



Knowledge Enquiry

KNO-034997

Enquiry Ref No  
KNO-034997

Enquiry Status  
Closed

Research Officer  
s.22

GENERAL

ENQUIRY DETAILS		ACTIVITIES AND NOTES	
Date Received	8/11/2021	Priority	High
Enquiry Type	Advice request	Nexus Matter No.	
Source Enquiry	2510491	Team	TLO

ENQUIRY DESCRIPTION

Topic	Allowances		
Industry	Information Media and Telecommunications	Instrument Type	Modern Award
Executive Descrip.	Retail Award: how is 19.9 Cold work allowance payable		
Research Descrip.			


CLIENT DETAILS

CLIENT DETAILS			
Source	TLO General Line	Copy To	
Internal Business Unit	Frontline Voice	Internal Contact	s.22

External Business Unit

External Contact

EMPLOYER / EMPLOYEE DETAILS

Employer		Occupation	
Employer ABN		Main Duties	MA4 and MA2
State	Vic		
Employee Status	Part-time		

INDUSTRIAL INSTRUMENTS

Modern Award	Title	Created On
No Modern Award records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

Pre Modern Award	Title	Created On
No Pre Modern Award records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

INFOLINE ENQUIRY DETAILS (IF ASSOCIATED)

QUESTIONS AND BACKGROUND INFORMATION

Description	<div>1. MA4 - notification of rosters 15.9 (c)(d) - roster can be changed by mutual agreement with 7 days notice or 14 if no agreement Says applies to all employees except part time Does this apply to casuals?</div> <div>2. MA4 and MA2 - 10.5 - rostering for 3 consecutive hours or paid as such Have sought externa legal advice which says it's not paid because it leaves off requirement, why does FWO say it is required?</div> <div>3. Cold work 19.9(b)(c) of MA4 - is that for entire day or just for day when they work in the cold chamber "while so employed is not clear"</div>	Legislation/Industrial Instruments Considered
Question		View

Background information

CONSULTATION

Date Started	Consultation Type	Consulted By	Consultation Complet...	Date Completed...	Created On
No Consultation records are available in this view.					
0 - 0 of 0 (0 selected)					Page 1

APPROVAL/OUTCOME

SUBMISSION					
RO Approver	Yes	Submit to TL	No	Submit to EL	No

TLEApproval

TL APPROVAL			EL APPROVAL		
Approved	No		Approved	No	
Approver			Approver		
Date Approved			Date Approved		
Returned	No		Returned	No	
Returned By			Returned By		
Date Returned			Date Returned		
Reason			Reason		

OUTCOME

OUTCOME DETAILS			
Date Finalised	8/11/2021	Outcome Details	agree with previous KNO that per shift/day where doing that type of work
Outcome	Advice Provided		
Letter Attached	No		

Knowledge Object Title	SharePoint Revision...	Link	Knowledge Object Title	Link
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No Affected Knowledge Object records are available in this view.	
0 - 0 of 0 (0 selected)	Page 1

No Linked Knowledge Object records are available in this view.	
0 - 0 of 0 (0 selected)	Page 1

ASSOCIATED RECORDS

Connected To	Role (To)	Description
No Connection records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

ADMINISTRATION

Owner	 s.22	Modified By	 s.22
Created On	8/11/2021 3:10 PM	Modified On	8/11/2021 3:12 PM

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- [Search Employer](#)[View Employer](#)

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Under the Freedom of Information





Knowledge Enquiry

KNO-035102

Enquiry Ref No  
KNO-035102

Enquiry Status  
Closed

Research Officer  
s.22

GENERAL

ENQUIRY DETAILS		ACTIVITIES AND NOTES	
Date Received	15/11/2021	Priority	High
Enquiry Type	Advice request	Nexus Matter No.	
Source Enquiry	2518146	Team	TLO

ENQUIRY DESCRIPTION

Topic	Conditions		
Industry	Information Media and Telecommunications	Instrument Type	Modern Award
Executive Descrip.	Retail Award: how does 15.6(h) work		
Research Descrip.	15.6 Full-time employees (h) The options are:		

CLIENT DETAILS

CLIENT DETAILS			
Source	TLO General Line	Copy To	
Internal Business Unit	Frontline Voice	Internal Contact	s.22 irrelevant

External Business Unit

External Contact

EMPLOYER / EMPLOYEE DETAILS

Employer		Occupation	
Employer ABN		Main Duties	retail
State	Vic		
Employee Status	Full-time		

INDUSTRIAL INSTRUMENTS

Modern Award	Title	Created On	Pre Modern Award	Title	Created On
No Modern Award records are available in this view.			No Pre Modern Award records are available in this view.		
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Page 1			Page 1		

INFOLINE ENQUIRY DETAILS (IF ASSOCIATED)

QUESTIONS AND BACKGROUND INFORMATION

Description	<p>ERR calling regarding General Retail Industry award:</p> <p>Wanting information on rostering provisions in the general retail industry award-</p> <p>clause 15.6 :</p> <ul style="list-style-type: none"><li>- How do 15.6g) and 15.6h) interact with each other?</li><li>- What about 15.6(h)(vi)? and 15.6(m)(i) -</li></ul> <p>-----</p> <p>L2 <b>s.22</b></p> <p></p> <p>ER rep adv this incudes the ways in which EE's work weeks can be arranged.</p> <p>ER rep adv  will be used for about 130 ER's.</p> <p>1.</p> <p>ER rep adv she is confused on how 15.6(h)(iii)(iv)(v) would work?</p> <p>as per (iii) the 4 extra hours off per fortnight is this paid or unpaid? is the additional day of paid or unpaid as well?</p> <p>ER rep wondering how this may interact with consecutive days off as well?</p> <p>2.</p> <p>Also 15.6(m) how does that interact with 15.6(h)(vi)?</p>	Legislation/Industrial Instruments Considered
Question		View

CONSULTATION

Date Started	Consultation Type	Consulted By	Consultation Complet...	Date Completed...	Created On
No Consultation records are available in this view.					
0 - 0 of 0 (0 selected)					Page 1

APPROVAL/OUTCOME

SUBMISSION					
RO Approver	Yes	Submit to TL	No	Submit to EL	No

TLELApproval

TL APPROVAL			EL APPROVAL		
Approved	No		Approved	No	
Approver			Approver		
Date Approved			Date Approved		
Returned	No		Returned	No	
Returned By			Returned By		
Date Returned			Date Returned		
Reason			Reason		

OUTCOME

OUTCOME DETAILS			
Date Finalised	15/11/2021	Outcome Details	standard full-time hours are 7.6 per day - 38 per week - o/t can potentially be triggered for hours over 7.6 ordinary agreed hours - the 11 hours in 15.5 is the outer parameter 15.6(h) creates flexibility to 'bank' hours, eg to work more than the 7.6 and then take paid time off is different to TOIL which is taken at corresponding time to overtime per 21.3(b)
Outcome	Advice Provided		
Letter Attached	No		

Knowledge Object Title	SharePoint Revision...	Link	Knowledge Object Title	Link
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No Affected Knowledge Object records are available in this view.	
0 - 0 of 0 (0 selected)	Page 1

No Linked Knowledge Object records are available in this view.	
0 - 0 of 0 (0 selected)	Page 1

ASSOCIATED RECORDS

Connected To	Role (To)	Description
No Connection records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

ADMINISTRATION

Owner	 s.22	Modified By	 s.22
Created On	15/11/2021 2:44 PM	Modified On	15/11/2021 2:57 PM

- [View Customer](#)[Search Customer](#)[Edit Customer](#)[Register Customer](#)[Reset Password](#)[View Organisation](#)[Search Organisation](#)
- [Search Employer](#)[View Employer](#)

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Knowledge Enquiry

KNO-035185

Enquiry Ref No  
KNO-035185

Enquiry Status  
Closed

Research Officer  
s.22

GENERAL

ENQUIRY DETAILS				ACTIVITIES AND NOTES
Date Received	18/11/2021	Priority	High	<b>Title:</b> 1. 15.9(g) - what is an event and what happens if there is an agreement? does overtime need to be paid? -No definition in award for the word 'event', need to read the clause in context. It allows for changes, however, to prevent chopping and changing roster and prohibits avoidance of paying entitlements. Overtime is payable if it triggers overtime. By working the 'new' roster does not waive their overtime entitlement.  2. Do FT EE's need to have an agreement on days and hours of work  3. 15.2 (c) can the trading hours change? does it need to be the whole week that they trade until 6pm? - Can there be an agreement for late night trading that the hours change? -Refer to web content. If their establishment trade beyond 9pm, then the span of hours extended to 11pm (M-F).  4. 15.2(c) what are the ordinary hours on the weekend? -refer to web content  5. 18.2 if a business is doing averaging - if the EE gets paid weekly and works 30 hours in one week and than 46 the week after - do they just get paid 38 hours each week? -18.2 Wages must be paid for a pay period according to the number of hours worked by the employee in the period or they may be averaged over a fortnight. -refer to web content: "These employees can be paid under an averaging system to avoid getting different payments on each pay day. This means the pay would stay the same each week even when an employee's hours differ from week to week."  6. 19.4(a) what if its more than 3 weeks, is that a breach of the award? - technical contravention of the award - might be common law agreement, employee might still be entitled to reimbursement.  7. does the business need to pay for Uber if the EE does not have transport? - 19.4.(b) The employer must reimburse the employee any additional costs they incurred in travelling to and from the other place of work. If only means of transport, then yes, however, encourage discussion and agreement between parties  8. 19.12 liquor licence - is this anyone that has a liquor licence or is it just where a liquor licence is needed for the role? -if it is a requirement by the employer/ the role to hold a liquor licence, then would be entitled to the allowance  9. 25.2 what happens when a shift start between: - normal shift is 2am - overtime before the shift (what's the payment for that); - baking production EE that starts at 2am? normal shift at 10pm? Pending internal advice s.22 18/11/2021 6:22 PM
Enquiry Type		Nexus Matter No.		
Source Enquiry	2520373	Team	TLO	
ENQUIRY DESCRIPTION				
Topic				
Industry	Information Media and Telecommunications	Instrument Type	Not Applicable	
Executive Descrip. Retail Award MA04 - [REDACTED]				
Research Descrip. Retail Award MA04 [REDACTED]				
General Retail award compliance [REDACTED]				
1. 15.9(g) - what is an event and what happens if there is an agreement? does overtime need to be paid? 2. Do FT EE's need to have an agreement on days and hours of work 3. 15.2 (c) can the trading hours change? does it need to be the whole week that they trade until 6pm? - Can there be an agreement for late night trading that the hours change? 4. 15.2(c) what are the ordinary hours on the weekend? 5. 18.2 if a business is doing averaging - if the EE gets paid weekly and works 30 hours in one week and than 46 the week after - do they just get paid 38 hours each week? 6. 19.4(a) what if its more than 3 weeks, is that a breach of the award? 7. does the business need to pay for Uber if the EE does not have transport? 8. 19.2 liquor licence - is this anyone that has a liquor licence or is it just where a liquor licence is needed for the role? 9. 25.2 what happens when a shift start between - normal shift is 2am - overtime before the shift (what's the payment for that) - baking production EE that starts at 2am? normal shift at 10pm?				

