

The Fair Work Commission has handed down another important [decision](#) in its four yearly review of modern awards. The decision is to include accident make-up pay in a number of awards.

## What is accident make-up pay?

Accident make-up pay is an award obligation that requires the employer to top up the difference between an employee's wages and what they receive under workers compensation payments.

## What awards are affected?

The Commission placed the proposed variations in [four](#) categories. The first category were awards where there was a clear national standard prior to the award modernisation process (ie. pre-2010). The second category were awards where there was a significant proportion of employees that had an entitlement. The third category were awards with a limited history of accident make-up pay, and the fourth were awards with little or no history.

The Commission has determined to include accident make-up pay provisions in the first two categories of awards. In doing so, the Commission specifically rejected employer arguments that the award system should not interfere with existing workers compensation schemes, including "step down" provisions that are designed to encourage workers to return to work.

Of the awards commonly used by our clients, the decision affects the *Building and Construction General Onsite Award 2010*, the *Joinery and Building Trades Award 2010*, the *Mobile Crane Hiring Award 2010*, the *Concrete Products Award 2010* and the *Timber Industry Award 2010*.

The *Clerks – Private Sector Award 2010* and the *Manufacturing and Associated Industries and Occupations Award 2010* are not affected.

## Operative date

This is only a test case decision. The award provisions will be finalised in the next few weeks. However, the Commission has determined that the clauses will come into effect on 15 October 2015. Employers should check the award closer to the time to ensure that they understand the effect of the provision. Click [here](#) for an example of an old accident make-up pay clause.

## Concerns about the effect of this provision

Because this is an award entitlement, it only applies to whom the modern award applies. Businesses who are covered by an enterprise agreement will not be affected by this decision (except if their agreement incorporates the award). Business concerned about this provision may consider making an enterprise agreement that suits the needs of their enterprise.

## Need more information

If you would like further information about these changes, or to discuss how enterprise agreements, please contact the team at Fair Work Lawyers.

The information contained in this publication is general in nature and does not constitute legal advice. Employers should seek legal advice in relation to their specific circumstances.

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