



GET READY
FOR ANNUALISED SALARY CHANGES

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GET READY FOR ANNUALISED

SALARY CHANGES

Now the Fair Work Commission has introduced new mandatory requirements for annualised salaries, the question now is if annualisation is worth the effort?

From March 1, 2020, the Fair Work Commission (FWC) is bringing into force new rules for annualised salary arrangements in 22 modern awards.

Employers paying annualised salaries are now required to record employee work times and compare the salary value to what would have been earned under the award and backpay any difference.

To comply with the new requirements employers paying annualised salaries will need to review employment contracts and update HR and payroll practices to compare the annualised salary to what would have been earned under the award and backpay any difference.

Although the changes were introduced as part of the FWC's regular four-yearly review of modern awards, it's also an effort to prevent employees on annualised salaries being paid less than their award entitlements for actual hours worked – which was the central issue in [Woolworth's underpayments admission](#) in 2019.

However, the new rules will require administration, and there is little official guidance so far on how the new rules should be applied.

What we do know is that it will be essential for employers to prove they did the right thing to avoid breaching a modern award and having to make a back payment, pay a fine or make a contrition payment under the Fair Work Act 2009. Furthermore, as the federal government aims to [criminalise 'wage theft'](#), compliance with the new rules can't be put in the too-hard basket.



ANNUALISATION COST

VS BENEFIT



Salary annualisation is a common practice that sees overtime, penalty rates and other employer obligations consolidated into an annualised salary value, which is paid out at a consistent value each pay period.

Annualisation appeals to employers because it requires less administration than recording hours and paying irregular amounts on a pay-by-pay basis. For employees, the benefit is knowing what they'll earn ahead of time. But ensuring annualised salary arrangements are airtight from a legal perspective is tricky.

A key FWC requirement is that an annual salary can't be less than the minimum entitlements an employee is entitled to for the hours they work under the award or registered agreement. Care needs to be taken where salaried employees work at times when they would be entitled to penalty rates or overtime rates under their award – their salary must take all award entitlements into account.

Indeed, one of the new changes to modern awards is that if an employee works in excess of a 38-hour week, the employer must ensure that

they don't earn below what they're entitled to under the award overall.

Without regular reconciliations ensuring that hours are matching pay, this problem balloons out over time, and it has been the source of many of the [high-profile incidences](#) of underpayments seen recently in Australia.

MANAGING

MANDATORY

CLAUSES

The awards impacted by the new annualised salary arrangements are divided into three categories that reflect the level of effort required to administer annualised salaries in each.

Category 1 awards generally apply to industries or occupations where employees work relatively stable hours, while Category 2 awards cover industries and occupations with highly variable hours or significant ordinary hours that attract penalty rates. Finally, Category 3 has two specific clauses for the Marine Towage Award 2010 and the Hospitality Industry (General) Award 2010.

The changes to annualised salaries are part of the Fair Work Commission's four-yearly review of modern awards. Find out more about [changes to awards in 2020](#) and when each award is changing.

THE 22 MODERN AWARDS AFFECTED BY THE NEW RULES FOR ANNUAL WAGE ARRANGEMENTS:

 Banking, Finance and Insurance Award 2010	 Broadcasting, Recorded Entertainment and Cinemas Award 2010	 Clerks – Private Sector Award 2010
 Contract Call Centres Award 2010	 Health Professionals and Support Services Award 2010	 Horticulture Award 2010
 Hospitality Industry (General) Award 2010	 Hydrocarbons Industry (Upstream) Award 2010	 Legal Services Award 2010
 Local Government Industry Award 2010	 Manufacturing and Associated Industries and Occupations Award 2010	 Marine Towage Award 2010
 Mining Industry Award 2010	 Oil Refining and Manufacturing Award 2010	 Pastoral Award 2010
 Pharmacy Industry Award 2010	 Rail Industry Award 2010	 Restaurant Industry Award 2010
 Salt Industry Award 2010	 Telecommunications Services Award 2010	 Water Industry Award 2010
 Wool Storage, Sampling and Testing Award 2010		

UNDERSTANDING THE CORE FEATURES



MANDATORY TIMEKEEPING

Employers must record employee start and finish times, including any unpaid breaks. In effect, employers must keep accurate records of the hours that they work, for any employee paid an annualised salary, even where these hours may be stable from week to week.