CLIENT DETAILS

CLIENT DETAILS			
Source	TLO General Line		Copy To
Internal Business Unit	Frontline Voice		Internal Contact  s.22

External Business Unit

External Contact

EMPLOYER / EMPLOYEE DETAILS

Employer	 [REDACTED]	Occupation	
Employer ABN		Main Duties	retail establishments
State	NSW		
Employee Status	Unsure		

INDUSTRIAL INSTRUMENTS

Modern Award	Title	Created On	Pre Modern Award	Title	Created On
No Modern Award records are available in this view.			No Pre Modern Award records are available in this view.		
0 - 0 of 0 (0 selected)			0 - 0 of 0 (0 selected)		
Page 1			Page 1		

INFOLINE ENQUIRY DETAILS (IF ASSOCIATED)

QUESTIONS AND BACKGROUND INFORMATION

Description	General Retail award compliance [REDACTED]	Legislation/Industrial Instruments Considered
Question	<div>1. 15.9(g) - what is an event and what happens if there is an agreement? does overtime need to be paid?</div> <div>2. Do FT EE's need to have an agreement on days and hours of work</div> <div>3. 15.2 (c) can the trading hours change? does it need to be the whole week that they trade until 6pm? - Can there be an agreement for late night trading that the hours change?</div> <div>4. 15.2(c) what are the ordinary hours on the weekend?</div> <div>5. 18.2 if a business is doing averaging - if the EE gets paid weekly and works 30 hours in one week and than 46 the week after - do they just get paid 38 hours each week?</div> <div>6. 19.4(a) what if its more than 3 weeks, is that a breach of the award?</div> <div>7. does the business need to pay for Uber if the EE does not have transport?</div> <div>8. 19.2 liquor licence - is this anyone that has a liquor licence or is it just where a liquor licence is needed for the role?</div> <div>9. 25.2 what happens when a shift start between</div> <div>- normal shift is 2am - overtime before the shift (what's the payment for that)</div> <div>- baking production EE that starts at 2am? normal shift at 10pm?</div>	View

Background information

CONSULTATION

Date Started	Consultation Type	Consulted By	Consultation Complet...	Date Completed...	Created On
No Consultation records are available in this view.					
0 - 0 of 0 (0 selected)					Page 1

APPROVAL/OUTCOME

SUBMISSION					
RO Approver	Yes	Submit to TL	No	Submit to EL	No

TLELApproval

TL APPROVAL			EL APPROVAL		
Approved	No		Approved	No	
Approver			Approver		
Date Approved			Date Approved		
Returned	No		Returned	No	
Returned By			Returned By		
Date Returned			Date Returned		
Reason			Reason		

OUTCOME

OUTCOME DETAILS			Outcome Details		
Date Finalised	18/11/2021		Hi s.22	As discussed, as per our phone conversation.	
Outcome	Advice Provided		With Q.9 span of hours for baking production employees, we are currently reviewing this question. please escalate.		
Letter Attached	No		Many thanks.		
			Regards,	s.2	

Knowledge Object Title	SharePoint Revision...	Link	Knowledge Object Title	Link
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No Affected Knowledge Object records are available in this view.	
0 - 0 of 0 (0 selected)	Page 1

No Linked Knowledge Object records are available in this view.	
0 - 0 of 0 (0 selected)	Page 1

ASSOCIATED RECORDS

Connected To	Role (To)	Description
No Connection records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

ADMINISTRATION

Owner	 s.22	Modified By	 s.22
Created On	18/11/2021 5:53 PM	Modified On	18/11/2021 6:25 PM

- [View Customer](#)[Search Customer](#)[Edit Customer](#)[Register Customer](#)[Reset Password](#)[View Organisation](#)[Search Organisation](#)
- [Search Employer](#)[View Employer](#)





Knowledge Enquiry

KNO-035222

Enquiry Ref No  
KNO-035222




Enquiry Status  
Closed

Research Officer  
s.22

GENERAL

ENQUIRY DETAILS		ACTIVITIES AND NOTES	
Date Received	22/11/2021	Priority	Low
Enquiry Type	Advice request	Nexus Matter No.	
Source Enquiry	2520373	Team	Internal Advice

ENQUIRY DESCRIPTION

Topic	 Wages		
Industry	 Information Media and Telecommunications	Instrument Type	 Not Applicable
Executive Descrip.	Retail Award - Payment for baking production employee		
Research Descrip.	How is a baking production employee paid if works outside the shift conditions?		



CLIENT DETAILS

CLIENT DETAILS		Copy To	
Source	Infoline Escalation	Internal Contact	s.22
Internal Business Unit	Frontline Voice		

External Business Unit

External Contact

EMPLOYER / EMPLOYEE DETAILS


Employer		Occupation	
Employer ABN		Main Duties	retail establishments
State	NSW		
Employee Status	Full-time		

INDUSTRIAL INSTRUMENTS

Modern Award	Title	Created On	Pre Modern Award	Title	Created On
No Modern Award records are available in this view.			No Pre Modern Award records are available in this view.		
0 - 0 of 0 (0 selected)			0 - 0 of 0 (0 selected)		
Page 1			Page 1		

INFOLINE ENQUIRY DETAILS (IF ASSOCIATED)

QUESTIONS AND BACKGROUND INFORMATION

Description	General Retail award compliance 	Legislation/Industrial Instruments Considered	MA000004: General Retail Industry Award 2020
Question	1. 15.9(g) - what is an event and what happens if there is an agreement? does overtime need to be paid? 2. Do FT EE's need to have an agreement on days and hours of work 3. 15.2 (c) can the trading hours change? does it need to be the whole week that they trade until 6pm? - Can there be an agreement for late night trading that the hours change? 4. 15.2(c) what are the ordinary hours on the weekend? 5. 18.2 if a business is doing averaging - if the EE gets paid weekly and works 30 hours in one week and than 46 the week after - do they just get paid 38 hours each week? 6. 19.4(a) what if its more than 3 weeks, is that a breach of the award? 7. does the business need to pay for Uber if the EE does not have transport? 8. 19.2 liquor licence - is this anyone that has a liquor licence or is it just where a liquor licence is needed for the role? 9. 25.2 what happens when a shift start between - normal shift is 2am - overtime before the shift (what's the payment for that) - baking production EE that starts at 2am? normal shift at 10pm?  How is a baking production employee paid if works outside the shift conditions?	View	KNO-035185 - Escalate
Background information	24.2 For a baking production employee shiftwork means a shift starting at or after midnight and before 6.00 am. 25.2 Baking production employees—early morning shift rates		

CONSULTATION

Date Started	Consultation Type	Consulted By	Consultation Complet...	Date Completed...	Created On
7/02/2022	Other	s.22	Yes	7/03/2022	7/02/2022 8:21...
1 - 1 of 1 (0 selected)					Page 1


APPROVAL/OUTCOME

SUBMISSION

RO Approver	Yes	Submit to TL	Yes	Submit to EL	No
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TLEApproval

TL APPROVAL

Approved	No	Approved	No
Approver	 s.22	Approver	
Date Approved		Date Approved	
Returned	No	Returned	No
Returned By		Returned By	
Date Returned		Date Returned	
Reason		Reason	

OUTCOME

OUTCOME DETAILS

Date Finalised	7/03/2022	Outcome Details	Dea
Outcome	Advice Provided	Thank you for your patience with your enquiry regarding payment for baking production employee shiftworkers under the Retail Award.	
Letter Attached	No	Our response is as follows:	
		From the first pay period on or after 1 October 2020 in order for an employee to be entitled to the early morning shift night rate in cl.25.2 (b) of the Retail Award they must:	
		•be specifically employed as a shift worker (cl23.1), not someone who’s not employed as a shift worker but does additional hours and overtime (cl.23.2) and,	
		•be a baking production employee who does shift work that starts at or after midnight and before 6am (cl.24.2) and,	
		•begin a shift at or after midnight and before 2 am (cl.25.2(b))	

Prior to 1 October 2020 in order for an employee to be entitled to the early morning shift night rate in cl. 30.4 (b) of the Retail Award they had to be:

- be specifically employed as a shift worker (cl30.1(a)), not someone who’s not employed as a shift worker but does additional hours and overtime (cl30.1(b)) and,
- begin a shift before 2 am (cl.30.4(b))

If the hours worked do not fall within the scope of the baking production employee shift worker provisions then the relevant penalties and overtime provisions under the award will apply.

