



# FACT SHEET

## Casual Overtime in the HIGA

Created: December 2017

As part of the statutory 4 yearly review of modern awards, the Fair Work Commission has varied the *Hospitality Industry (General) Award 2010* (the 'HIGA') to require the payment of overtime rates for casual employees who work in excess of maximum hour limitations in a day or over a week or roster cycle.

The overtime payment requirement applies to casual employees from the first full pay period commencing on or after 1 January 2018.

**NOTE** These variations only apply to casual employees covered by the HIGA, and do not apply to casual employees covered by an Enterprise Agreement.

### **WHAT ARE THE MAXIMUM HOURS LIMITATIONS FOR CASUAL EMPLOYEES?**

In accordance with clause 13.2 a casual employee is entitled to overtime rates for all time worked (exclusive of meal breaks) in excess of:

- A maximum of 12 hours per day or per shift; or
- A maximum of 38 hours per week, or where the casual employee works in accordance with a roster, an average of 38 hours per week over the roster cycle (which may not exceed 4 weeks).

This means that from the first full pay period that commences either on 1 January 2018, or after 1 January 2018, overtime payments will need to be made to casuals who work hours in excess of those noted above.

As overtime of casuals is a new entitlement for the hospitality industry – both the *Restaurant Industry Award 2010* and the *Registered and Licensed Clubs Award 2010* have also been varied to provide a casual overtime entitlement, it is important of employers to be aware of the change for their rostering practices.

### **ADJUSTING CASUAL HOURS**

#### **UNILATERALLY REDUCING HOURS TO FALL UNDER MAXIMUM HOUR LIMITATIONS**

In its decision, the Fair Work Commission noted that employers may be able to avoid paying casual overtime rates by adopting rostering systems that ensure employees do not work in excess of these maximum hour limitations.

#### **CASUALS WHO WORK MORE THAN 38 HOURS PER WEEK**

It is recommended that you seek specific advice prior to reducing the hours of a casual employee, particularly in circumstances where you have an employment contract with a casual employee to provide a number of hours

per week which is in excess of 38 hours OR the casual employee has been regularly work the same roster and this would change.

Obligations as per clause 8.2 in the HIGA may be evoked in such a circumstance.

## **CASUAL EMPLOYEE OVERTIME RATES**

### **WHEN THE OVERTIME IS WORKED**

As per clause 33, the overtime rates for casual employees are the same as the overtime rates for full-time and part-time employees. This means that the overtime rate/s that is payable depends on when the overtime was worked:

#### Monday-Friday:

- 150% of the employee's ordinary hourly rate for the first two hours of overtime;
- 200% of the employee's ordinary hourly rate for the rest of the overtime;

#### Between midnight Friday and midnight Sunday:

- 200% of the employee's ordinary hourly rate.

### **THE RATE PAYABLE**

The rate payable for casual overtime is inclusive of the 25% casual loading. What this means is the actual monetary amount for each hour of overtime is the same for a casual employee as it is for a full-time or part-time employee.

The following table compares various hourly rates of pay for a permanent and a casual food & beverage attendant grade 3:

	<b>M-F</b>	<b>Saturday</b>	<b>Sunday</b>	<b>Pub Hols</b>	<b>O/T 150%</b>	<b>O/T 200%</b>
	<b>100%</b>	<b>125%</b>	<b>170%</b>	<b>225%</b>	<b>150%</b>	<b>200%</b>
<b>Permanent F&amp;B Grade 3</b>	20.21	25.26	34.36	45.47	30.32	40.42
	<b>125%</b>	<b>150%</b>	<b>175%</b>	<b>250%</b>	<b>150%</b>	<b>200%</b>
<b>Casual F&amp;B Grade 3</b>	25.26	30.32	35.37	50.53	30.32	40.42

*Wage rates applicable from 1 July 2017*

It is important to note that while clause 32.4 of the HIGA provides that penalties are not cumulative, where more than one penalty applies, an employee is entitled to the penalty which is to the employee's greatest advantage.

Therefore, in assessing overtime entitlements, employers will need to consider whether these are more advantageous than the relevant daily rate – particularly during those Monday to Friday periods which attract late night or early morning penalties in addition to the hourly rates.

## **Scenario Examples**

The following examples are intended to assist members in understanding the overtime arrangements for casual employees. All examples are based on a casual food and beverage attendant grade 3.

### **Example 1:** *In excess of 12 hours per day*

An employee works 13 hours on a Wednesday, exclusive of meal breaks. As the employee has worked in excess of a maximum of 12 hours, the employee is entitled to one hour of overtime at 150% (i.e. 1 x \$30.32).

### **Example 2:** *In excess of 12 hours per shift*

An employee works from 12.00pm (midday) Thursday, until 2.40am on Friday (morning). During the shift, the employee has 1 x 30 minute unpaid and 2 x 20 minute paid meal breaks. In total, exclusive of breaks, the employee has worked a 13.5 hour shift.

The employee is entitled to overtime because they worked a shift in excess of a maximum of 12 hours. The employee is entitled to be paid 1.5 hours of overtime at 150% (i.e. 1.5 x \$30.32).

### **Example 3:** *More than 38 hours in a rostered week*

An employee is working in accordance with a weekly roster which runs from Monday to Sunday. The employee is rostered to work 5 x 9 hour shifts on Wednesday, Thursday, Friday, Saturday and Sunday for a total of 45 hours.

The employee is entitled to overtime for all hours in excess of 38 hours. This means the employee will be entitled to overtime rates for last 7 hours of the shift on Sunday at 200% (i.e. 7 x \$40.42).

### **Example 4:** *More than 76 hours in a rostered fortnight*

An employee is rostered in accordance with a fortnightly roster and works 81 hours. The roster is:

- Week 1 - the employee works 45 hours (5 x 9 hour shifts)
- Week 2 - the employee works 36 hours (4 x 9 hour shifts) on Tuesday, Wednesday, Thursday and Friday.

The 5 hours in excess of 76 hours will be overtime and paid as 2 x 150% (i.e. 2 x \$30.32) and 3 x 200% (i.e. 3 x \$40.42) due to the overtime occurring on a Friday.

### **Example 5:** *Time worked in excess of 12 hours per shift/s and 38 hours in a week*

Exclusive of meal breaks, an employee works:

- 14 hours on Monday,
- 8 hours on Wednesday,
- 6 hours on Sunday
- 13 hours on Tuesday,
- 9 hours on Saturday and

While the employee has worked a total of 50 hours for the week, the Monday and Tuesday shifts both exceeded the 12 hour maximum and will attract overtime (2 hours x 150% for the Monday shift; 1 hour x 150% for the Tuesday shift).

As those hours have been paid at overtime rates, it is our view that they be subtracted from the weekly total when working out whether an employee has worked in excess of 38 hours per week.

The 9 hours which attract overtime will be the last 3 hours of the Saturday shift (3 x 200% i.e. 3 x \$40.42) and all of the 6 hours on the Sunday shift (6 x 200% i.e. 6 x \$40.42).

#### **Further Assistance**

Financial QHA members are encouraged to contact the QHA's Employment Relations Department (refer the contact details at the bottom of this page) for a confidential discussion about the information in this Fact Sheet, or to discuss any queries relating to specific workplace matters.

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