



MEMBERS UPDATE

————— OCTOBER 2023 —————

Welcome to the October 2023 member's update

In this month's members update we look at:

- Reminder of Annual leave changes during shutdown
- Award & agreement free wages & conditions
- Payroll Tax NSW
- C14 rates in Modern Awards

Our Melbourne Summit is just around the corner and we are looking forward to seeing some of our members while we are down there. Find further information here <https://www.austpayroll.com.au/australian-payroll-summit/>



Reminder of Annual leave changes during shutdown

From 1 May 2023, many awards will have updated rules on taking annual leave during a shutdown.

A shutdown is when a business temporarily closes, such as during Christmas and New Year. It's important to start considering now the implications for your workforce in the upcoming Christmas period, ensuring the you meet your notice and payment obligations.

The new rules mean:

- employers may require employees to take paid annual leave during a temporary shutdown
- employers must provide at least 28 days' written notice of the temporary shutdown period to all impacted employees
- the requirement to take annual leave must be reasonable
- the notice period can be reduced through an agreement between the employer and the majority of impacted employees
- an employee who doesn't have enough paid annual leave to cover the whole period can form an agreement with their employer for other options for the days not covered, such as:
 - using accrued time off
 - annual leave in advance, or
 - leave without pay.

However, an employer cannot direct or require an employee to use annual leave in advance or take unpaid leave.

The employee will be paid for any public holidays during the shutdown period that fall on days they would normally work.

<https://www.fairwork.gov.au/newsroom/news/new-shutdown-rules-for-awards>

Award & agreement free wages & conditions

Most employees are covered by an award or registered agreement, but a few jobs and industries are not. If an employee is not covered by an award or agreement, they are considered to be award and agreement free. HR/your business should advise if an employee is considered Award free.

Award and agreement free employees may have an employment contract. They are also entitled to at least the:

- national minimum wage
- National Employment Standards (NES).

Awards don't apply to high income employees. A high income employee is an employee who:

- has accepted a written guarantee of annual earnings
A guarantee of annual earnings should:
 - make it clear that the employer is giving an undertaking (or guarantee) to pay the employee an amount of earnings exceeding the high-income threshold
 - specify the fixed period, i.e. the start and end date, the amount of earnings are being guaranteed for (generally this should be 12 months or more)

- notify the employee that the consequence of accepting the undertaking is that the modern award will no longer apply to them
- for the guarantee to be valid, the employee must agree to accept both the undertaking and the amount of the earnings.
- is guaranteed to earn an annual amount which is more than the high-income threshold. The high-income threshold changes each year. From 1 July 2023, it is \$167,500.

To calculate an employee's earnings to see if they meet the threshold, include:

- the employee's wages
- the agreed value of non-monetary benefits.

When calculating an employee's earnings to see if they meet the threshold don't include payments which can't be calculated in advance such as:

- commissions
- incentive-based payments and bonuses
- overtime (unless the overtime is guaranteed)
- reimbursements
- statutory superannuation contributions

If you are unsure if an employee is truly award free, reach out to your HR/business or an employment lawyer.

Payroll Tax NSW

The NSW Government released the 2023-2024 State Budget on 19 September 2023, the first NSW Labor budget in over a decade. The Budget has meant there is no changes to Payroll tax for NSW.

Tax Year	Threshold	Rate
2023-24	\$1,200,000	5.45%

<https://www.revenue.nsw.gov.au/taxes-duties-levies-royalties/payroll-tax#:~:text=Rates%20and%20thresholds&text=The%20payroll%20tax%20rate%20from,View%20previous%20rates%20and%20thresholds.>

C14 rates in Modern Awards

The Fair Work Commission is now reviewing the C14 rates in modern awards (those rates that fall below the current minimum wage).

As we learnt with the minimum wage increase this year, the C14 rates are supposed to be 'transitional' (entry level rates for limited periods of time). It's been determined that not all awards with the C14 rates are transitional so the Fair Work Commission is reviewing:

- (1) The lowest classification rate in any modern award applicable to ongoing employment should be at least the C13 rate.
- (2) Any classification rate in a modern award which is below the C13 rate (including but not limited to the C14 rate) must be an entry-level rate which operates only for a limited period and provides a clear transition to the next classification rate in the award (which must not be less than the C13 rate).
- (3) The transition period for the purpose of (2) should not exceed six months.

To find out more please find the link below;

<https://www.fwc.gov.au/documents/decisionsigned/pdf/2023fwcfb168.pdf>

Compliance: When's the last time you...

Fair Work are running campaigns for companies to review minimum workplace entitlements on a regular basis not just when an employee starts or is promoted.

Things that the business should review are the employees award classification. Your HR/business should provide you with what award/classification an employee is covered under. This is important as an employee's Award classifications (also known as levels or grades) determine an employee's pay based on their role and type of work.

<https://www.fairwork.gov.au/employment-conditions/awards/award-classifications>

FAQ

Q. Does a Car Allowance attract Superannuation?

A. In regards to car allowances, it depends on whether these are deductible expense allowances, or non-deductible expense allowances. A deductible expense allowance is one where the allowance is intended to compensate an employee for work related expenditure for which the employee can claim a tax deduction. In this case no super is payable.

A non-deductible expense allowance is one where the allowance is not specifically all for work related usage (there may be personal usage) and therefore the employee can't claim a tax deduction for the full value of the allowance paid. In this case super is payable.

<https://www.ato.gov.au/business/payg-withholding/payments-you-need-to-withhold-from/payments-to-employees/allowances-and-reimbursements/withholding-for-allowances/>

MEMBERS WEBINAR

Our October webinar will be held on Wednesday 25th October at 1pm (Sydney time) where we will be looking at **Allowances - PAYG Withholding, Reporting and Superannuation Obligations.**