Kind regards,

s.22

Fair Work Ombudsman

Knowledge Object Title	SharePoint Revision...	Link
No Affected Knowledge Object records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

Knowledge Object Title	Link
No Linked Knowledge Object records are available in this view.	
0 - 0 of 0 (0 selected)	
Page 1	

ASSOCIATED RECORDS

Connected To	Role (To)	Description
No Connection records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

ADMINISTRATION

Owner  s.22

Modified By  s.22

Created On 22/11/2021 3:13 PM

Modified On 7/03/2022 8:11 AM

- [View Customer](#)[Search Customer](#)[Edit Customer](#)[Register Customer](#)[Reset Password](#)[View Organisation](#)[Search Organisation](#)
- [Search Employer](#)[View Employer](#)



Knowledge Enquiry




KNO-035305

Enquiry Ref No  
KNO-035305

Enquiry Status  
Closed

Research Officer  
s.22

GENERAL


ENQUIRY DETAILS				ACTIVITIES AND NOTES	
Date Received	24/11/2021	Priority	Low	<b>Title:</b> sent email to customer. outstanding question about baking production employee will be answered in KNO-035654. <b>s.22</b> 21/02/2022 3:24 PM <b>Title: PACT enquiry CSS-KNO-036138</b> Called <b>s.22</b> 31.1.22 - showed her where to find this instance of static help text, attached to eligibility question regarding whether the employee works outside ordinary hours <b>s.42 Legal professional privilege</b>  <b>s.22</b> 21/02/2022 11:47 AM <b>Title:</b> TLO response for CSS-KNO-035305  Question: Does part time employee receive overtime when they work outside the spread of hours under the Retail Award MA004.  Advice: Part time employees do not receive overtime penalty if they work outside the spread of hours.  Clause 21.2(b) specifies that overtime is payable for part time employees when they work 'in excess of their guaranteed hours as agreed in clause 10.5 or as varied under clause 10.6 or clause 10.11'. It does not provide that working outside the spread of hours would attract overtime payment for part time employees. This is on the basis that part time employees should not have their hours rostered outside the spread of hours as part of the guaranteed hours arrangement.  This is in contrast to the overtime payment for casual employees in cause 21.2(c)(ii) - casual employees will receive overtime payment if they work outside the span of hours.  This information is also confirmed in PACT. <b>s.2</b> 21/02/2022 11:44 AM <b>Title:</b> 14/2 Checked with <b>s.22</b> - part time employees shouldn't have their hours to be rostered outside the span of hours (clause 10.5, 10.6). As comparison, clause 21.2c specifies that casual employees receive overtime for working outside the span, however, clause 21.2b and clause 10 do not have such specification. <b>s.22</b> 17/02/2022 3:38 PM <b>Title:</b> checked with <b>s.22</b> about PACT help text, that they are reviewing part time employee help text before 1 July 2021. She replied: we were looking into it and <b>s.</b> and <b>s.2</b> thought there could be other different time period which may need to be included in this help text for part-time	
Enquiry Type	Advice request	Nexus Matter No.			
Source Enquiry	 2520373	Team	Internal Advice		
ENQUIRY DESCRIPTION					
Topic					
Industry	 Information Media and Telecommunications	Instrument Type	 Not Applicable		
Executive Descrip.	Retail Award MA04 - part time employee, overtime, spread of hours				
Research Descrip.	Retail Award MA04 - part time employee, overtime, spread of hours				
	additional escalation question from customer.				
	10.8 For any time worked in excess of their guaranteed hours agreed under clause 10.5 or as varied under clause 10.6 or clause 10.11,the part-time employee must be paid at the overtime rate specified in Table 10—Overtime rates.				
	Does part time employee receive overtime when working outside the spread of hours?				
	see KNO-036138 PACT enquiry OT is triggered when 'more than agreed hours' is worked; OT is not triggered when 'outside of agreed times of work'				

s.42 Legal professional privilege

the casual overtime changes in November last year accidentally changed part-time as well  
s.22 24/11/2021 4:33 PM

CLIENT DETAILS

CLIENT DETAILS

Source	Infoline Escalation	Copy To
Internal Business Unit	Frontline Voice	Internal Contact  s.22
External Business Unit		External Contact

EMPLOYER / EMPLOYEE DETAILS

Employer	 [Redacted]	Occupation
Employer ABN	[Redacted]	Main Duties retail establishments
State	NSW	
Employee Status	Full-time	

INDUSTRIAL INSTRUMENTS

Modern Award	Title	Created On	Pre Modern Award	Title	Created On
No Modern Award records are available in this view.			No Pre Modern Award records are available in this view.		
0 - 0 of 0 (0 selected)			0 - 0 of 0 (0 selected)		
Page 1			Page 1		

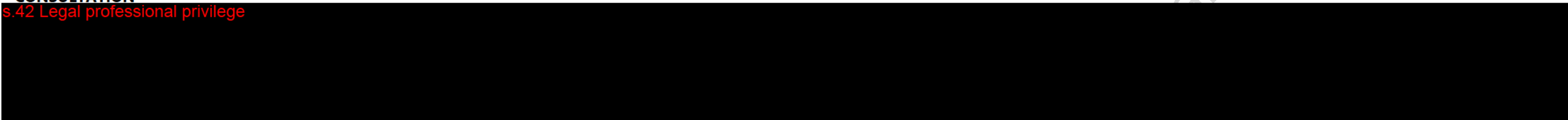
INFOLINE ENQUIRY DETAILS (IF ASSOCIATED)

QUESTIONS AND BACKGROUND INFORMATION

Description	General Retail award compliance [Redacted]	Legislation/Industrial Instruments Considered	MA000004: General Retail Industry Award 2020
<div>1. 15.9(g) - what is an event and what happens if there is an agreement? does overtime need to be paid?</div> <div>2. Do FT EE's need to have an agreement on days and hours of work</div> <div>3. 15.2 (c) can the trading hours change? does it need to be the whole week that they trade until 6pm? - Can there be an agreement for late night trading that the hours change?</div> <div>4. 15.2(c) what are the ordinary hours on the weekend?</div> <div>5. 18.2 if a business is doing averaging - if the EE gets paid weekly and works 30 hours in one week and than 46 the week after - do they just get paid 38 hours each week?</div> <div>6. 19.4(a) what if its more than 3 weeks, is that a breach of the award?</div> <div>7. does the business need to pay for Uber if the EE does not have transport?</div> <div>8. 19.2 liquor licence - is this anyone that has a liquor licence or is it just where a liquor licence is needed for the role?</div> <div>9. 25.2 what happens when a shift start between</div> <div>- normal shift is 2am - overtime before the shift (what's the payment for that)</div> <div>- baking production EE that starts at 2am? normal shift at 10pm?</div>			

CONSULTATION

s.42 Legal professional privilege



APPROVAL/OUTCOME

SUBMISSION

RO Approver	Yes	Submit to TL	No	Submit to EL	No
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TLEApproval

TL APPROVAL	EL APPROVAL
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Approved	No	Approved	No
Approver		Approver	
Date Approved		Date Approved	
Returned	No	Returned	No
Returned By		Returned By	
Date Returned		Date Returned	
Reason		Reason	

OUTCOME

OUTCOME DETAILS

Date Finalised	21/02/2022	Outcome Details	Email sent to customer:
Outcome	Advice Provided		Hi [REDACTED]
Letter Attached	No		Thank you for your patience with us in responding to your enquiry. In this response, I will address the outstanding question from enquiry 2520373: Does part time employee receive overtime when they work outside the spread of hours under the Retail Award MA004.  It was noted that there appears to be inconsistent information appeared in PACT.  Advice: Part time employees do not receive overtime penalty if they work outside the spread of hours.  Clause 21.2(b) specifies that overtime is payable for part time employees when they work 'in excess of their guaranteed hours as agreed in clause 10.5 or as varied under clause 10.6 or clause 10.11'.

It does not provide that working outside the spread of hours would attract overtime payment for part time employees. This is on the basis that part time employees should not have their hours rostered outside the spread of hours as part of the guaranteed hours arrangement.

This is in contrast to the overtime payment for casual employees in cause 21.2(c)(ii) - casual employees will receive overtime payment if they work outside the span of hours.

This information is also confirmed in PACT, which was recently updated.

We note enquiry 2546407 is still outstanding. We will respond to you as soon as we finalised our research.

We appreciate your patience with us. Should you have other questions in the meantime, please do not hesitate to contact us on 13 13 94.

Regards,  
s.22  
Fair Work Ombudsman

Knowledge Object Title	SharePoint Revision...	Link
No Affected Knowledge Object records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

Knowledge Object Title	Link
No Linked Knowledge Object records are available in this view.	
0 - 0 of 0 (0 selected)	
Page 1	

ASSOCIATED RECORDS

Connected To	Role (To)	Description
No Connection records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

ADMINISTRATION

Owner  s.22

Modified By  s.22

Created On 24/11/2021 4:32 PM

Modified On 21/02/2022 3:25 PM

- [View Customer](#)[Search Customer](#)[Edit Customer](#)[Register Customer](#)[Reset Password](#)[View Organisation](#)[Search Organisation](#)
- [Search Employer](#)[View Employer](#)



KNO035222

How is a baking production employee paid if works outside the shift conditions?

Response

(Other questions answered in Notes under KNO-035185)

Under the Retail Award a baking production employee is able to work shiftwork between midnight and 6.00 am.

If the shift starts between midnight and 2.00 a.m. they will be night shiftworker.

If the shift starts after 2.00 a.m. they will be an early morning shiftworker.

If a shift starts before midnight then the arrangement does not technically comply with the terms of the award. Employees should be rostered according to the shift provisions in the award.

In the event an employee has already worked hours which do not comply with the award, we are unable to advise what the applicable rate(s) would be. For example, if the matter went to court, a court might determine that all hours worked are paid at overtime rates, or that the hours worked prior to midnight are paid at overtime rates and the hours worked after midnight have the nightshift penalty applied. ~~ALL relevant work to be overtime OR technically for the nightshift work to be from midnight and the hours prior to midnight to be overtime hours.~~

~~We are unable to predict the outcome.~~

I trust this information is of assistance.

**From:** s.22  
**To:** FWO - TLO Support  
**Subject:** CSS-KNO-035654 - re: Additional questions enquiry 2546407 [SEC=OFFICIAL]  
**Date:** Thursday, 16 December 2021 10:07:15 AM  
**Attachments:** [image001.png](#)  
[image002.emz](#)  
[image004.jpg](#)  
[image005.jpg](#)  
[image006.png](#)  
[image007.jpg](#)  
[oledata.mso](#)  
[image008.png](#)

## OFFICIAL

Hi,

s.22 has asked for this information regarding enquiry 2546407.

The customer has contacted us following up on some previous enquiries. It appears some questions were raised previously and were meant to be escalated, but was closed instead (from enquiry 2526329).

1. Rounding of weekly rates - When there is a national wage increase, ER Rep wants to know how FWO does the calculation to end with the rounded weekly rates that we do? – as per K265405, when rounding is required in our pay tool, rounding is to 2 decimal places. Weekly rates are normally ‘as published by FWC in the award or in their decision re: NMW and not rounded.