SETTING BOUNDARIES

Depending on the relevant award, employers may be required to advise employees in writing of how their annualised wage will satisfy the award and the method by which this has been calculated, as well as the maximum overtime (outside of the 38-hour week) they can work in a pay period without being entitled to a separate payment.

EMPLOYEE CONSENT

An employee's agreement in writing will be required to implement an annualised salary arrangement for award Categories 2 and 3 (employees who work highly variable hours). The agreement may be terminated by the employer with 12 months' notice; however, an agreement won't be required for award Category 1 (employees who work relatively stable hours).

ANNUALISED SALARY

COMPLIANCE TIMELINE



1

Find out which awards apply to employees



2

Work out which job classification employees fall into



3

See if the applicable award is one of the 22 awards being changed



4

Consider whether employment contracts may require amendments



5

Review timekeeping/rostering system



6

Conduct reconciliation after 12 months from an employee's start date, or at termination

COMMON LAW CONTRACTS

AND ENTERPRISE AGREEMENTS

The Fair Work Commission has made it clear that an employer and employee are not obliged to rely only on an annualised salary arrangement administered under an award. Instead, they can choose to apply a common law contract (correctly drafted) with a set-off clause, although there are specific requirements they must follow.

It's important to remember that common law contracts and other enterprise agreements don't necessarily remove an employer's obligation under an award, so seek comprehensive legal advice when using these instruments to safely incorporate any award entitlements.

Set-off clauses still require employers to meet their minimum award obligations – which require regular audits and reconciliations to ensure employees are being paid correctly. To stay compliant, employers need to perform regular audits of annualised salaries vs. full award wages to see if the salary is still above the required award rate and run regular audits to compliment hours-and-pay record keeping. Trigger points for a review include changes to awards, an employee departure or contract change.

To maintain common law contracts or enterprise agreements, employers may need to redraft annualised salary clauses in employment contracts. Enterprise agreements can also be affected by modern award changes, particularly where the agreement incorporates or references the award.

Be careful annualising a salary for employees with significant variations in their hours of work – even with an adequate contractual set-off clause, underpayments can still occur. Just because you pay an above-award rate doesn't mean you aren't underpaying employees, as the rate must adequately compensate the employee for all award entitlements, including penalty rates, overtime rates and allowances.





TIMEKEEPING AND RECONCILIATION

One of the foreseeable issues with the new salary annualisation clauses are to do with an organisation's time-keeping system being able to integrate with the payroll system and deliver a single source of truth to payroll administrators.

This record of hours and attendance must be signed by the employee or acknowledged as correct in writing (including by electronic means) for each pay period.

The new annualised salary clauses require that each 12 months from the commencement of the annualised wage arrangement, or upon termination, employers must calculate the amount of remuneration that would have been payable to the employee under the provisions of this award. The amount is compared to the amount of the annualised wage actually paid to the employee, and any shortfall must be paid within 14 days.

Sounds confusing? It can be. You'll need comprehensive time records and a payroll solution that can automate this process as much as possible – ideally one that can calculate the difference you need to pay automatically – so employers may need new time and attendance software or a replacement payroll solution (see below for Aurion's advice on developing a solution).



PREPARING FOR THE CONSEQUENCES

While employers may find the introduction of administrative requirements to be burdensome, it is important to note that compliance with modern awards, including the annual salary clauses, is a legal requirement and stiff penalties apply for non-compliance.

However, the question still applies: if annualised salaries are no longer a more cost-effective way of remunerating employees, because they're more difficult to administer – is it worth the effort? A good timekeeping tool with award interpretation built in can automate a lot of the pain away.

The Fair Work Ombudsman (FWO) has not issued any guidance about how the new annual salary requirements should be applied, and the full implication of the new salary annualisation rules are not yet known.

We may see many employee contracts and agreements scrutinised to see what penalties were swapped for the wage rate; and the new annualised salary rules may have to be tested in court before a water-tight interpretation can be found.

MORE INFORMATION



For more information on the new Fair Work Commission rules on salary annualisation take a look at the [full decision](#), as well as details of the [changes to awards in 2020](#).

YOUR ACTION PLAN

To help develop your response to the new annualised salaries arrangements, in March and April 2020, Aurion will be releasing a series of resources with expert advice and opinion on staying compliant – make sure you don't miss out by [subscribing to our mailing list](#) today.





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