

The Fair Work Commission has recently issued a key [decision](#) regarding construction awards as part of its [four yearly review](#) of modern awards. These changes will take effect from 1 December 2018 for employers who to whom the applicable award(s) [apply](#).

Who is affected does this apply to?

This decision affect the following modern awards, although predominately relate to the Building Award:

- [Building and Construction General On-Site Award 2010](#) ("Building Award")
- [Joinery and Building Trades Award 2010](#) ("Joinery Award")
- [Mobile Crane Hiring Award 2010](#) ("Mobile Crane Award")
- [Plumbing and Fire Sprinklers Award 2010](#) ("Plumbing Award")

If you have an enterprise agreement, these changes will not affect you unless your agreement incorporates any relevant award terms.

What is changing?

The following is a brief review of the substance of the decision. The Commission has not yet finalised the terms of these changes, which will be issued after consideration of draft determinations.

1. Living Award From Home Allowance

The Living Away from Home allowance (LAHA) in the Building Award, Joinery Award and Mobile Crane Award will be significantly altered, including:

- On engagement an employee must not make any false or misleading statements about their address, and the employer must take reasonable steps to verify it. If the employer has not taken steps to verify an employee's address they may still be liable to pay an employee. This is intended to prevent collusion between the prospective employee and the employer.
- An express requirement for employers who elect to pay the monetary amount instead of providing accommodation and meals (currently \$70.81 per day) that the actual allowance is the greater of this amount or the amount actually incurred for reasonable accommodation and meals.
- Changing the standard of accommodation that must be provided, to be measured against 'contemporary living standards', a term not otherwise defined.
- Changes to camping provisions require the employer to bear the cost of reasonable meals for employees required to stay in a camp. If providing meals is not practicable, the employer must reimburse the employee for the reasonable cost of meals. In the latter case the camping allowance would remain to compensate for the employee having to purchase and/or prepare their own food.
- New rostering limitations such that employees are entitled to seven days off after being rostered on for 4 weeks (with at least five (5) days of that break not including travel time) an additional 2 days break after 12 weeks continuous service, and one additional day break for every 12 weeks after that.

2. Daily Fares and Travel

The Building Award's [daily fares and travel](#) allowance is generally poorly understood. The Commission has provided some welcome changes to this provision, confirming the allowance is not payable when an employee is:

- absent from work for any reason including leave and RDOs
- provided with or offered free transport by the employer to and from the construction site
- provided with a fully maintained vehicle by the employer to travel to and from the construction site (regardless of any other use that may be made of the vehicle), or
- not required to start and finish work at the construction site but rather at another fixed location (eg. the employer's a yard) so that actual travel to and from the construction site occurs in paid working time.

NB: this does not exclude or effect the obligation to compensate employees for travel during work hours, which remains a separate and additional entitlement. The Commission has also altered the provisions so that the complex rules about radial areas have been simplified, particularly around distant work.

3. Time off in lieu (TOIL)

The Building Award and the Joinery Award do not currently provide for TOIL. The '[model](#)' TOIL provision will be made available to full-time and part-time employees (ie. not to [daily hire](#) or casual employees).

4. Tool allowance

The Building Award's tool allowance will be varied to confirm that the allowance is paid for maintaining *and providing* standard tools of trade. The employer will have an obligation to provide or reimburse for the provision of tools other than the standard tools of the trade, the cost of protective clothing and a separate general requirement to pay for steel-capped safety boots if they are required.

5. Other allowances

There are dozens of allowances payable under the Building Award. Most of these will be simplified into a single compulsory allowance (excepting travel, living away from home, leading hand, multi-storey and several skill based allowances). The amount of this new allowance is yet to be determined, but is expected to be different for residential and non-residential construction. While this allowance will be simpler it is likely to lead to an increase for most employers who are not required to pay these allowances.

NB: this change will not happen from 1 December 2018, but is anticipated to occur in the near future. For employers who pay a higher rate of pay to cover allowances, it will be vital to ensure that this arrangement is properly documented to avoid a back-pay claim.

6. Hours of work

The hours of work provisions in the Building Award will be slightly amended to provide:

- Employers will have the capacity to roster RDOs either on the basis that all employees will take their RDOs on single day in a 20-day work cycle or, alternatively, employees may be rostered to take their RDOs on different days during the cycle
- If an employer wants to roster employees' RDOs on different days across the 20-day work cycle, the employer will be required to issue a written roster seven days in advance of the commencement of the work cycle.
- All employees will be given the capacity to bank RDOs
- Adding a daily maximum number of ordinary hours for casual employees and part-time employees.
- Adding that working rostered days off may occur by agreement with the employee without

restriction as to the circumstances, or upon the provision of 48 hours' notice in specified circumstances. An employee who works on a RDO will retain the accrued RDO in addition to the penalty rates to be paid for working on the RDO.

- Removing the prohibition on part-time employees working on a rostered day off.

7. Shift work (Building Award)

The Building Award will be amended to cover the gap in the current definition of shift work for shifts commencing between 11pm and 4.30am. This new 'early morning shift' will attract a loading of 50%.

8. Annual leave loading (Building Award)

The annual leave loading provision in the Building Award will be simplified to provide that the loading is calculated on the amount the employee would have earned for ordinary hours during that period.

9. Alternative working arrangements (Joinery Award)

The requirement in the Joinery Award for 60% of workers to approve a change to working arrangements is amended to require a majority of workers.

10. Redundancy

Despite submissions from relevant employer associations, the redundancy provisions of the Building Award, the Plumbing Award and the Joinery Award were not altered. Specifically the issues surrounding the absence of an exemption for small businesses and the unusual definition of redundancy will remain.

Need more information

If you would like further information about the above matters including terms and conditions of employment and the application of awards, enterprise agreements or the NES, please contact the team at Fair Work Lawyers.



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