2. When a shiftworker does not work a public holiday under the retail award, does the payment they receive include shift loading, or just the base rate of pay? - Clause 25.3 (c)  
 Unclear as 25.3(c) states: “An employee who elects not to work on a public holiday shift is entitled to be absent without loss of pay.”

They also have 2 questions which have been raised and are currently open with TLO:

3. How is a baking production employee (under the retail award) paid if works outside the shift conditions? – See KNO-035222

4. ER Rep notice that in PACT, there is inconsistent information with the award regarding overtime for part time employees in the Retail award under “Does this apply?” (this appears to be regarding the “Note: We are currently reviewing the ordinary hours for part-time employees prior to 1 July 2021.” portion) – See KNO-035305

Enquiry 2546407 is being escalated.

Regards

s.22 | Senior Customer Experience Officer – Customer Service Delivery Operations

Customer Service Branch

**FAIR WORK OMBUDSMAN**

s.22 irrelevant  
information

**s.22 irrelevant information**

The Fair Work Ombudsman and Registered Organisations Commission Entity acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respect to them and their cultures, and Elders, past, present and future.

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-  
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-  
~Please consider the environment before printing this message~



~Please consider the environment before printing this message~

We welcome feedback about your experience with us. It helps us to know what we're doing well and what changes we need to make. Tell us what you think about our services, or request a review of a decision, by completing [our online feedback form](#)

Documents released by the Fair Work Ombudsman  
Under the Freedom of Information



Knowledge Enquiry

KNO-035654

Enquiry Ref No  
KNO-035654

Enquiry Status  
Closed




Research Officer  
s.22

GENERAL

ENQUIRY DETAILS

Date Received	16/12/2021	Priority	Low
Enquiry Type	Advice request	Nexus Matter No.	
Source Enquiry	2546407	Team	Internal Advice

ENQUIRY DESCRIPTION

Topic	 Wages		
Industry	 Information Media and Telecommunications	Instrument Type	 Modern Award
Executive Descrip.	Rounding and public holiday payment (not worked) for shiftworker #riskhigh		
Research Descrip.	Rounding and public holiday payment (not worked) for shiftworker #riskhigh		
	<p>1. Rounding of weekly rates - When there is a national wage increase, ER Rep wants to know how FWO does the calculation to end with the rounded weekly rates that we do? – This appears answerable as per K265405, when rounding is required in our pay tool, rounding is to 2 decimal places. Weekly rates are normally ‘as published by FWC in the award or in their decision re: NMW and not rounded.</p> <p>2. When a shiftworker does not work a public holiday under the retail award, does the payment they receive include shift loading, or just the base rate of pay? - Clause 25.3 (c) Unclear as 25.3(c) states: “An employee who elects not to work on a public holiday shift is entitled to be absent without loss of pay.”</p> <p>Employer also has other escalated questions - see email attached in documents. ALSO SEE NOTES IN ENQUIRY</p> <div></div>		

ACTIVITIES AND NOTES

Title:	Questions 1, 3, 4 can be responded to and this KNO closed. Q2 needs further research and a new KNO-037051 has been created for Q2.
s.22	23/03/2022 10:41 AM
Title:	
Hi s.2	
I've answered the question in 2520373/ KNO-035305. This is in relation to the 4th question in this enquiry:	
4. ER Rep notice that in PACT, there is inconsistent information with the award regarding overtime for part time employees in the Retail award under “Does this apply?”	
I sent email to customer advising there's no OT for part time employees working outside the span. PACT has recently updated the eligibility question on this too (KNO-036138).	
Many thanks.	
s.2	
s.22	21/02/2022 3:23 PM
Title:	
Response for Q4 Awaiting outcome of KNO-035305	
s.22	27/01/2022 12:21 PM
Title:	
Response for Q3 Awaiting outcome of consultation KNO-034574	
s.22	27/01/2022 12:20 PM
Title:	
Response for Q2	
<a href="https://www.fairwork.gov.au/employment-conditions/public-holidays/not-working-on-public-holidays">https://www.fairwork.gov.au/employment-conditions/public-holidays/not-working-on-public-holidays</a>	
<a href="http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fwa2009114/s116.html">http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fwa2009114/s116.html</a>	
s.22	27/01/2022 12:18 PM
Title:	
Response for Q1 attached in documents (see text in italics)	
<a href="#">Service Process</a> 20/12/2021 3:28 PM	
Title:	
Have asked PACT team for advice on wording for Q1 (email sent from TLO mailbox)	
<a href="#">Service Process</a> 20/12/2021 3:28 PM	

CLIENT DETAILS


CLIENT DETAILS

Source	Infoline Escalation	Copy To	
Internal Business Unit	Frontline Voice	Internal Contact	s.22 irrelevant

External Business Unit

External Contact

EMPLOYER / EMPLOYEE DETAILS

Employer		Occupation	
Employer ABN		Main Duties	Retail
State	Vic		
Employee Status	Full-time		

INDUSTRIAL INSTRUMENTS

Modern Award	Title	Created On	Pre Modern Award	Title	Created On
No Modern Award records are available in this view.			No Pre Modern Award records are available in this view.		
0 - 0 of 0 (0 selected)			0 - 0 of 0 (0 selected)		
Page 1			Page 1		

INFOLINE ENQUIRY DETAILS (IF ASSOCIATED)

QUESTIONS AND BACKGROUND INFORMATION

Description	ER Rep calling to follow up on previous calls made. ER Rep advised that has made several enquiries for which they are waiting on a response. Questions relate to the following: 1. Rounding of weekly rates - When there is a national wage increase, ER Rep wants to know how FWO does the calculation to end with the rounded weekly rates that we do? 2. When a shiftworker does not work a public holiday under the retail award, does the payment they receive include shift loading, or just the base rate of pay? - Clause 25.3 (c) 3. How is a baking production employee paid if works outside the shift conditions? 4. ER Rep notice that in PACT, there is inconsistent information with the award regarding overtime for part time employees in the Retail award under "Does this apply?"  ER Rep also querying – when do shiftworkers receive overtime in the retail award?				
Question	2 questions that were not escalated: 1. Rounding of weekly rates - When there is a national wage increase, ER Rep wants to know how FWO does the calculation to end with the rounded weekly rates that we do? – This appears answerable as per K265405, when rounding is required in our pay tool, rounding is to 2 decimal places. Weekly rates are normally 'as published by FWC in the award or in their decision re: NMW and not rounded.  2. When a shiftworker does not work a public holiday under the retail award, does the payment they receive include shift loading, or just the base rate of pay? - Clause 25.3 (c) Unclear as 25.3(c) states: "An employee who elects not to work on a public holiday shift is entitled to be absent without loss of pay."  Background information	View	Legislation/Industrial Instruments Considered  KNO-035222, KNO-035305, MA000004, enquiry 2526329, K265405  1. As per K265405, when rounding is required in our pay tool, rounding is to 2 decimal places. Weekly rates are normally 'as published by FWC in the award or in their decision re: NMW and not rounded.  2. Unclear whether shift loading is still payable, as 25.3(c) states: "An employee who elects not to work on a public holiday shift is entitled to be absent without loss of pay." a loss of shift loading may be considered a loss of pay.		

CONSULTATION

Date Started	Consultation Type	Consulted By	Consultation Complet...	Date Completed...	Created On
24/11/2021	Other	s.22	Yes	4/03/2022	7/02/2022 12:21...
1 - 1 of 1 (0 selected)					Page 1

APPROVAL/OUTCOME

SUBMISSION

RO Approver	No	Submit to TL	Yes	Submit to EL	No
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TLEApproval

TL APPROVAL

Approved	Yes	Approved	No
Approver	s.22	Approver	
Date Approved	23/03/2022	Date Approved	
Returned	No	Returned	No
Returned By		Returned By	
Date Returned		Date Returned	
Reason	Questions 1, 3, 4 only (see KNO-037051 for Q2).	Reason	

OUTCOME

OUTCOME DETAILS

Date Finalised	23/03/2022	Outcome Details	Response
Outcome	Advice Provided		1. As a general rule we will take the existing weekly rate, apply the increase and round to the nearest 10 cents. Our approach and rates are consistent with those of the Fair Work Commission. 2. We are looking into this issue and will advise when we have a response. Please see: <a href="https://www.fairwork.gov.au/employment-conditions/public-holidays/not-working-on-public-holidays">https://www.fairwork.gov.au/employment-conditions/public-holidays/not-working-on-public-holidays</a> <a href="http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fwa2009114/s116.html">http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fwa2009114/s116.html</a> 3. From the first pay period commencing after 1 October 2020 in order for an employee to be entitled to the early morning shift night rate in cl.25.2 (b) of the Retail Award they must: * be specifically employed as a shift worker (cl.23.1), not someone who's not employed as a shift worker but does additional hours and overtime (cl.23.2) and, * be a baking production employee who does shift work that starts at or after midnight and before 6am (cl.24.2) and, * begin a shift at or after midnight and before 2 am (cl.25.2(b)) Prior to 1 October 2020 in order for an employee to be entitled to the early morning shift night rate in cl.30.4 (b) of the Retail Award they must: * be specifically employed as a shift worker (cl.30.1(a)), not someone who's not employed as a shift worker
Letter Attached	No		

but does additional hours and overtime (cl30.1(b)) and,  
\* begin a shift before 2 am (cl.30.4(b))  
If the hours worked don't fall within the scope of the BPE shift worker provisions then the relevant penalties and overtime provisions under the award will apply  
4. There is no entitlement to overtime for part time employees working outside the span under the Retail Award. Our Pay And Conditions Tool (PACT) has recently been updated to reflect this.

