

**From:** Renee Veal [<mailto:rveal@nteu.org.au>]  
**Sent:** Thursday, 28 July 2016 11:43 AM  
**To:** Linda Gale; Chambers - Johns C; Chambers - Catanzariti VP  
**Cc:** Stuart Pill; Catherine Pugsley; [ashannon@claytonutz.com](mailto:ashannon@claytonutz.com)  
**Subject:** Re: AM2014/6 NTEU revised clause

Please find attached further revision of the NTEU draft clause on academic working hours, incorporating the change discussed during proceedings this morning.

Linda Gale

---

**From:** Linda Gale  
**Sent:** Thursday, 28 July 2016 8:16:47 AM  
**To:** [chambers.johns.c@fwc.gov.au](mailto:chambers.johns.c@fwc.gov.au)  
**Cc:** Stuart Pill; Catherine Pugsley; [ashannon@claytonutz.com](mailto:ashannon@claytonutz.com); Renee Veal  
**Subject:** AM2014/6 NTEU revised clause

Dear Associate,

Please find attached a revised clause 22 for the Higher Education Academic Staff Award, in two formats- one with markup to highlight the changes from the previous draft, and one without markup to provide a clean copy.

If possible, could you please print 8 copies of each for the hearing today?

Thanks.

Linda Gale  
NTEU

## Exhibit J - revised clause 22 with markup

### 22. Hours of work

~~For the purpose of the NES, ordinary hours of work under this award are 38 per week.~~

#### 22.1 Definitions and Application

For the purposes of this clause:

*a. The relevant period of account* shall mean each calendar year or such other period as is agreed in writing between the employer and the employee (not exceeding two years), or in the case of a fixed term contract engagement of less than eighteen months, the period of that engagement; or otherwise where the employment or part of the employment covers only part of a year, that part of the year. The period of account shall exclude any periods during which leave or public holidays are taken.

*b. Required work* shall mean:

- i. The specific duties and work allocated to an employee; and
- ii. To the extent these are not covered by i), any work necessary to meet performance standards expected of the employee; ~~and~~
- ~~iii. To the extent these are not covered by i) and ii), any work necessary to achieve any promotion expectations of the employer applicable to that employee.~~

*c. Ordinary-hours workload* for an employee shall mean that amount of required work such that employees at the relevant academic level and discipline or group of disciplines could with confidence be expected to perform that work in a competent and professional manner within an average 38 hours per week, as determined prospectively in respect of the relevant period of account. In respect of **part time employees**, all specifications in this clause in relation to hours of work will be calculated pro rata to the fraction of employment.

22.2 The maximum ordinary hours of work of an academic employee shall be an average of 38 hours per week over the relevant period of account. For this purpose, in addition to any required work performed on those days, each **public holiday** and each day of **leave** shall count as 7.6 hours of work.

22.3 Where the employee's actual hours of work are not set by the employer and recorded, maximum ordinary hours of work shall be deemed not to have been exceeded if the amount of required work does not exceed ordinary-hours workload, or exceeds it by less than 1/19<sup>th</sup> part.

22.4 This sub-clause applies in circumstances where the employee's actual hours of work are set by the employer, are recorded and exceed an average of 38 over the period of account. In this case, the employee shall be entitled to be paid overtime at the ordinary hourly rate of pay for the first 5 additional hours per week (averaged over the period of account), and at 150% of the ordinary hourly rate of pay thereafter, provided that the rate of overtime loading for hours in excess of 5 per week shall be capped at 150% of the ordinary rate applicable to the sixth step of Level C.

- 22.5** This sub-clause applies where the actual hours are not set and recorded by the employer, and where the required work exceeds ordinary-hours' workload. In this case, the employee shall be paid an overtime loading calculated as follows:
- a. The number of hours per week within which employees at the relevant academic level and discipline or group of disciplines could with confidence be expected to perform the required work, as allocated to the employee, at a competent and professional level, as averaged across the period of account, shall be ascertained in hours per week ("ascertained hours");
  - b. Where the number of ascertained hours under a) is less than 40, no overtime loading shall be paid;
  - c. Where the number of ascertained hours under a) is at least 40 and less than 44, the overtime loading shall be equal to  $1/38^{\text{th}}$  of the minimum salary applicable to the employee for each whole hour by which the number of those ascertained hours exceeds 38;
  - d. Where the number of ascertained hours under a) is at least 44, the overtime loading shall be equal to  $5/38^{\text{ths}}$  of the minimum salary applicable to the employee, plus 3.947% for each whole additional hour in excess of 43, provided that the rate of overtime loading in respect of hours in excess of 43 shall be capped at the rate applicable to the sixth step of Level C.
- 22.6** An error made in good faith by an employer in ascertaining the number of hours per week, as required by under 22.5 a), does not constitute a breach of this Award, provided the employer has a fair and rigorous system for ascertaining those hours. This sub-clause does not limit the entitlement of employees to any overtime loading.
- 22.7** The employer must advise the employee before the period of account, or for a new employee within 14 days of the commencement of the period of account, whether any overtime loading is payable, and if so the basis and amount of the loading. An employee is not entitled to an overtime loading in respect of periods of leave days actually worked. Overtime loading may be averaged over the period of account and any periods of leave or public holidays, and may be paid, or part paid, at the end of a period of account. The employer shall be entitled to reduce or withdraw overtime loading where required work in fact does not justify the overtime loading as advised to the employee, and must increase the overtime loading in accordance with this clause if the employer increases the amount of required work beyond that which was advised to the employee. No procedural requirement of Sub-clause 22.5 or this sub-clause need be complied with by any employer if the actual salary paid to the employee at all relevant times exceeds the sum of the minimum salary applicable under this Award and any overtime loading which would otherwise be payable.
- 22.8** ~~It is recognised that many academic staff perform productive self-directed work which is not required work within the meaning of this clause.~~ To avoid doubt, with respect to employees whose actual hours of work are not set by the employer, no employer shall be held to be in breach of this clause merely by virtue of the fact that an employee is actually working any

number of hours. ~~Nor shall any employee be discriminated against or otherwise disadvantaged in their employment for reason that they have not worked hours in excess of those necessary to perform required work in a competent and professional manner.~~

