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Monday, 9th of August 2021

The Hon. Justice IJK Ross
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000

By email: chambers.ross.j@fwc.gov.au

Dear Justice Ross,

Re: AM2018/26 Social, Community, Home Care and Disability Services Industry Award 2010 – ASU Draft Determination

We refer to the matter above.

The Fair Work Commission ('**Commission**') directed the ASU to file draft determinations for its proposed variations regarding client cancellations and travel during meal breaks by Middyay, on Monday, 9 August 2021. Accordingly, the ASU files a draft determination.

To assist the Commission and the parties to understand the ASU's draft determination, we set out the ASU's proposed amendments to the Commission's draft determination dated 4 May below in red.

(f) Client cancellation

(i) Clause 25.5(f) applies where a client cancels or changes a scheduled home care or disability service, within 7 days of the scheduled service, which a full-time or part-time employee was rostered to provide.

(ii) Where a service is cancelled by a client under clause 25.5(f)(i), the employer may either:

(A) direct the employee to perform other work during those hours in which they were rostered; or

(B) cancel working time affected by the cancelled service ('affected working time').

(iii) Where clause 25.5(f)(ii)(A) applies, the employee will be paid the amount payable had the employee performed the cancelled service or the amount payable in respect of the work actually performed, whichever is the greater.

(iv) Where clause 25.5(f)(ii)(B) applies, the employer must either:

(A) pay the employee the amount they would have received had the affected working time not been cancelled; or

(B) subject to clauses 25.5(f)(v) and (vi), provide the employee with make up time in accordance with clause 25.5(f)(vii).

(v) The make up time arrangement can only be used where the employee was notified of the cancelled affected working time at least 12 hours prior to the scheduled commencement of the shift affected by the cancelled service. In these cases, clause 25.5(f)(iv)(A) applies.

(vi) The make up time arrangement cannot be used where the employer is permitted to charge the client in respect of the cancelled service. In these cases, clause 25.5(f)(iv)(A) applies.

(vii) Where the employer elects to provide make up time:

(A) the make up time must be rostered in accordance with clause 25;

(B) the make up time must be rostered to be performed within 6 weeks of the date of the cancelled shift;

(C) the employer must consult with the employee in accordance with clause 8A regarding when the make up time is to be worked prior to rostering the make up time;

(D) the make up time can include work with other clients or in other areas of the employer's business provided the employee has the skill and competence to perform the work; and

(E) an employee who works make up time will be paid the amount payable had the employee performed the cancelled service or the amount payable in respect of the work actually performed, whichever is the greater.

(viii) Clause 25.5(f) is intended to operate in conjunction with clause 25.5(d) and does not prevent an employer from changing a roster under clause 25.5(d)(i) or (ii).

A copy of this correspondence and the draft determination has been sent to the other parties to the Four Yearly Review of the SCHDS Award.

Yours faithfully



Michael Robson
NATIONAL INDUSTRIAL COORDINATOR

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FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

s.156 4 yearly review of modern awards

SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010

[MA000100]

Social, community, home care and disability services

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER LEE

MELBOURNE, XX MONTH 2021

Four yearly review of modern awards – Award stage – Group 4A awards – substantive issues – Social, Community, Home Care and Disability Services Industry Award 2010

A. Further to the decision issued by the Full Bench of the Fair Work Commission on XX MONTH 2021 ([2021] FWCFB XXXX), the above award is varied as follows:

1. By deleting clause 25.5(f) and inserting the following:

(f) Client cancellation

(i) Clause 25.5(f) applies where a client cancels or changes a scheduled home care or disability service, within 7 days of the scheduled service, which a full-time or part-time employee was rostered to provide.

(ii) Where a service is cancelled by a client under clause 25.5(f)(i), the employer may either:

(A) direct the employee to perform other work during those hours in which they were rostered; or

(B) cancel working time affected by the cancelled service (**‘affected working time’**).

(iii) Where clause 25.5(f)(ii)(A) applies, the employee will be paid the amount payable had the employee performed the cancelled service or the amount payable in respect of the work actually performed, whichever is the greater.

(iv) Where clause 25.5(f)(ii)(B) applies, the employer must either:

(A) pay the employee the amount they would have received had the affected working time not been cancelled; or

(B) subject to clauses 25.5(f)(v) and (vi), provide the employee with make up time in accordance with clause 25.5(f)(vii).

(v) The make up time arrangement can only be used where the employee was notified of the cancelled affected working time at least 12 hours prior to the scheduled commencement of the start of the shift affected by the cancelled service. In these cases, clause 25.5(f)(iv)(A) applies.

(vi) The make up time arrangement cannot be used where the employer is permitted to charge the client in respect of the cancelled service. In these cases, clause 25.5(f)(iv)(A) applies.

(vii) Where the employer elects to provide make up time:

(A) the make up time must be rostered in accordance with clause 25;

(B) the make up time must be rostered to be performed within 6 weeks of the date of the cancelled shift;

(C) the employer must consult with the employee in accordance with clause 8A regarding when the make up time is to be worked prior to rostering the make up time;

(D) the make up time can include work with other clients or in other areas of the employer's business provided the employee has the skill and competence to perform the work; and

(E) an employee who works make up time will be paid the amount payable had the employee performed the cancelled service or the amount payable in respect of the work actually performed, whichever is the greater.

(viii) Clause 25.5(f) is intended to operate in conjunction with clause 25.5(d) and does not prevent an employer from changing a roster under clause 25.5(d)(i) or (ii).

2. By inserting the following new clause 27.3:

27.3 Travel during meal and tea breaks

If an employer requires an employee to travel during a meal break or a tea break that time spent travelling will count as work and will be paid as such for the purposes of this clause.

3. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation from **XX MONTH 2021**. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period on or after **XX MONTH 2021**.

PRESIDENT

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