards that contain overtime provisions. Awards have not yet been varied to reflect the Full Bench's decision.

- **Casual Employment Common Issue Case**

This case will be heard before a five-Member Full Bench of the FWC. The unions are pursuing numerous claims to restrict flexibility and increase employers' costs associated with employing casuals. Ai Group is strongly opposing the unions' claims, and is also seeking to increase flexibility for employers and reduce red tape. Submissions and evidence will be filed in October before hearings commence in early 2016.

- **Part-time Common Issue Case**

This case will be heard in conjunction with the *Casual Employment Common Issue Case*. The unions are pursuing claims to give part-time employees more entitlements. Ai Group is strongly opposing the unions' claims and is seeking to increase flexibility regarding part-time employment.

- **Family and Domestic Violence Clause Common Issue Case**

The ACTU is seeking the inclusion in all awards of a clause that would provide, amongst other aspects, an entitlement to up to 10 days of paid leave per year to an employee who experiences family violence. Ai Group has filed initial submissions opposing the ACTU's claim on the basis that the FWC does not have the jurisdiction to grant it. In response to Ai Group's jurisdictional submissions, the ACTU dropped some elements of its claims (e.g. a requirement for every employer to appoint a domestic violence contact officer) but the unions are proceeding with their main claim for 10 days of paid leave. A hearing was held on 13 August 2015 to deal with the jurisdictional issues and the Full Bench has reserved its decision.

- **Family Friendly Work Arrangements Common Issues Case**

The ACTU is seeking an absolute right for an employee to return to work on a part-time basis after parental leave. This case

also includes a claim for additional paid leave to attend pre-natal, pre-adoption or permanent care order appointments. Ai Group has filed initial submissions opposing the ACTU's claim on the basis that the FWC does not have the jurisdiction to grant it. A hearing was held on 13 August 2015 to deal with the jurisdictional issues and the Full Bench has reserved its decision.

- ***District Allowances Case***

This case is related to the Accident Pay Case discussed above. The hearings have been adjourned pending the outcome of a relevant Federal Court case.

- ***Public Holidays Common Issues Case***

This case involves a review of public holiday provisions in modern awards including various union claims for new entitlements. Ai Group is strongly opposing the unions' claims. It is anticipated that these proceedings will commence in early 2016.

In addition to the above common issue cases, there is a major ***Penalty Rates Case*** underway involving a review of penalty rates in the fast food, retail and hospitality industries. Ai Group Workplace Lawyers are representing fast food industry employers in this case.

**Do you require further advice?**

For information or assistance, please contact the **Ai Group Workplace Advice Line** on 1300 78 38 44.



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