

# MEMBERS UPDATE



**SEPTEMBER  
2022**



In this month's members update we look at:

- Annualised wage arrangements for restaurant, cafe and hospitality workers
- Superannuation on leave loading?
- Fairwork Compliance notice course
- Payroll Compliance: Start Monthly training with your Payroll team

## Welcome to the September 2022 member's update

Our Brisbane Conference is just around the corner and we are looking forward to seeing some of our Queensland members while we are up there. Find further information [here](#)

## Annualised wage arrangements for restaurant, cafe and hospitality workers

From 1 September 2022, annualised wage arrangements in the following awards are changing:

- Restaurant Award
- Hospitality Award

Following a decision made by the Fair Work Commission, these replace the previous annualised salary arrangement provisions in these awards.

Key changes include:

- rules about what award entitlements can be included in an annualised wage arrangement
- new rules about the maximum number of hours that attract overtime or penalty rates that an employee can work in a roster cycle and be included in their annualised wage (called the 'outer limits')
  - an average of 18 ordinary hrs per week that attract a penalty rate (except for evening work)
  - an average of 12 overtime hrs pw.
- what needs to be included in a written agreement for an annualised wage arrangement
- extra record-keeping rules
- new rules about ending an annualised wage arrangement.

These changes:

- only apply to full-time employees covered by the Restaurant Award or the Hospitality Award
- don't apply to people employed as Managerial Staff (Hotels) under the Hospitality Award.

Click here for the employer's guide <https://www.fairwork.gov.au/sites/default/files/2022-08/employers-guide-to-annualised-wage-arrangements-in-the-hospitality-and-restaurant-industries.pdf>

## Superannuation on leave loading?

The issue of Super on leave loading has arisen again. In a recent court case between Finance Sector Union of Australia v Commonwealth Bank of Australia (2022), the court ruled that Leave loading is not considered OTE.

As we know previously outlined by the ATO, annual leave loading will be ordinary times earnings (OTE) unless it is referable to a lost opportunity to work overtime. The ATO website also clearly states that all other annual leave loading is OTE and therefore subject to SG.

Superannuation Guarantee Ruling (SGR) 2009/2 states at paragraph 238: "By way of exception an annual leave loading that is payable under some awards and industrial agreements is not OTE if it is demonstrably referable to a notional loss of opportunity to work overtime. However, the loading is always included in

'salary and wages'.

The ATO have not yet commented on the court case or indicated whether there will be any updates to SGR 2009/2, and there could be a chance that they may decide to appeal the ruling. As a result, we suggest that you continue to meet your SG obligations as required by the ATO until this is further clarified by them. If an employer wants to apply the court ruling to their own particular circumstances, then we would recommend that they obtain legal advice.

Payment	Salary and wages	OTE
Annual leave	Yes	Yes
Annual leave loading – clearly linked to lost opportunity to work overtime	Yes	No
Annual leave loading – all other	Yes	Yes

<https://www.ato.gov.au/business/super-for-employers/paying-super-contributions/how-much-super-to-pay/list-of-payments-that-are-ordinary-time-earnings/#Leave>

## Fairwork Compliance notice course

A compliance notice is a formal document issued by a Fair Work Inspector requiring an employer to fix a contravention of workplace laws.

Fairwork have a new online course that will help you understand what a compliance notice is and how to respond if you get one. It includes:

- information about compliance notices and why they are issued
- step-by-step guidance for responding to a compliance notice
- video scenarios and real-life case studies about the consequences of ignoring a compliance notice
- activities to step learners through how to calculate an underpayment and make back-payments
- tips to help you avoid common compliance mistakes in your workplace
- links to free calculators and resources to help you meet the requirements of a compliance notice and prevent future workplace problems.

<https://www.fairwork.gov.au/tools-and-resources/online-learning-centre/compliance-notices>

## Payroll Compliance: Start Monthly training with your Payroll team

Each month we deliver a Members Webinar for all our members. This is a great way for your team to come together to watch, discuss and plan how to ensure that your payroll team and system are compliant with legislation.

Previous webinars include topics such as:

- Understanding ETP's & Genuine Redundancy Payments
- Overpayments & Deductions
- Purchase leave Arrangements
- Death of an employee

If you have missed any webinars from the past, don't worry we have them all saved in our members portal.

<https://www.austpayroll.com.au/members-area/webinars/>

## FAQ

### Q. Do I have to offer my casual employees the option to go full-time or part-time?

A. Unless you're a small business (less than 15 employees), the only reasons for not making an offer to a casual employee for casual conversion is if your employee isn't eligible (as per below) for casual conversion or you've got reasonable grounds to do so.

To be eligible to request casual conversion, a casual employee:

- needs to have been employed by the employer for at least 12 months
- needs to have worked a regular pattern of hours on an ongoing basis for at least the last 6 months
- could continue working these hours as a full-time or part-time employee without significant changes.

Reasonable grounds for deciding not to make an offer can include that, in the next 12 months:

- the employee's position won't exist
- the employee's hours of work will significantly reduce
- the employee's days or times of work will significantly change, and that can't be accommodated within the employee's available days or times for work.

Reasonable grounds can also include:

- making the offer would not comply with a recruitment or selection process required by or under a Commonwealth, State or Territory law
- the employer would have to make a significant adjustment to the employee's work hours for them to be employed full-time or part-time.

<https://www.fairwork.gov.au/starting-employment/types-of-employees/casual-part-time-and-full-time/casual-employees/becoming-a-permanent-employee#no-offer>

### Q. If an employee is acting in a higher position while someone is on holidays and they are paid higher duties allowance, is this allowance included in OTE for super?

A. Yes, the higher duty allowance is considered part of Ordinary Time Earnings

When an employee is performing higher duties which is usually different from their normal duties, the higher duties allowance they receive relates to work they are doing during their ordinary hours of work and in effect, the allowance is added to their "normal pay" and becomes the rate of pay for those ordinary hours. As superannuation is payable on wages paid for ordinary hours of work, then it is also payable on the higher duties allowance.

In STP Phase 1 higher duties should be included in Gross. Under STP Phase 2, Higher duties should be listed under Task (KN).

<https://www.ato.gov.au/Business/Single-Touch-Payroll/In-detail/Single-Touch-Payroll-Phase-2-employer-reporting-guidelines/?anchor=Reportingtheamountsyouthavepaid>

## Members Webinar



Please join us for our members webinar where we will be looking at **"Making the most of the FWO website and tools"**.  
Join us on **Thursday 29th September 2022 at 1pm (Sydney time)**.

**CLICK HERE TO REGISTER**