Knowledge Object Title	SharePoint Revision...	Link
No Affected Knowledge Object records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

Knowledge Object Title	Link
No Linked Knowledge Object records are available in this view.	
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Page 1	

ASSOCIATED RECORDS

Connected To	Role (To)	Description
No Connection records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

ADMINISTRATION

Owner  s.22

Modified By  s.22

Created On 16/12/2021 11:10 AM

Modified On 23/03/2022 11:54 AM

- [View Customer](#)[Search Customer](#)[Edit Customer](#)[Register Customer](#)[Reset Password](#)[View Organisation](#)[Search Organisation](#)
- [Search Employer](#)[View Employer](#)



Knowledge Enquiry


KNO-037051

Enquiry Ref No  
KNO-037051




Enquiry Status  
Closed

Research Officer  
s.22

GENERAL

ENQUIRY DETAILS				ACTIVITIES AND NOTES	
Date Received	16/12/2021	Priority	Low	Title:	See email attached s.22 24/10/2022 1:15 PM
Enquiry Type	Advice request	Nexus Matter No.			
Source Enquiry	 2546407	Team	Internal Advice		

ENQUIRY DESCRIPTION

Topic	 Public holidays		
Industry	 Information Media and Telecommunications	Instrument Type	 Modern Award
Executive Descrip.	Retail MA - MA004 - what does "without loss of pay" mean for a shiftworker not working on a public holiday #riskhigh		
Research Descrip.	Retail MA - MA004 - what does "without loss of pay" mean for a shiftworker not working on a public holiday #riskhigh		
Question 2 from KNO-035654 (due to the delay in providing a response this has been made a separate enquiry).			
Customer is a payroll software company.			
2. When a shiftworker does not work a public holiday under the retail award, does the payment they receive include shift loading, or just the base rate of pay? - Clause 25.3 (c) Unclear as 25.3(c) states: "An employee who elects not to work on a public holiday shift is entitled to be absent without loss of pay."			

CLIENT DETAILS



CLIENT DETAILS			
Source	Infoline Escalation		Copy To
Internal Business Unit	Frontline Voice		Internal Contact 👤 s.22 irrelevant



External Business Unit

External Contact

EMPLOYER / EMPLOYEE DETAILS

Employer		Occupation	
Employer ABN		Main Duties	Retail
State	Vic		
Employee Status	Full-time		

INDUSTRIAL INSTRUMENTS

Modern Award	Title	Created On
No Modern Award records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

Pre Modern Award	Title	Created On
No Pre Modern Award records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

INFOLINE ENQUIRY DETAILS (IF ASSOCIATED)

QUESTIONS AND BACKGROUND INFORMATION

Description	ER Rep calling to follow up on previous calls made. ER Rep advised that has made several enquiries for which they are waiting on a response. Questions relate to the following: 1. Rounding of weekly rates - When there is a national wage increase, ER Rep wants to know how FWO does the calculation to end with the rounded weekly rates that we do? 2. When a shiftworker does not work a public holiday under the retail award, does the payment they receive include shift loading, or just the base rate of pay? - Clause 25.3 (c) 3. How is a baking production employee paid if works outside the shift conditions? 4. ER Rep notice that in PACT, there is inconsistent information with the award regarding overtime for part time employees in the Retail award under "Does this apply?"  ER Rep also querying – when do shiftworkers receive overtime in the retail award?		
Question	2 questions that were not escalated: 1. Rounding of weekly rates - When there is a national wage increase, ER Rep wants to know how FWO does the calculation to end with the rounded weekly rates that we do? – This appears answerable as per K265405, when rounding is required in our pay tool, rounding is to 2 decimal places. Weekly rates are normally 'as published by FWC in the award or in their decision re: NMW and not rounded.  2. When a shiftworker does not work a public holiday under the retail award, does the payment they receive include shift loading, or just the base rate of pay? - Clause 25.3 (c) Unclear as 25.3(c) states: "An employee who elects not to work on a public holiday shift is entitled to be absent without loss of pay."  Customer has a number of escalations currently open with TLO. Some of the questions they have asked have been escalated. From our records it appears that others were meant to be escalated, but never were. Open TLO escalations addressing 2 questions raised, KNO-035222 and KNO-035305	View	1. As per K265405, when rounding is required in our pay tool, rounding is to 2 decimal places. Weekly rates are normally 'as published by FWC in the award or in their decision re: NMW and not rounded.  2. Unclear whether shift loading is still payable, as 25.3(c) states: "An employee who elects not to work on a public holiday shift is entitled to be absent without loss of pay." a loss of shift loading may be considered a loss of pay.
Background information	Legislation/Industrial Instruments Considered KNO-035222, KNO-035305, MA000004, enquiry 2526329, K265405		

CONSULTATION

Date Started	Consultation Type	Consulted By	Consultation Complet...	Date Completed...	Created On
24/03/2022		s.22	Yes	24/10/2022	24/03/2022 9:4...
1 - 1 of 1 (0 selected)					Page 1

APPROVAL/OUTCOME

SUBMISSION					
RO Approver	Yes	Submit to TL	No	Submit to EL	No
TLELApproval					
TL APPROVAL			EL APPROVAL		
Approved	No		Approved	No	
Approver			Approver		
Date Approved			Date Approved		
Returned	No		Returned	No	
Returned By			Returned By		
Date Returned			Date Returned		
Reason			Reason		

OUTCOME

OUTCOME DETAILS			
Date Finalised	24/10/2022	Outcome Details	Dear
Outcome	Advice Provided		Thank you for your patience with your enquiry regarding what, "without loss of pay" means for a shiftworker not working on a public holiday under the Retail Award.
Letter Attached	No		We have reviewed our web content and will update it so that it is consistent with the FWC decision, [2021] FWCA 3785, which includes the following at paragraph 30 in relation to the Retail Award: "An employee is entitled to payment of public holiday penalties if they work the public holiday, and shift penalties if they do not. Shift work is performed during ordinary hours of work and shift penalties form part of a shiftworkers' ordinary rate of pay."
			I trust this information is of assistance.
			Kind regards,

**s.22**  
Fair Work Ombudsman

Knowledge Object Title	SharePoint Revision...	Link
No Affected Knowledge Object records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

Knowledge Object Title	Link
No Linked Knowledge Object records are available in this view.	
0 - 0 of 0 (0 selected)	
Page 1	

ASSOCIATED RECORDS

Connected To	Role (To)	Description
No Connection records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

ADMINISTRATION

Owner  **s.22**

Modified By  **s.22**

Created On 23/03/2022 10:40 AM

Modified On 24/10/2022 1:15 PM

- [View Customer](#)[Search Customer](#)[Edit Customer](#)[Register Customer](#)[Reset Password](#)[View Organisation](#)[Search Organisation](#)
- [Search Employer](#)[View Employer](#)

**From:** s.22  
**To:** FWO - TLO Support; s.22 irrelevant  
**Subject:** RE: ER rep asking for methodology for rounding of rates in PACT (KNO-035654) [SEC=OFFICIAL]  
**Date:** Monday, 20 December 2021 3:10:39 PM

---

**OFFICIAL**

I think that's fine, keep it very simple and we can also look again if they've got a follow-up question about something.

Thanks

s.2

---

**From:** FWO - TLO Support s.22 irrelevant  
**Sent:** Monday, 20 December 2021 3:02 PM  
**To:** s.  
**Subject:** FW: ER rep asking for methodology for rounding of rates in PACT (KNO-035654) [SEC=OFFICIAL]

**OFFICIAL**

FYI

---

**From:** FWO - PACT Feedback <s.22 irrelevant>  
**Sent:** Monday, 20 December 2021 2:51 PM  
**To:** FWO - TLO Support s.22 irrelevant  
**Subject:** RE: ER rep asking for methodology for rounding of rates in PACT (KNO-035654) [SEC=OFFICIAL]

**OFFICIAL**

Hi

If s.2 or s.22 are happy with that approach it looks fine.

Thanks

s.2

---

**From:** FWO - TLO Support s.22 irrelevant  
**Sent:** Monday, 20 December 2021 1:50 PM  
**To:** FWO - PACT Feedback s.22 irrelevant information  
**Subject:** RE: ER rep asking for methodology for rounding of rates in PACT (KNO-035654) [SEC=OFFICIAL]

**OFFICIAL**

Thanks **s.2** – here's our proposed response for the customer – please let me know if this is OK to go out. [REDACTED]

Dear [REDACTED]

Re: KNO-035654

Thank you for your enquiry regarding the rounding of weekly rates following an annual wage review increase.

As a general rule we will take the existing weekly rate, apply the increase and round to the nearest 10 cents. Our approach and rates are consistent with those of the Fair Work Commission.

I trust this information is of assistance, etc

---

**From:** FWO - PACT Feedback **s.22 irrelevant information**  
**Sent:** Monday, 20 December 2021 12:13 PM  
**To:** FWO - TLO Support **s.22 irrelevant**  
**Subject:** RE: ER rep asking for methodology for rounding of rates in PACT (KNO-035654)  
[SEC=OFFICIAL]

**OFFICIAL**

Hi **s.22**

As a general rule we will take the existing weekly rate, apply the increase and rounded to the nearest 10 cents. This is the approach taken by the FWC in applying the increase and we will always check our rates to make sure they match what the FWC provides in the award. **s.22**

**irrelevant  
if**

For some awards there might be a different approach where the award is providing yearly salaries.

Thanks

**s.2**

---

**From:** FWO - TLO Support **s.22 irrelevant**  
**Sent:** Thursday, 16 December 2021 11:12 AM  
**To:** FWO - PACT Feedback **s.22 irrelevant information**  
**Subject:** ER rep asking for methodology for rounding of rates in PACT (KNO-035654)  
[SEC=OFFICIAL]

**OFFICIAL**

Hello,

CSD have escalated an enquiry to us about rounding of rates, and your assistance to answer it is appreciated:

*" Rounding of weekly rates - When there is a national wage increase, ER Rep wants to know how FWO does the calculation to end with the rounded weekly rates that we do?"*

Please let me know if we provide this information to the public, and if so, what we tell them.

Thank you,

**s.22**

Documents released by the Fair Work Ombudsman  
Under the Freedom of Information

**From:** s.22 [REDACTED]  
**To:** s.22 irrelevant [REDACTED]  
**Subject:** RE: Summary of baking employee enquiries under the Retail Award on hand: [SEC=OFFICIAL]  
**Date:** Friday, 4 February 2022 4:28:41 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image005.png](#)  
[image003.png](#)

**OFFICIAL**

Thanks s.22

s.

