



s.156 Review of Modern Awards

AM2014/75

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COVER SHEET

NAME:	Sally Taylor
ORGANISATION:	Australian Manufacturing Workers Union
ADDRESS:	
Street Address 1:	133 Parramatta Road
Street Address 2:	Granville NSW 2142
Suburb/City:	
Date	26 April 2016
Telephone:	0417 491 836
Email:	sally.taylor@amwu.asn.au

1. The Commission's decision of 23 October, 2015¹ (the Decision) determined various issues regarding the exposure drafts in Group 1C-1E awards. The decision determined that the issue of examples in the Manufacturing and Associated Industries and Occupations Award 2010 (the Manufacturing Award).would be referred back to Commissioner Bissett²..
2. The AMWU has sought the inclusion of examples in the Manufacturing Award from the commencement of the 2014 Award review proceedings³. In our submission of 24 October, 2014 we stated that:

The AMWU supports, to the extent that employee's conditions are not undermined or compromised, proposed amendments which make the Award easier to understand. . We also support the inclusion of examples as an aid to comprehension and where relevant will provide examples prior to the conference before DP Lawrence. We note that employers and employees both benefit from an award format and expression which facilitates, rather than obscures, meaning⁴.

3. Our submission of 21 April 2015 in the current matter contained examples at Schedule B⁵ regarding the calculation of the casual loading and the calculation of overtime pay for casuals.
4. Our submission of 20 November, 2015 continued to support the inclusion of examples and invited interested parties to contact the AMWU to discuss the issue⁶. The AMWU continues to support the inclusion of examples.

¹ [2015] FWCFB 7236

² Ibid @ 92

³ See AMWU submission Stage 1 proceedings dated 9 May 2014.

⁴ AMWU Submission 29 October, 2014, paragraph 4

<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM201475-sub-amended-AMWU-291014.pdf>

⁵ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM201475-sub-AMWU-210415.pdf>

⁶ Paragraph 31, <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM201475-sub-AMWU-201115.pdf>

5. In addition to the examples previously provided the AMWU proposes for discussion that examples be drafted for the following exposure draft clause:

1. Ordinary Hours on the Weekend including for casual employees. (Clauses 12.2(c), 12.2(f), 29.1 and 29.2);
2. Rates for shiftworkers including casual employees (Clauses 29.2(c)-(i))
3. All Purpose Allowances. (Various however suggest Tool Allowance 27.1© and (d);
4. Overtime Including for casual employees (Clauses 30.1 -30.6, 30.11-12);
5. Other provisions as discussed at conference

6. The Commission, in a document dated 23 September, 2014 and titled “*Examples proposed for modern award*” (Attachment 1) provided a selection of examples from exposure drafts going to the above matters. The document provides a useful resource for the parties in drafting the examples at paragraph 5 above.

END

Examples proposed for modern awards

Below are some examples which have been proposed in exposure drafts created as part of the first 4 yearly review of modern awards. The examples are intended to provide additional guidance to employers and employees as to how provisions in the award are applied.

Examples from the [Exposure draft](#) based on the *Security Services Industry Award 2010*

1. Breaks after overtime

9.2 Minimum break between shifts

- (a) An employee is entitled to at least eight hours break between each shift factoring in any overtime.
- (b) Where an employee has not had at least eight hours off duty between those times, the employee must be released after completion of such overtime until the employee has eight hours off duty, without loss of pay for ordinary time occurring during such absence.
- (c) If on the instructions of the employer such an employee resumes or continues work without having had eight hours off duty, the employee must be paid at 200% ordinary time until released from duty for eight hours and is then entitled to be absent until the employee has had eight hours off duty without loss of pay for ordinary working time occurring during such absence.

Example 1 – Breaks after overtime (full-time employee)

For example: George is a full-time Level 1 employee. His hourly rate of pay is \$18.95. He normally works 38 hours per week, Monday to Friday, from 7.00 am to 4.00 pm.

George is directed to work until midnight on Tuesday.

If George starts work at his normal time of 7.00 am on Wednesday, he must be paid overtime at 200% of his hourly rate until he receives a break of at least 8 hours from work. If he works 7.6 hours on Wednesday, he will be paid as follows:

Calculating overtime pay

Multiply the hourly rate of pay by the overtime rate and then by the number of overtime hours worked = $\$18.95 \times 200\% \times 7.6 = \288.04 .

George is paid a total of **\$288.04** for Wednesday.

Alternatively, George may be directed by his employer to start work at 8.00 am on Wednesday (one hour later than his usual 7.00 am start) so he can receive 8 hours off work. If he works 7.6 hours on Wednesday, he will be paid his ordinary hourly rate for those hours: $\$18.95 \times 7.6 = \144.02 .

2. Broken shift allowance

11.1(a) Wage related allowances

Allowance	Payable	\$	% of <u>standard rate</u> (\$753.30)
...			
<u>Broken shift</u>	per broken shift	12.20	1.62

...

