

Clerks Award flexibility during coronavirus

JobKeeper changes to the Fair Work Act

On 9 April 2020, the Fair Work Act was amended to support the implementation and operation of the JobKeeper scheme in Australian workplaces.

For information about the changes and how they apply, go to [JobKeeper changes to the Fair Work Act. \(www.fair-work.gov.au/coronavirus-and-australian-workplace-laws/flexibility-in-workplace-laws-during-coronavirus/jobkeeper-changes-to-the-fair-work-act/jobkeeper-changes-to-the-fair-work-act\)](http://www.fair-work.gov.au/coronavirus-and-australian-workplace-laws/flexibility-in-workplace-laws-during-coronavirus/jobkeeper-changes-to-the-fair-work-act/jobkeeper-changes-to-the-fair-work-act)

We will continue to update our information and encourage you to check our website regularly for updates. You can also [sign up for email updates \(https://www.fairwork.gov.au/Website-information/staying-up-to-date/subscribe-to-email-updates\)](https://www.fairwork.gov.au/Website-information/staying-up-to-date/subscribe-to-email-updates) and we'll email you when more information is available.

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On 28 March 2020, the Fair Work Commission (the Commission) made a [determination \(https://www.fwc.gov.au/documents/documents/awardmod/variations/2020/pr717900.pdf\)](https://www.fwc.gov.au/documents/documents/awardmod/variations/2020/pr717900.pdf) varying the Clerks Award. The determination inserted a temporary new Schedule, which applies from an employee's first full pay period on or after 28 March until 30 June 2020. Schedule I adds award flexibility during the coronavirus outbreak for:

- employees' classifications and duties
- minimum engagement/pay for part-time and casual employees
- span of hours changes while working at home
- full-time and part-time employees' hours of work
- directions to take annual leave.

The Commission may extend when Schedule I operates until, if necessary. We'll update our information if that happens.

The following changes apply under Schedule I, for employers and employees covered by the Clerks Award. Use [Find my award \(https://www.fairwork.gov.au/awards-and-agreements/awards/find-my-award/\)](https://www.fairwork.gov.au/awards-and-agreements/awards/find-my-award/) if you're not sure which award applies to you.

Change in duties

While Schedule I applies, employers can tell their employees to do any tasks that they have the skill and competency for, even if those tasks aren't in their usual classification or normal work. The task must be safe and the employee must have all the appropriate licenses and qualifications to perform the tasks.

If an employee is told to work above their usual classification for more than one day, the employer needs to pay them at the higher rate.

Employees who do tasks below their usual classification are still paid at their usual pay rate.

Example: Employee directed to do tasks at a lower level

Alejandro is an office manager at a plumbing business. He manages a team of 2 administrative assistants. 1 of his team members is required to self-isolate for 14 days due to an enforceable government order.

Alejandro's employer would normally hire a temporary employee to replace the team member, but the business is quieter because of coronavirus.

Instead, the employer directs Alejandro to perform some work at a lower level while his team member is not at work.

Alejandro is paid at his usual pay rate for all the hours he works.

Minimum engagement/pay for part-time and casual employees working from home

Part-time employees who have agreed with their employer to work from home can have their minimum engagement reduced from 3 hours per shift to 2 hours per shift.

Casual employees who have agreed with their employer to work from home must be paid for a minimum of 2 hours' work per shift (rather than 3).

Span of hours changes while working at home

Employees who have agreed with their employer to work from home can make an agreement with their employer to change their span of hours to allow them to work between:

- 6am and 11pm, Monday to Friday
- 7am and 12.30pm, Saturday.

Employers don't need to agree with a majority of their employees to make these changes.

Day workers won't be considered shiftworkers for entitlements under the Clerks Award while these arrangements are in place.

Hours of work for full-time and part-time employees

Employers can temporarily reduce their permanent employees' hours of work to not less than 75% of their full-time ordinary hours or agreed part-time hours immediately prior to the reduction. This can be for the whole business or a section of the business.

If an employer wants to reduce their employees' hours, the employees will need to vote in favour of the reduction of hours. At least 75% of the full-time and part-time employees in the business or section of the business must approve the temporary reduction. The employer needs to follow these steps for the vote to be valid:

- If any employee is a known member of a union, let the union know about the vote.
- Provide the employees with the contact details for the Australian Services Union (ASU), if they wish to contact the ASU for advice.
- Email clerksaward@fwc.gov.au (mailto:clerksaward@fwc.gov.au) about the vote and provide the employees' work email addresses. The Commission will email the employees the ASU COVID-19 Information Sheet.
- Hold a vote at least 24 hours after they have followed steps 1-3.

Any employee who has had their hours reduced can ask their employer for permission to:

- find more work with another employer
- access training, professional development and study leave through their employer.

An employer can't unreasonably refuse an employee's request for find other work. An employer must also consider all reasonable requests for training, professional development or study leave.

Employees working reduced hours under Schedule I will continue to accumulate their paid leave and termination of employment entitlements based on their ordinary hours of work before the reduced the hours started.

Example: reduction of hours

Kin Nin runs a small accounting firm and employs 8 staff, including 5 administrative assistants who are employed under the Clerks Award. Many of Kin Nin's clients aren't operating due to enforceable government orders requiring them to close. This means there's less work for everyone in the office and Kin Nin needs to reduce the number of hours the administrative staff work by 20%.

Kin Nin organises a teleconference with the affected staff to let them know his intentions and the next steps, including the vote needed to agree on the reduction of hours.

Kin Nin contacts the ASU because he knows 2 of his staff are members and emails all the affected staff the contact details of the ASU. He then emails the Commission with the 5 email addresses of his administrative staff. They later receive an email from the Commission with an ASU COVID-19 Information Sheet, which has important information for the employees to consider.

24 hours later, Kin Nin holds a vote to reduce his employees' hours until 30 June 2020. 1 staff member votes against reducing the hours and 4 staff vote in favour of reducing the hours. This means all Kin Nin's administrative staff will now work 80% of their ordinary hours.

Several days later, one of Kin Nin's employees is offered some casual work by her local grocery store to help process invoices. The employee asks Kin Nin if they can do this. Kin Nin considers the request and doesn't find any conflict of interest or other reasonable grounds to refuse the request. This means Kin Nin has to allow his employee to work the second job while her hours are reduced under Schedule I.

An employer and employee can also individually agree in writing (including in an electronic form) to reduce the employee's hours.

Annual leave and close down of business

Employers can direct an employee to take annual leave under Schedule I by giving their employees at least 1 week's notice (or any shorter period of notice that is agreed).

If the annual leave is because the business is closing down for a period due to coronavirus and an employee doesn't have enough paid annual leave to cover the whole period, the employer can direct them to take unpaid leave. The period of unpaid leave counts as service for entitlements under the:

- Clerks Award
- National Employment Standards.

If the business isn't closing, the employer can only direct an employee to take annual leave if the:

- employee still has at least 2 weeks of leave left after the direction
- employer considers the employee's personal situation.

Employees can take up to twice as much annual leave at a proportionally reduced rate if their employer agrees.

Employees and employers can still agree to take annual leave at any time.

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