**From:** s.22 irrelevant information [REDACTED]

**Sent:** Friday, 4 February 2022 4:26 PM

**To:** s.22 irrelevant information [REDACTED]  
[REDACTED]

**Subject:** Summary of baking employee enquiries under the Retail Award on hand:  
[SEC=OFFICIAL]

**OFFICIAL**

Hi s.22 irrelevant

This is a summary of the baking employee enquiries under the Retail Award that I have on hand:

s.22 I am working through deferring all these and other enquiries on hold as per meeting discussion)

s.22 irrelevant information [REDACTED]

KNO-035222

22/11/2021

How is a baking  
production  
employee paid if  
works outside  
the shift  
conditions?

N/A

s.22 irrelevant information, [REDACTED]

s.22 irrelevant information



s.22



s.22

Research Officer | TLO

Advice Branch

**FAIR WORK OMBUDSMAN**

s.22 irrelevant information



The Fair Work Ombudsman and Registered Organisations Commission Entity acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respect to them and their cultures, and Elders, past, present and future.

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[www.fairwork.gov.au](http://www.fairwork.gov.au) | Fair Work Infoline: 13 13 94 | [subscribe to email updates](#)



**From:** s.22  
**To:** s.22 irrelevant  
**Subject:** RE: Summary of baking employee enquiries under the Retail Award on hand: [SEC=OFFICIAL]  
**Date:** Friday, 25 February 2022 4:51:42 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image005.png](#)  
[image003.png](#)

### OFFICIAL

Thank you s.22 I think we can reply to these enquiries as you've proposed. If you think it's helpful we could add what we do consider to fall within the definition of early morning shift work for a BPE (listed below).

It might not be necessary to include this information in these responses but it might be useful to have these lists noted in our enquiry records for anyone looking at them in future. We can also note that the same approach has been taken by the pay tool in those enquiry records as well.  
Retail Award - BPE shift work

- From ppc 1 October 2020 in order for an employee to be entitled to the early morning shift night rate in cl.25.2 (b) of the Retail Award they must:
  - be specifically employed as a shift worker (cl.23.1), not someone who's not employed as a shift worker but does additional hours and overtime (cl.23.2) and,
  - be a baking production employee who does shift work that starts at or after midnight and before 6am (cl.24.2) and,
  - begin a shift at or after midnight and before 2 am (cl.25.2(b))
- Prior to 1 October 2020 in order for an employee to be entitled to the early morning shift night rate in cl.30.4 (b) of the Retail Award they must:
  - be specifically employed as a shift worker (cl.30.1(a)), not someone who's not employed as a shift worker but does additional hours and overtime (cl.30.1(b)) and,
  - begin a shift before 2 am (cl.30.4(b))

s.

**From:** s.22 irrelevant information

**Sent:** Friday, 25 February 2022 9:41 AM

**To:** s.22 irrelevant information

**Subject:** RE: Summary of baking employee enquiries under the Retail Award on hand: [SEC=OFFICIAL]

### OFFICIAL

Hi s.22 irrelevant,

This is an updated summary of the baking employee enquiries with proposed responses based on the specific circumstances and our discussions s.22

DATE	ENQUIRY NO.	EMPLOYER	QUESTION	ENQUIRER VIEW	PROPOSED RESPONSE
------	-------------	----------	----------	---------------	-------------------

s.22 irrelevant information

s.22 irrelevant information

s.22 irrelevant information

22/11/2021	KNO-035222	[REDACTED]	How is a baking production employee paid if works outside the shift conditions?	N/A	This does not fall within the definition of shiftwork for a baking production employee under clause 24.2 of the Retail Award. The relevant overtime and penalty provisions under the award will apply.
------------	------------	------------	---	-----	--

s.22 irrelevant information

s.22 irrelevant information



Cheers,

s.22



s.22 | Research Officer | TLO

Advice Branch

**FAIR WORK OMBUDSMAN**

s.22 irrelevant information





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Under the Freedom of Information

KNO035654

1. Rounding of weekly rates - When there is a national wage increase, ER Rep wants to know how FWO does the calculation to end with the rounded weekly rates that we do? – as per K265405, when rounding is required in our pay tool, rounding is to 2 decimal places. Weekly rates are normally ‘as published by FWC in the award or in their decision re: NMW and not rounded.

2. When a shiftworker does not work a public holiday under the retail award, does the payment they receive include shift loading, or just the base rate of pay? - Clause 25.3 (c)

Unclear as 25.3(c) states: “An employee who elects not to work on a public holiday shift is entitled to be absent without loss of pay.”

They also have 2 questions which have been raised and are currently open with TLO:

3. How is a baking production employee (under the retail award) paid if works outside the shift conditions? – See KNO-035222

4. ER Rep notice that in PACT, there is inconsistent information with the award regarding overtime for part time employees in the Retail award under “Does this apply?” (this appears to be regarding the “Note: We are currently reviewing the ordinary hours for part-time employees prior to 1 July 2021.” portion) – See KNO-035305

#### Response

1. *As a general rule we will take the existing weekly rate, apply the increase and round to the nearest 10 cents. Our approach and rates are consistent with those of the Fair Work Commission.*

2. *We are looking into this issue and will advise when we have a response.*

*Please see:*

<https://www.fairwork.gov.au/employment-conditions/public-holidays/not-working-on-public-holidays>

[http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol\\_act/fwa2009114/s116.html](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fwa2009114/s116.html)

3. *From the first pay period commencing after 1 October 2020 in order for an employee to be entitled to the early morning shift night rate in cl.25.2 (b) of the Retail Award they must:*
- *be specifically employed as a shift worker (cl.23.1), not someone who's not employed as a shift worker but does additional hours and overtime (cl.23.2) and,*
  - *be a baking production employee who does shift work that starts at or after midnight and before 6am (cl.24.2) and,*
  - *begin a shift at or after midnight and before 2 am (cl.25.2(b))*

*Prior to 1 October 2020 in order for an employee to be entitled to the early morning shift night rate in cl.30.4 (b) of the Retail Award they must:*

- *be specifically employed as a shift worker (cl30.1(a)), not someone who's not employed as a shift worker but does additional hours and overtime (cl30.1(b)) and,*
- *begin a shift before 2 am (cl.30.4(b))*

*If the hours worked don't fall within the scope of the BPE shift worker provisions then the relevant penalties and overtime provisions under the award will apply*

4. *There is no entitlement to overtime for part time employees working outside the span under the Retail Award. Our Pay And Conditions Tool (PACT) has recently been updated to reflect this.*

Documents released by the Fair Work Ombudsman  
Under the Freedom of Information



Knowledge Enquiry

KNO-039792

Enquiry Ref No  
KNO-039792

Enquiry Status  
Closed

Research Officer  
s.22

GENERAL

ENQUIRY DETAILS		ACTIVITIES AND NOTES	
Date Received	26/08/2022	Priority	High
Enquiry Type		Nexus Matter No.	
Source Enquiry	2794846	Team	TLO

ENQUIRY DESCRIPTION

Topic	
Industry	Information Media and Telecommunications
Instrument Type	Modern Award
Executive Descrip. Retail Award - whether under clause 15.6 (i) a paid RDO is provided, if worked O/T payable	
Research Descrip. keywords: MA004	
Enquirer building a platform for entitlements	

CLIENT DETAILS

CLIENT DETAILS			
Source	TLO General Line	Copy To	
Internal Business Unit	Frontline Voice	Internal Contact	s.22

External Business Unit

External Contact

EMPLOYER / EMPLOYEE DETAILS


Employer		Occupation	
Employer ABN		Main Duties	retail assistants
State	Vic		
Employee Status	Full-time		

INDUSTRIAL INSTRUMENTS

Modern Award	Title	Created On	Pre Modern Award	Title	Created On
No Modern Award records are available in this view.			No Pre Modern Award records are available in this view.		
0 - 0 of 0 (0 selected)			0 - 0 of 0 (0 selected)		
Page 1			Page 1		

INFOLINE ENQUIRY DETAILS (IF ASSOCIATED)

QUESTIONS AND BACKGROUND INFORMATION

Description	OBO employer 	Legislation/Industrial Instruments Considered
Question	<p>Qs about Retail Award MA04</p> <p>Concerned about grey area, clause 15.6 (i)</p> <p>If I choose the option of 5 days of 7.6 hrs. If the ees are f-t , 20 days in a month. But if larger org, only 19 days in a months.</p> <p>e.g. If I have rotating day off in 4 weeks.</p> <p>If I give them the 7.6 hours,</p> <p>If rostered as per 15.6 (i) then they wouldn't be able to provide 38 hours per week and that EE would then not be FT? You would have to roster the 20th day in order to provide the hours</p> <p>I think she was saying that she strictly wanted them to work 7.6 hours/ 20 days and that (i) would mean that they would have to work more over the 19 days to have the 20th day off. That's when she said that the business actually would want them to work on the accrued RDO and because it would be considered OT, or they would then to pay OT for the extra on the other 19 days and she didn't want to trigger OT and pay OT.</p>	View

Background information



CONSULTATION

Date Started	Consultation Type	Consulted By	Consultation Complet...	Date Completed...	Created On
No Consultation records are available in this view.					
0 - 0 of 0 (0 selected)					Page 1

APPROVAL/OUTCOME

SUBMISSION					
RO Approver	Yes	Submit to TL	No	Submit to EL	No

TLELApproval

TL APPROVAL			EL APPROVAL		
Approved	No		Approved	No	
Approver			Approver		
Date Approved			Date Approved		
Returned	No		Returned	No	
Returned By			Returned By		
Date Returned			Date Returned		
Reason			Reason		

OUTCOME

OUTCOME DETAILS			Outcome Details	
Date Finalised	30/08/2022		As discussed overtime would be payable on the basis of clause 21.2 (a) which states: 'An employer must pay a full-time employee for hours worked in excess of the ordinary hours of work or outside the span of hours (excluding shiftwork) or outside the roster conditions prescribed in clause 15'. Noting that the relevant obligations are contained in clause 15.6(i). (PACT provides some scenarios for when O/T applies but indicates that this is not not exhaustive).	
Outcome	Advice Provided			
Letter Attached	No			

Knowledge Object Title	SharePoint Revision...	Link	Knowledge Object Title	Link
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No Affected Knowledge Object records are available in this view.	
0 - 0 of 0 (0 selected)	Page 1

No Linked Knowledge Object records are available in this view.	
0 - 0 of 0 (0 selected)	Page 1

ASSOCIATED RECORDS

Connected To	Role (To)	Description
No Connection records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

ADMINISTRATION

Owner	 s.22	Modified By	 s.22
Created On	26/08/2022 11:39 AM	Modified On	30/08/2022 4:13 PM

- [View Customer](#)[Search Customer](#)[Edit Customer](#)[Register Customer](#)[Reset Password](#)[View Organisation](#)[Search Organisation](#)
- [Search Employer](#)[View Employer](#)

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KNO-039792 – Jabber – 29/082022

29/08/2022 8:47 AM

Hi s.22 RE:2794846 Retail Award and paid RDO. Sorry haven't got an answer yet, will update you today.. Thanks

s.22 a

29/08/2022 8:48 AM

Hi s.22 no problem :)

29/08/2022 1:27 PM

Hi s.22 I couldn't find anything specifically on this. PACT provides some scenarios for when O/T applies but it not exhaustive. It would seem under clause 21.2 (a) that overtime would be payable... did you have reservations about that conclusion?