11.2(c) Broken shift allowance

A broken shift allowance is payable to an employee who is required to work a rostered shift in two periods of duty (excluding rest breaks).

Example 2 – Broken shift (full-time employee)

For example: Jimmy is a full-time Level 3 employee. His hourly rate of pay is \$19.82.

Jimmy starts work at 12:00 pm and finishes work at 4.00 pm on Thursday. He is rostered to return to work at 8.00 pm that same day for a period of 3.6 hours. Jimmy will:

- Work a total of 4 hours of ordinary time
- Work a total of 3.6 hours of ordinary time on night shift
- Work a broken shift

Calculating ordinary time pay

Step 1: Multiply the hourly rate of pay by the number of ordinary hours worked = $\$19.82 \times 4 = \79.28 .

Calculating ordinary time pay on night shift

Step 2: Multiply the hourly rate of pay by the night shift penalty and by the number of night shift hours worked = $\$19.82 \times 121.7\% \times 3.6 = (\$24.12) \times 3.6 = \$86.83$.

Calculating total pay

Step 3: Add the total hourly rate in Step 1 to the total night shift rate in Step 2, and the broken shift allowance = $\$79.28 + \$86.83 + \$12.20 = \178.31

Jimmy is paid a total of **\$178.31** for Thursday.

NOTE: Calculations in this example are based on the rounded hourly rates in Schedule B.

3. Amount payable for shift and weekend work

13. Penalty rates

Penalty rates apply to ordinary hours worked as follows:

Shift	Period	Penalty rate	Casual penalty rate
...			
Night	Midnight to 6:00 am and 6:00 pm to midnight – Monday to Friday	121.7%	146.7%
...			

Example 3 – Shift work and weekend work (Casual employee)

For example: Frank is a casual Level 1 employee. His casual hourly rate of pay is \$23.69 per hour (\$18.95 hourly rate + 25% casual loading). He works a 5 hour shift on Friday, Saturday and Sunday each shift starting at 6.00 pm. Frank will:

- Work a total of 5 hours of ordinary time on night shift
- Work a total of 5 hours of ordinary time on a Saturday
- Work a total of 5 hours of ordinary time on a Sunday

Calculating ordinary time pay on night shift

Step 1: Multiply the hourly rate of pay by the casual loading plus night shift penalty = $\$18.95 \times (100\% + 25\% + 21.7\%) = \$18.95 \times 146.7\% = \$27.80$

Step 2: Multiply the night shift rate of pay by the number of ordinary hours worked on night shift = $\$27.80 \times 5 = \139.00

Calculating ordinary time pay on Saturday

Step 3: Multiply the hourly rate of pay by the casual loading plus Saturday work penalty = $\$18.95 \times (100\% + 25\% + 50\%) = \$18.95 \times 175\% = \$33.16$

Step 4: Multiply the Saturday work rate by the number of ordinary hours worked on Saturday = $\$33.16 \times 5 = \165.80 .

Calculating ordinary time pay on Sunday

Step 5: Multiply the hourly rate of pay by the casual loading plus Sunday work penalty = $\$18.95 \times (100\% + 25\% + 100\%) = \$18.95 \times 225\% = \$42.64$

Step 6: Multiply the Sunday work rate by the number of ordinary hours worked on Sunday = $\$42.64 \times 5 = \213.20 .

Calculating total pay

Step 7: Add the total night shift amount in Step 2, the total Saturday amount rate in Step 4, and the total Sunday work amount in Step 6 = $\$139.00 + \$165.80 + \$213.20 = \518.00

Frank is paid a total of **\$518.00** for the three shifts.

NOTE: Calculations in this example are based on the rounded hourly rates in Schedule B.

4. Amount payable for overtime

14. Overtime

14.3 Overtime rates

Where a full-time, part-time or casual employee works overtime the employer must pay to the employee the overtime rates as follows:

For overtime worked on	Overtime rate
Monday to Saturday—first 2 hours	150%
Monday to Saturday—after 2 hours	200%
Sunday all day	200%
Public holiday all day	250%

See Schedule B for a summary of overtime rates.

Example 4 – Overtime Monday to Friday (full-time employee)

For example: Julie is a full-time Level 2 employee. Her hourly rate of pay is \$19.49 per hour. She normally works 7.6 hours per day (38 hours per week) Monday to Friday. On Tuesday she works 10.6 hours (3 extra hours).

Calculating ordinary time pay

Step 1: Multiply the hourly rate of pay by the number of ordinary hours worked = $\$19.49 \times 7.6 = \148.12 .

Calculating overtime pay

Step 2: Find the overtime rate of pay by multiplying the hourly rate by the overtime penalty. For;

- the first 2 hours of overtime = $\$19.49 \times 150\% \times 2 = \58.48
- Each hour thereafter of overtime = $\$19.49 \times 200\% = \38.98

Calculating total pay

Step 3: Add the total hourly rate in step 1, the overtime rates in step 2 = $\$148.12 + \$58.48 + \$38.98 = \245.58

Julie is paid \$245.58 for the 10.6 hours worked on Tuesday

NOTE: Calculations in this example are based on the rounded hourly rates in Schedule B.

