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FACT SHEET

Part-Time Employment under the HIGA

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 introduce a flexible part-time employment provision.

The new flexible part-time employment provision will apply to part-time employees from the first full pay period commencing on or after 1 January 2018.

NOTE These variations only apply to part-time employees covered by the HIGA, and do not apply to part-time employees covered by an Enterprise Agreement.

DOES THE CHANGE AFFECT EXISTING HIGA PART-TIME EMPLOYMENT ARRANGEMENTS?

No. If you have a part-time employee who, prior to 1 January 2018, had a regular pattern of work with fixed working hours, they are entitled to continue to be rostered in accordance with that arrangement, unless they agree to enter into a new flexible part-time employment arrangement.

WHAT IS A PART-TIME EMPLOYEE UNDER THE NEW FLEXIBLE PART-TIME EMPLOYMENT ARRANGEMENT?

A part-time employee is an employee who has a guaranteed number of hours to be provided and paid each week or over each roster cycle.

The number of guaranteed hours must be at least 8 hours and less than 38 hours each week, or an average of at least 8 hours and less than 38 hours each week over the roster cycle. Remembering that at clause 29.2(a) of the HIGA the minimum engagement per shift for a part-time employee is 3 hours.

For example, a part-time employee on a weekly roster may have guaranteed hours of 20 hours. If the employer operates a fortnightly or 4 weekly roster cycle, the guaranteed hours would be 40 hours per fortnight, or 80 hours per 4 weeks.

In accordance with clause 12, at the commencement of the part-time employment engagement, the employer and the part-time employee must agree on, and record in writing:

- i. The guaranteed hours and roster cycle period; and
- ii. The days of the week, and periods in each of those days when the employee will be available to work the guaranteed hours (**employee's availability**).

WHEN CAN I ROSTER THE GUARANTEED HOURS?

Once you have recorded the guaranteed hours, roster cycle and the employee's availability in writing, you can roster the guaranteed hours on any days, and at any times within the employee's availability.

The proviso to this is that the part-time employee receives at least 2 days off each week and you comply with any other applicable provisions in the HIGA (e.g. minimum and maximum shift engagement).

You are not required to provide a part-time employee with rostered shifts at the same starting and finishing times each week. Furthermore, if you are operating a fortnightly (or longer) roster cycle, you do not need to roster the same number of hours in each week.

That is the benefit of the new part-time arrangements – it provides flexibility to roster according to workplace needs.

CAN THE GUARANTEED HOURS BE CHANGED?

Yes, but only with the written consent of the part-time employee.

CAN I PROVIDE A PART-TIME EMPLOYEE WITH ADDITIONAL HOURS AT ORDINARY RATES?

Yes. You can *roster* a part-time employee with 'additional hours' which will be payable at ordinary rates, subject to those additional hours:

- Being rostered within the employer's availability; and
- Not exceeding 38 hours per week or an average of 38 hours per week over the roster cycle; and
- Not exceeding maximum hours limitations in clause 29.2; and
- The part-time employee receives 2 days off each week.

(Refer to example 1 and 2 below)

IS A PART-TIME EMPLOYEE ENTITLED TO OVERTIME RATES?

As per clause 33, the overtime rates for part-time employees are payable at a rate as per the below when the employee exceeds:

- 38 hours per week, or an average of 38 hours per week over a roster cycle; or
- The maximum hours limitations in clause 29.2; or
- Their rostered hours.

The applicable overtime rates are:

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.

On a rostered day off:

- 200% of the employee's ordinary hourly rate, with a minimum payment of four hours.

This means that the overtime rate/s that is payable depends on when the overtime was worked.

WHAT HAPPENS IF THE PART-TIME EMPLOYEE REGULARLY WORKS IN EXCESS OF THEIR GUARANTEED HOURS?

If a part-time employee has regularly worked a number of hours in excess of their guaranteed hours for at least 12 months, the part-time employee may request in writing an increase in their guaranteed hours.

If agreed, the new number of guaranteed hours is to be recorded in writing.

An employer may refuse the request on reasonable business grounds, and must provide a written response to the employee specifying the grounds for the refusal.

WHAT HAPPENS IF A PART-TIME EMPLOYEE'S AVAILABILITY CHANGES?

Where there is a change to the part-time employee's availability due to a genuine and ongoing change in a part-time employee's personal circumstances (e.g. childcare arrangements, University timetable), and their availability can no longer accommodate the guaranteed hours, the guaranteed hours will no longer apply, and the employer and employee are to reach a new agreement concerning guaranteed hours.

WHAT HAPPENS IF A PART-TIME EMPLOYEE DOES NOT GET 2 DAYS OFF EACH WEEK?

This would constitute a breach of the HIGA, which *could* result in a pecuniary penalty being imposed on the employer. Furthermore, any work performed on a 6th and subsequent day each week is likely to attract overtime rates.

Scenario Examples

The following examples are intended to assist members in understanding the part-time provisions that have effect from 1 January 2018.

Example 1: *Overtime not applicable*

An employer and a part-time employee, Rita, have agreed on guaranteed hours of 28 hours per week. She also agreed that her availability would be any hours between 7am and 5pm Monday to Friday.

Rita generally works Monday through to Thursday working 7 hours per day. After a few months of employment, the Hotel's room occupancy increases significantly and the employer rosters Rita, in advance, to work an additional 7 hours on the Friday. Rita's total hours worked for the week are 35 hours.

Rita is not entitled to any overtime for that week because the additional 7 hours above her guaranteed hours were rostered within Rita's agreed availability.

Example 2: *Overtime applicable*

An employer and a part-time employee, Barry, have agreed on guaranteed hours of 20 per week. His agreed availability is Monday to Saturday 6am until 1pm. For the upcoming week he is rostered Monday to Thursday 6am to 11am (20 hours).

On Tuesday, another Room Attendant calls in sick. The Housekeeping Manager asks Barry that morning if he can work until 12 midday, and there is no discussion as to whether Barry would agree to vary the roster by mutual consent (which would be required under clause 30.2 of the HIGA if the roster is to be changed with less than seven days' notice).

Barry agrees to work the additional hour. Despite this hour falling within Barry's availability it is work in excess of his rostered hours.

Therefore, the additional hour on Tuesday will be paid at overtime rates.

Example 3: *Declining Employee's Request to Increase Guaranteed Hours*

An employer and a part-time employee, Patrick, have agreed on guaranteed hours of 25 hours per week. Six months after Patrick commenced, Harriet, a Bar Attendant, commenced a period of unpaid parental leave. The employer roster provided Patrick with additional rostered hours which had become available by way of Harriet's absence.

Over the 12 months Harriet was on parental leave, Patrick worked an average of 32 hours per week. Patrick approached the employer seeking to increase his guaranteed hours to 32 per week.

The employer declined the request as Harriet was due to return from parental leave, which meant that the additional hours Patrick has been working will no longer be available. In this instance, the employer has a reasonable business ground upon which to decline Patrick's request.

Example 4: *Guaranteed Hours*

An employer and a part-time employee, Judy, have agreed to a guarantee of 20 hours per week averaged over 4 weeks (therefore 80 hours). With hours worked within the employee's availability period, Judy has worked:

- 15 hours in week 1,
- 15 hours in week 2,
- 30 hours in week 3 and
- 17 hours in week 4.

The employee has worked 77 hours over the 4 week period. Despite working less than 80 hours over the period, Judy must be paid for 80 hours.

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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