29/08/2022 3:29 PM

Happy to chat further if need be or can finalise on that basis...

s.22

29/08/2022 3:32 PM

Hi s.22 no I think that's fine - do we have any reasoning behind that. Just that I know the customer will ask for a detailed response

29/08/2022 3:43 PM

Yup understood I think the reasoning is in clause 21.2 (a) which states:

'An employer must pay a full-time employee for hours worked in excess of the ordinary hours of work or outside the span of hours (excluding shiftwork) or outside the roster conditions prescribed in clause 15'.

Noting that clause 15.6(i) provides the relevant obligations.

Let us know if you need more... Cheers



Knowledge Enquiry

KNO-039910

Enquiry Ref No  
KNO-039910

Enquiry Status  
Closed


Research Officer  
s.22

GENERAL


ENQUIRY DETAILS		ACTIVITIES AND NOTES	
Date Received	1/09/2022	Priority	High
Enquiry Type	Advice request	Nexus Matter No.	
Source Enquiry	2794846	Team	TLO

ENQUIRY DESCRIPTION


Topic

 Hours of work

Industry

 Information Media and Telecommunications

Instrument Type

 Modern Award

Executive Descrip.

OHOW and O/T under MA004

Research Descrip.

OBO employer

Qs about Retail Award MA04

Concerned about grey area, clause 15.6 (i)

If I choose the option of 5 days of 7.6 hrs. If the ees are f-t , 20 days in a month. But if larger org, only 19 days in a months.

e.g. If I have rotating day off in 4 weeks.

If I give them the 7.6 hours,

If rostered as per 15.6 (i) then they wouldn't be able to provide 38 hours per week and that EE would then not be FT? You would have to roster the 20th day in order to provide the hours

I think she was saying that she strictly wanted them to work 7.6 hours/ 20 days and that (i) would mean that they would have to work more over the 19 days to have the 20th day off. That's when she said that the business actually would want them to work on the accrued RDO and because it would be considered OT, or they would then to pay OT for the extra on the other 19 days and she didn't want to trigger OT and pay OT.

keywords

MA004 O/T F/T OHOW

CLIENT DETAILS

CLIENT DETAILS		
Source	TLO General Line	Copy To

Internal Business Unit

Frontline Voice

Internal Contact

s.22

h

External Business Unit

External Contact

EMPLOYER / EMPLOYEE DETAILS

Employer

Occupation

Employer ABN

Main Duties

retail assistants

State

Vic

Employee Status

Full-time

INDUSTRIAL INSTRUMENTS

Modern Award	Title	Created On	Pre Modern Award	Title	Created On
No Modern Award records are available in this view.			No Pre Modern Award records are available in this view.		
0 - 0 of 0 (0 selected)			0 - 0 of 0 (0 selected)		
Page 1			Page 1		

INFOLINE ENQUIRY DETAILS (IF ASSOCIATED)

QUESTIONS AND BACKGROUND INFORMATION

Description

OBO employer

Qs about Retail Award MA04

Concerned about grey area, clause 15.6 (i)

If I choose the option of 5 days of 7.6 hrs. If the ees are f-t , 20 days in a month. But if larger org, only 19 days in a months.

e.g. If I have rotating day off in 4 weeks.

If I give them the 7.6 hours,

If rostered as per 15.6 (i) then they wouldn't be able to provide 38 hours per week and that EE would then not be FT? You would have to roster the 20th day in order to provide the hours

I think she was saying that she strictly wanted them to work 7.6 hours/ 20 days and that (i) would mean that they would have to work more over the 19 days to have the 20th day off. That's when she said that the business actually would want them to work on the accrued RDO and because it would be considered OT, or they would then to pay OT for the extra on the other 19 days and she didn't want to trigger OT and pay OT.

Legislation/Industrial Instruments Considered

Question

View

CONSULTATION

Date Started	Consultation Type	Consulted By	Consultation Complet...	Date Completed...	Created On
No Consultation records are available in this view.					
0 - 0 of 0 (0 selected)					Page 1

APPROVAL/OUTCOME

SUBMISSION

RO Approver	Yes	Submit to TL	No	Submit to EL	No
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TLELApproval

TL APPROVAL	EL APPROVAL
-------------	-------------

Approved	No	Approved	No
Approver		Approver	
Date Approved		Date Approved	
Returned	No	Returned	No
Returned By		Returned By	
Date Returned		Date Returned	
Reason		Reason	

OUTCOME

OUTCOME DETAILS

Date Finalised	1/09/2022	Outcome Details	Hi s.22
Outcome	Advice Provided		CI 15.6 of MA004 says: (h) The options are: (i) working 5 days of 7 hours and 36 minutes each per week ... (j) In an establishment at which at least 15 employees are employed per week on a regular basis,the employer must not roster an employee to work ordinary hours on more than 19 days per 4 week cycle. (j) Clause 15.6(i) is subject to ANY AGREEMENT to the contrary between the employer and an individual employee.
Letter Attached	No		Because clause 15.6(j) provides that ordinary hours cannot be worked on more than 19 days in each four-week cycle, if the employer required the employee to work hours on more than 19 days in each four-week cycle (without 'any agreement' referred to in para (j)) those hours could not be characterised as 'ordinary' hours for the purpose of the award.  Therefore, in our view hours worked on more than 19 days in each four-week cycle (without 'any

agreement') are in excess of/outside the roster conditions in clause 15.6.

Consequently, such hours would be overtime and paid as overtime as per cl.21.2(a) if an employee was to work on any days beyond the 19th day in a four-week cycle.

Thanks, s.22

Knowledge Object Title	SharePoint Revision...	Link
No Affected Knowledge Object records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

Knowledge Object Title	Link
No Linked Knowledge Object records are available in this view.	
0 - 0 of 0 (0 selected)	
Page 1	

ASSOCIATED RECORDS

Connected To	Role (To)	Description
No Connection records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

ADMINISTRATION

Owner s.22

Modified By s.22

Created On 1/09/2022 9:35 AM

Modified On 1/09/2022 12:35 PM

- [View Customer](#)[Search Customer](#)[Edit Customer](#)[Register Customer](#)[Reset Password](#)[View Organisation](#)[Search Organisation](#)
- [Search Employer](#)[View Employer](#)

**From:** s.22  
**To:** s.22  
**Subject:** RE: KNO-037051 - Retail filtered content - Public Holidays [SEC=OFFICIAL]  
**Date:** Monday, 24 October 2022 10:29:00 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.jpg](#)  
[image004.jpg](#)  
[image005.jpg](#)  
[image006.png](#)  
[image007.png](#)

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**From:** s.22 irrelevant information  
**Sent:** Monday, 24 October 2022 10:27 AM  
**To:** s.22 irrelevant information  
**Subject:** RE: KNO-037051 - Retail filtered content - Public Holidays [SEC=OFFICIAL]  
 Thanks s.22  
 (Just noticed a couple of typos below)

---

**From:** s.22 irrelevant information  
**Sent:** Monday, 24 October 2022 10:07 AM  
**To:** s.22 irrelevant information  
**Subject:** RE: KNO-037051 - Retail filtered content - Public Holidays [SEC=OFFICIAL]  
 Hi s.22  
 Will do...  
 Thanks,  
 s.22

---

**From:** s.22 irrelevant information  
**Sent:** Monday, 24 October 2022 9:30 AM  
**To:** s.22 irrelevant information  
**Subject:** KNO-037051 - Retail filtered content - Public Holidays [SEC=OFFICIAL]  
 Hi s.22

Long story short, we deferred this one and were initially going to get legal advice, but then decided to check in with the web team as to whether there was a reason for the current content.

We've followed up with the web team, and

- as there's no documented reason for the filtered content for the Retail MA providing the default response, and
- this is at odds with an [FWC decision](#)

Can you please attach this email chain, send a response to the customer and finalise the enquiry? See suggested response below.

Dear X,

Thank you for your enquiry asking what, "without loss of pay" means for a shiftworker not working on a public holiday under the General Retail Industry Award ("Retail MA"). I apologise for the delay in responding.

We have reviewed our web content and will update it so it's consistent with the FWC decision, [2021] FWCA 3785, which includes the following at paragraph 30 in relation to the Retail MA, "An employee is entitled to payment of public holiday penalties if they work the public holiday, and shift penalties if they do not. Shift work is performed during ordinary hours of work and shift penalties form part of a shiftworkers' ordinary rate of pay."

I trust this information is of assistance. If you need further information please



*contact us, (etc)*

Please let me know if you have any questions.

Thank you,

s.22

---

**From:** s.22 irrelevant information

**Sent:** Monday, 24 October 2022 9:07 AM

**To:** s.22 irrelevant information

**Subject:** RE: Retail filtered content - Public Holidays [SEC=OFFICIAL]

Hi s.22 yes that sounds great. Thanks for following up on this one!

s.2

---

**From:** s.22 irrelevant information

**Sent:** Monday, 24 October 2022 8:45 AM

**To:** s.22 irrelevant information

**Subject:** RE: Retail filtered content - Public Holidays [SEC=OFFICIAL]

Thanks s.2 – as the response is for a [redacted], do you want me to let them know:

- based on an FWC [decision](#), “An employee is entitled to payment of public holiday penalties if they work the public holiday, and shift penalties if they do not. Shift work is performed during ordinary hours of work and shift penalties form part of a shiftworkers’ ordinary rate of pay.”
- We will soon be updating the content on our website accordingly

---

**From:** s.22 irrelevant information

**Sent:** Thursday, 20 October 2022 5:20 PM

**To:** \$ [redacted]

**Cc:** s.22 irrelevant information >

**Subject:** RE: Retail filtered content - Public Holidays [SEC=OFFICIAL]

Thanks very much s.22 very helpful to know it likely wasn’t based on any specific considerations.