14.4 When calculating overtime each day's work will stand alone, except where the overtime is continuous with overtime commenced on the previous day.

5. Amount payable for call back

14.5 Call back

- (a) An employee required to return to work for any reason after leaving the place of employment (whether notified before or after leaving the place of employment) must be paid a minimum number of hours as specified below:
- (i) where attendance is required at the employer's premises for the purposes of a disciplinary and/or counselling interview and/or administrative procedures such as completing or attending to Workers Compensation Forms, Accident Reports, or Break/Entry Reports, the employee must be paid a minimum payment of two hours at the appropriate rate for each such attendance;
 - (ii) except as provided in clause 14.5(a)(i), where attendance is required at the employer's premises on a Monday through Saturday, the employee must be paid a minimum payment of three hours at the appropriate rate;
 - (iii) and for Sunday attendance the employee must be paid a minimum payment of four hours at the appropriate rate.
- (b) This clause does not apply where a period of duty is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

Example 5 – Call back (full-time employee)

For example: Jimmy is a full-time Level 3. His hourly rate of pay is \$19.82. Jimmy finishes work at 5.00 pm but is requested to return to work at 9.00 pm for a security check. It takes him one hour to secure the premises however he is entitled to three hours pay at overtime rates (as this is outside ordinary hours).

Calculating overtime pay

Step 1: Find the overtime rate of pay by multiplying the hourly rate by the overtime penalty. For;

- The first 2 hours of overtime = $\$19.82 \times 150\% \times 2 = \59.46
- Each hour thereafter of overtime = $\$19.82 \times 200\% \times 1.5 = \59.46

Jimmy is paid \$118.92 ($\$59.46 + \59.46) for the 3 hour call back

NOTE: Calculations in this example are based on the rounded hourly rates in Schedule B.

6. Calculating apprentice rate (inclusive of industry allowance)

Example from the [Exposure draft](#) based on the *Aluminium Industry Award 2010*

10.3(a)(ii) The rate of pay for apprentices (other than an adult apprentices) who commenced their apprenticeship with the employer on or after 1 January 2014 will be the following percentage of the minimum wage for an Aluminium Worker Grade 4:

Year	% of Aluminium Worker Grade 4 for an apprentice who has not completed Year 12	% of Aluminium Worker Grade 4 for an apprentice who has completed Year 12
1st	50	55
2nd	60	65
3rd	75	75
4th and subsequent	88	88

Example – Wage rate—2nd year apprentice (other than adult apprentice)

For example: For an employee who commenced their apprenticeship on or after 1 January 2014, has not completed year 12, and is undertaking their 2nd year of training, the ordinary rate of pay is calculated as follows:

Ordinary hourly rate of pay

1. Determine the relevant percentage from the table in clause 10.3(a)(ii) = 60% of the Aluminium Worker Grade 4
2. Calculate the minimum hourly rate of pay = 60% of \$19.64 = \$11.78 (minimum hourly rate)
3. Add the hourly work conditions and disability allowance from clause 11.1(b) = $\$33.58 / 38 = \0.88
4. Ordinary hourly rate = $\$11.78 + \0.88
= **\$12.66** per hour

Ordinary weekly rate of pay

1. Determine the relevant percentage from the table in clause 10.3(a)(ii) = 60% of the Aluminium Worker Grade 4
2. Calculate the minimum weekly rate of pay = 60% of \$746.20 = \$447.72 (minimum hourly rate)
3. Add the weekly work conditions and disability allowance from clause 11.1(b) = \$33.58
4. Ordinary hourly rate = $\$447.72 + \33.58
= **\$481.30** per week

7. Daylight saving

Example from the [Exposure draft](#) based on the *Asphalt Industry Award 2010*

8.6 Daylight saving

For work performed on a shift that spans the time when daylight saving begins or ends, as prescribed by relevant state or territory legislation, an employee will be paid according to adjusted time (i.e. the time on the clock at the beginning of work and the time on the clock at the end of work).

Examples

Daylight saving begins

Larry works in New South Wales where daylight saving is due to begin at 2.00 am on the first Sunday in October. At 2.00 am the clock will go forward one hour to 3.00 am.

Larry is rostered to work the night shift that evening from 10.00 pm to 6.30 am. Larry will work for seven and a half hours but he will be paid according to the difference in time on the clock which is eight and a half hours.

Daylight saving ends

Nadia works in Victoria where daylight saving is due to end at 3.00 am on the first Sunday in April. At 3.00 am the clock will go back one hour to 2.00 am.

Nadia is rostered to work the night shift that evening from 10.00 pm to 6.30am. Nadia will work for nine and half hours but she will be paid according to the difference in time on the clock which is eight and a half hours.