

Variation of awards on the initiative of the Commission

Matter No. AM2020/12

NATIONAL FARMERS' FEDERATION

Proposal to Vary Awards to include Unpaid Pandemic Leave and Double Annual Leave At Half Pay

Date: 6 April 2020

1. As the peak body representing agriculture the National Farmers Federation has an interest in the Horticulture Award, the Pastoral Award, the Silviculture Award, and the Sugar Industry Award.
2. In principle, the NFF supports effort to introduce flexibly into modern awards so as to allow workplaces to respond appropriately to the COVID-19 pandemic. This will include both measures to enable employers and employees to comply with government requirements to observe quarantine and address risk associated with movement. It would also include measures to enable workplaces to introduce social distancing requirements.
3. Safeguards such as these are likely to be especially important to rural and remote areas, where most farm businesses are located, and which may not have the infrastructure to cope with a mass outbreak of COVID-19
4. As such, subject to our observations below, the NFF supports the proposed amendments.

Accrual of Leave Entitlements

5. A number of our members have observed that the proposals may have ramifications for accumulation of leave.
6. Given that leave-without-pay does not count as 'service' for the purposes of the *Fair Work Act 2009*, employees would not accumulate personal or annual leave while taking unpaid pandemic leave.
7. The position is less clear when it comes to long service leave as it varies by jurisdiction, but the outcome appears by-and-large to be the same.
8. Presumably, however without more all of the time that the employee is on 'double annual leave at half pay' contribute in full toward the accumulation of annual and personal leave.
9. If this conclusion is correct and, as it appears, it is an unintended consequence of the proposal, then it is our submission that the amount of leave which accrues during this period of 'double annual leave at half pay' should also be halved.

Working in Isolation

10. Under the proposal, unpaid pandemic leave will be available where:

the employee is required, by government or medical authorities or acting on medical advice, to self-isolate or is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic in circumstances where the employee is required to work at premises operated by an employer.

11. It appears that the leave would not be available where the employee can work in isolation; e.g. from home or in a remote paddock. However, it is our submission that this could be clearer. This is a length sentence which requires a great deal of “unpacking” to understand. This could be accomplished by inserting a note to that effect

Conclusion

12. We stress that our support for the Commission’s proposal does not hinge on these issues. On balance, it is our view that the intent of the proposal is sound and that it should be adopted irrespective of the observations we make above.
13. Nonetheless, they are genuine concerns expressed particularly by smaller growers in our membership, and as such we would ask that the Commission given them due consideration in reaching its final decision.

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