



8 April 2019

Horticulture Award 2010 Casual Overtime Guidance

The Fair Work Commission's unfortunate decision requiring growers to pay casual employees under the Horticulture Award overtime from 15 April 2019 has left growers with a woefully short timeframe to get abreast of and plan for the changes. This is a monumental failure of the system which will hurt both growers and employees. The NFF has already expressed its concerns in its media, as well as directly to the Minister and the Fair Work Ombudsman.

Nonetheless, as a final binding decision of the Commission, the independent workplace relations arbiter, industry has no choice now but to comply. Growers need to familiarise themselves with the requirement and institute business systems which will enable them to comply. This guide aims to assist.

The key points of the new system are as follows:

- The changes will have effect on the first full pay period that starts on or after 15 April 2019.
- A casual employee's *ordinary hours* are limited to 12 per day and 304 per eight weeks.
- A casual employee must be paid a night loading of 15% for any *ordinary hours* which are worked between 8.31 pm and 4.59 am.
- This 'night' loading is paid in addition to the casual loading of 25%. Although the decision does not specify, in the NFF's view these loadings should not 'compound'; this means that the 15% 'night' loading is calculated on the base rate, the 25% casual loading is independently calculated on the base rate, and the amounts of the two loadings are then added to the base rate;

EXAMPLE:

If the hourly base rate is \$18.93, then:

- *The 'night' loading is $15\% \times \$18.93 = \2.84*
- *The 'casual' loading is $25\% \times \$18.93 = \4.733*
- *Final rate is $\$18.93 + \$2.84 + \$4.73 = \26.50*
- In states and territories which do **not** observe daylight saving time, by agreement between the employer and a majority of affected employees, the daily spread of hours can be moved forward to 7.31 pm to 3.59 am for the period of day-light savings time.

- Any work performed by a casual employee outside *ordinary hours* will be considered overtime.
- When working during overtime, a casual employee must be paid an overtime rate of 175%; i.e. the standard time-and-a-half plus the casual loading.
- If, during an 8 week period, an employee works a number of days/shifts which exceed 12 hours, those extra (i.e. overtime) hours do not count towards the 304 ordinary hours they can work in an 8 week period and are not paid (again) as overtime.

EXAMPLE:

If the hourly base rate is \$18.93, then

- *The overtime rate is $175\% \times \$18.93 = \33.13*
 - *When a casual employee works a 15-hour day they are paid $(\$23.66 \times 12) + (\$33.13 \times 3) = \$327.09$*
 - *When an employee works 400 hours over 8 weeks **but** has worked for 15 hours on 14 of those days — that is, has already worked and been paid for 42 overtime hours — then the amount of overtime for the calculation of the 8 weeks period does not include those 42 hours i.e. is 54 hours.*
- The eight week period will be calculated individually for each employee, commencing from when the employee starts work or when the new overtime arrangements take effect
 - The ‘night’ loading is **not** paid where the employee is working overtime.
 - Nothing in this decision affects the (way or amount of) payment of a casual employee on a piecework agreement. This means that the piecework does not get overtime or the night loading, and neither the overtime rate nor the night loading are factored into the calculation of the piece rate (i.e. of the “minimum hourly rate” for the purpose of clause 15.2 of the Award).
 - For the purposes of approving an enterprise agreement, the Commission needs to be satisfied that, as at “the time the application for approval of the agreement by the FWC was made”, the employees concerned are “better off over all” under the agreement. The change “comes into operation from 15 April 2019”. Accordingly, it appears that the Commission should assess any proposal for an enterprise agreement against the ‘pre-change’ Award up until 15 April 2019.

The NFF has already had discussions about this decision and its consequences with the Fair Work Ombudsman. We will continue those discussion, but if growers have any feedback or ideas on how to make this work, or feel they are being unfairly targeted, please notify your peak body or the NFF.

Get in touch

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