

IR Weekly update

The Fair Work Commissions recent decision to reduce Sunday and public holiday penalty rates has led to fairly predictable reactions from key stakeholders.

Some reports may have given the impression that penalty rate changes apply immediately and across the board. This is NOT the case. The decision will vary some modern awards differently – there is no model clause for penalty rates as a consequence of this decision.

This summary considers some of the practical implications and decisions for various organisations, managers and in many cases IR/HR practitioners will need to consider.

The long and the short of it

- The “technical” aspects of the decision
- What the changes to specific rates are
- How the changes will be implemented

How affected parties have reacted

- Some media coverage of the decision quoted employees who claimed they would be significantly financially disadvantaged by the decision, while business owners claimed they could extend their weekend trading hours, employ more workers or roster more senior (higher base pay) staff at weekends or similar.
- Some employer organisations have claimed that more jobs will become available if businesses take those steps, and some unions have focused on the “financial hardship for employees” claims.
- Some business spokespeople have also suggested the decision will place small and larger businesses on a more even footing. This it could be argued is because employees in many large businesses, e.g. retail chain stores, are covered by enterprise agreements that have traded or reduced penalty rates, for example replaced by a higher base rate of pay, whereas employees in smaller businesses are covered by award provisions, the FWC decision will alter.
- There is also some anecdotal evidence of a few businesses publicising their decisions to continue to pay employees their current levels of penalty rates. Some have placed notices outside their premises to this affect.
- Some parties are broadcasting current estimates are that about 600,000-700,000 employees could be affected by the decision which is clearly not the case.
- Currently for example the hotel workforce is in the region of 80% plus casual employment and so some members do not get the benefit of the Sunday penalty rate reduction for these casual employees.
- On this basis the same can be said and the communication that impacts on the publicised numbers impacted and by changed Sunday rates importantly it is far less than some parties are portraying i.e. **no change to those employed as a casual under the HIGA award.**

What options are available to employers?

Where employees are covered by the FWC decision, they will have the following options:

- Follow the decision and reduce penalty rates to the minimum set by the relevant award
- Continue to pay employees the pre-decision penalty rates

Penalty Rate Changes at a glance

The relevant modern awards will be varied in the following manner:

	Sunday Penalty Rates (%)	
Award	Full-time & Part-time	Casual
HIGA	175 150	No Change (175)
Retail Award	200 150	200 175
Restaurant Award	No Change (150)	No Change (Lev 1-2 150, Lev 3-6 175)

	Public Holiday Penalty Rates (%)	
Award	Full-time & Part-time	Casual
HIGA	250 225	275 250
Retail Award	250 225	275 250
Restaurant Award	250 225	No Change (250%)

Implementation of Changes

At this stage, the full bench has not reached a conclusive view on how the changes are to be implemented. It has indicated its provisional view is:

- **Public Holiday** penalty rates will take effect from **1 July 2017**
- The variations to the **Sunday penalty** rates will be **phased in** by a series of annual adjustments taking place on 1 July each year. The full bench has indicated that this process will involve at least two adjustments, but less than five.
- THA will continue to communicate with members and provide advice and support where requested and over the next 4 to 6 weeks will be conducting member information sharing forums around the state.