- 22.9** This clause does not apply to **casual employees**, except that where a casual employee is engaged for more than 76 hours in any two-week period, then the payments for hours worked in excess of 76 shall be 150% of the rate otherwise payable.

## 22. Hours of work

### 22.1 Definitions and Application

For the purposes of this clause:

*a. The relevant period of account* shall mean each calendar year or such other period as is agreed in writing between the employer and the employee (not exceeding two years), or in the case of a fixed term contract engagement of less than eighteen months, the period of that engagement; or otherwise where the employment or part of the employment covers only part of a year, that part of the year. The period of account shall exclude any periods during which leave or public holidays are taken.

*b. Required work* shall mean:

- i. The specific duties and work allocated to an employee; and
- ii. To the extent these are not covered by i), any work necessary to meet performance standards expected of the employee.

*c. Ordinary-hours workload* for an employee shall mean that amount of required work such that employees at the relevant academic level and discipline or group of disciplines could with confidence be expected to perform that work in a competent and professional manner within an average 38 hours per week, as determined prospectively in respect of the relevant period of account. In respect of **part time employees**, all specifications in this clause in relation to hours of work will be calculated pro rata to the fraction of employment.

**22.2** The maximum ordinary hours of work of an academic employee shall be an average of 38 hours per week over the relevant period of account. For this purpose, in addition to any required work performed on those days, each **public holiday** and each day of **leave** shall count as 7.6 hours of work.

**22.3** Where the employee's actual hours of work are not set by the employer and recorded, maximum ordinary hours of work shall be deemed not to have been exceeded if the amount of required work does not exceed ordinary-hours workload, or exceeds it by less than 1/19<sup>th</sup> part.

**22.4** This sub-clause applies in circumstances where the employee's actual hours of work are set by the employer, are recorded and exceed an average of 38 over the period of account. In this case, the employee shall be entitled to be paid overtime at the ordinary hourly rate of pay for the first 5 additional hours per week (averaged over the period of account), and at 150% of the ordinary hourly rate of pay thereafter, provided that the rate of overtime loading for hours in excess of 5 per week shall be capped at 150% of the ordinary rate applicable to the sixth step of Level C.

**22.5** This sub-clause applies where the actual hours are not set and recorded by the employer, and where the required work exceeds ordinary-hours' workload. In this case, the employee shall be paid an overtime loading calculated as follows:

- a. The number of hours per week within which employees at the relevant academic level and discipline or group of disciplines could with confidence be expected to perform the required

work, as allocated to the employee, at a competent and professional level, as averaged across the period of account, shall be ascertained in hours per week (“ascertained hours”);

- b. Where the number of ascertained hours under a) is less than 40, no overtime loading shall be paid;
- c. Where the number of ascertained hours under a) is at least 40 and less than 44, the overtime loading shall be equal to  $1/38^{\text{th}}$  of the minimum salary applicable to the employee for each whole hour by which the number of those ascertained hours exceeds 38;
- d. Where the number of ascertained hours under a) is at least 44, the overtime loading shall be equal to  $5/38^{\text{ths}}$  of the minimum salary applicable to the employee, plus 3.947% for each whole additional hour in excess of 43, provided that the rate of overtime loading in respect of hours in excess of 43 shall be capped at the rate applicable to the sixth step of Level C.

**22.6** An error made in good faith by an employer in ascertaining the number of hours per week, as required by under 22.5 a), does not constitute a breach of this Award, provided the employer has a fair and rigorous system for ascertaining those hours. This sub-clause does not limit the entitlement of employees to any overtime loading.

**22.7** The employer must advise the employee before the period of account, or for a new employee within 14 days of the commencement of the period of account, whether any overtime loading is payable, and if so the basis and amount of the loading. An employee is not entitled to an overtime loading in respect of periods of leave. Overtime loading may be averaged over the period of account and any periods of leave or public holidays, and may be paid, or part paid, at the end of a period of account. The employer shall be entitled to reduce or withdraw overtime loading where required work in fact does not justify the overtime loading as advised to the employee, and must increase the overtime loading in accordance with this clause if the employer increases the amount of required work beyond that which was advised to the employee. No procedural requirement of Sub-clause 22.5 or this sub-clause need be complied with by any employer if the actual salary paid to the employee at all relevant times exceeds the sum of the minimum salary applicable under this Award and any overtime loading which would otherwise be payable.

**22.8** To avoid doubt, with respect to employees whose actual hours of work are not set by the employer, no employer shall be held to be in breach of this clause merely by virtue of the fact that an employee is actually working any number of hours.

**22.9** This clause does not apply to **casual employees**, except that where a casual employee is engaged for more than 76 hours in any two-week period, then the payments for hours worked in excess of 76 shall be 150% of the rate otherwise payable.