Yes that paragraph sounds like it will cover off the issue very well.

Thanks again,

s.2

---

**From:** s.22 irrelevant information

**Sent:** Thursday, 20 October 2022 3:31 PM

**To:** s.22 irrelevant information

**Cc:** s.22 irrelevant information

**Subject:** RE: Retail filtered content - Public Holidays [SEC=OFFICIAL]

Hi s.2

I’ve had a look at that filter and I can’t see any specific info about that wording. It appears to be the default wording we use for a number of awards in that filter.

I note your point about clause [25.3 in the retail award](#) which would indicate that shiftworkers who normally work on a public holiday should receive their rate + shift penalties if they don’t work.

I suggest adding the below paragraph to the filter – can you let me know if you’re happy with that?

**Shiftworkers not working on a public holiday**

A shiftworker who elects not to work on a public holiday shift is entitled to be absent without loss of pay. This means they are entitled to receive the same shift penalty rates they would have

received if they had worked.

Thanks

s.2



s.22 | Team Leader – Digital Experience and Strategy (a/g)

Communication Branch

**FAIR WORK OMBUDSMAN**

s.22 irrelevant  
information



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**From:** s.22 irrelevant information

**Sent:** Wednesday, 19 October 2022 5:04 PM

**To:** s.22 irrelevant information

**Subject:** RE: Retail filtered content - Public Holidays [SEC=OFFICIAL]

Hi s.22 appreciate that, that timeframe sounds good.

Thank you!

s.2

**From:** s.22 irrelevant information >

**Sent:** Wednesday, 19 October 2022 4:24 PM

**To:** s.22 irrelevant information

**Cc:** s

**Subject:** RE: Retail filtered content - Public Holidays [SEC=OFFICIAL]

Hi s.2

Thanks for sharing this with me. It's not ringing any bells for me, but I've asked s.2 to look into the history to see whether there was any advice behind using the 'no special rules...' phrase.

If there wasn't, we're happy to work with you to update the wording.

We'll aim to come back to you by the end of the week / early next week if that works for you?

Thanks,

s.2



s.22 | Assistant Director – Digital Experience & Strategy

Communication Branch

**FAIR WORK OMBUDSMAN**

s.22 irrelevant  
information

**From:** s.22 irrelevant information

**Sent:** Tuesday, 18 October 2022 3:31 PM

**To:** s.22 irrelevant information

**Cc:**

**Subject:** Retail filtered content - Public Holidays [SEC=OFFICIAL]

Hi s.2

Not sure if this issue will ring any bells. We have an enquiry at the moment that is somewhat impacted by web content.

There's some filtered web content on the retail award that talks about there being no special rules when not working a P/H.

The award itself has the wording 'without loss of pay' which was mentioned in an [FWC decision](#).

We think there may be an argument (for example) that shiftworkers are still paid shift penalties if they don't work on a public holiday.

If there wasn't anything specifically behind the view in the current web content, our view is that it may need to be revised to reflect that particular wording in the award.

Happy to discuss this one!

Kind regards

s.2



s.22 | Acting Director, Knowledge Management and TLO

Advice Branch

**FAIR WORK OMBUDSMAN**

s.22 irrelevant information

Record my hours – available now

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Knowledge Enquiry

KNO-041917

Enquiry Ref No  
KNO-041917

Enquiry Status  
Closed

Research Officer  
S.22

GENERAL

ENQUIRY DETAILS		ACTIVITIES AND NOTES	
Date Received	21/02/2023	Priority	High
Enquiry Type	Advice request	Nexus Matter No.	
Source Enquiry	2949716	Team	TLO

ENQUIRY DESCRIPTION

Topic	 Overtime		
Industry	 Information Media and Telecommunications	Instrument Type	 Modern Award

Executive Descrip. Hospitality Award - ordinary hours and overtime

Research Descrip. Hospitality Award - ordinary hours and overtime

ER rep enquiry -   
They want to know how OT applies here to fine tune

Overtime in hospitality award under 15.1 for FT EEs

1. If EE is rostered to work more than 10 ordinary hours on more than 3 consecutive days but does not receive a 48 hour break after the last consecutive day, do they receive OT?  
If so, how does Overtime apply?  
a. Before 30 hours?  
b. After 30 hours?  
c. until they receive 48 hour break ?


2. Split shifts: If 3rd shift goes outside of 12 hours, is the whole shift OT or just the hours outside of 12 hours, OT?


Found KNO-028536 and KNO-035967

Keywords – MA009, OHOW, O/T, B/S

CLIENT DETAILS

CLIENT DETAILS		
Source	TLO General Line	Copy To

Internal Business Unit	Frontline Voice	Internal Contact	 s.22
External Business Unit		External Contact	

EMPLOYER / EMPLOYEE DETAILS			
Employer	 [REDACTED]	Occupation	
Employer ABN	[REDACTED]	Main Duties	Hospitality
State	Vic		
Employee Status	Full-time		

INDUSTRIAL INSTRUMENTS

Modern Award	Title	Created On	Pre Modern Award	Title	Created On
No Modern Award records are available in this view.			No Pre Modern Award records are available in this view.		
0 - 0 of 0 (0 selected)			0 - 0 of 0 (0 selected)		
Page 1			Page 1		

INFOLINE ENQUIRY DETAILS (IF ASSOCIATED)

QUESTIONS AND BACKGROUND INFORMATION

Description	[REDACTED]		Legislation/Industrial Instruments Considered	MA000009: Hospitality Industry (General) Award 2020
	1. Does OT apply if the EE does not get a minimum break of 10 hours between shifts? What does changeover in roster entail?			
	2. If EE is rostered to work more than 10 ordinary hours on more than 3 consecutive days but does not receive a 48 hour break after the last consecutive day, do they receive OT?			
	3. Split shifts: If 3rd shift goes outside of 12 hours, is the whole shift OT or just the hours outside of 12 hours, OT?			
Question	2. If EE is rostered to work more than 10 ordinary hours on more than 3 consecutive days but does not receive a 48 hour break after the last consecutive day, do they receive OT?	View	[REDACTED]	
	2.A does Overtime apply re question 2 - for a. Before 30 hours b. After 30 hours c. until they receive 48 hour break ? ----			
	3. Split shifts: If 3rd shift goes outside of 12 hours, is the whole shift OT or just the hours outside of 12 hours, OT?			
Background information	Covered a lot of questions for ER in the notes section re OB call [REDACTED] - MA09 clause 15.1 Section C			
	Similar history - KNO-028536 KNO-028537			

CONSULTATION

Date Started	Consultation Type	Consulted By	Consultation Complet...	Date Completed...	Created On
No Consultation records are available in this view.					
0 - 0 of 0 (0 selected)					Page 1

APPROVAL/OUTCOME

SUBMISSION					
RO Approver	Yes	Submit to TL	No	Submit to EL	No

TLELApproval

TL APPROVAL			EL APPROVAL		
Approved	No		Approved	No	
Approver			Approver		
Date Approved			Date Approved		
Returned	No		Returned	No	
Returned By			Returned By		
Date Returned			Date Returned		
Reason			Reason		

OUTCOME

OUTCOME DETAILS			Outcome Details	
Date Finalised	21/02/2023		As discussed, PACT includes the 12 hours broken shift spread and '10 hours per day on more than 3 consecutive days without a break of 2 days immediately after' as one of the FT EE ordinary hours conditions that qualify the FT EE for overtime however consideration will need to be given to how/when exactly the overtime applies from/until what point . Please escalate this enquiry for further research and note that this is a high risk enquiry with potential to affect a large amount of ERs/EEs because the customer enquiry [REDACTED]	
Outcome	Advice Provided			
Letter Attached	No			

Knowledge Object Title	SharePoint Revision...	Link	Knowledge Object Title	Link
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No Affected Knowledge Object records are available in this view.	
0 - 0 of 0 (0 selected)	Page 1

No Linked Knowledge Object records are available in this view.	
0 - 0 of 0 (0 selected)	Page 1

ASSOCIATED RECORDS

Connected To	Role (To)	Description
No Connection records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

ADMINISTRATION

Owner	 s.22	Modified By	 s.22
Created On	21/02/2023 3:22 PM	Modified On	21/02/2023 3:28 PM

- [View Customer](#)[Search Customer](#)[Edit Customer](#)[Register Customer](#)[Reset Password](#)[View Organisation](#)[Search Organisation](#)
- [Search Employer](#)[View Employer](#)

Documents released by the Fair Work Ombudsman  
Under the Freedom of Information



Knowledge Enquiry

KNO-041918

Enquiry Ref No  
KNO-041918

Enquiry Status  
Closed

Research Officer  
s.22

GENERAL

ENQUIRY DETAILS				ACTIVITIES AND NOTES	
Date Received	21/02/2023	Priority	Low	Title:	
Enquiry Type	Advice request	Nexus Matter No.		Response attached to documents	s.22 15/03/2023 11:33 AM
Source Enquiry	🔑 2949716	Team	Internal Advice	Title:	
				As per discussion with s.22 see attached email	s.22 15/03/2023 11:33 AM

ENQUIRY DESCRIPTION

Topic	🚩 Overtime
Industry	🔧 Information Media and Telecommunications
Instrument Type	🔧 Modern Award

Executive Descrip. MA009 - OHOW and O/T - software payroll company - #riskhigh

Research Descrip. MA09 - Overtime- Rostering Arrangements - MA009 - OHOW and O/T - software payroll company - #riskhigh

s.22 irrelevant information

Hospitality Award - ordinary hours and overtime

ER rep enquiry -

They want to know how OT applies here to fine tune their payroll software system

Overtime in hospitality award under 15.1 for FT EEs

1. If EE is rostered to work more than 10 ordinary hours on more than 3 consecutive days but does not receive a 48 hour break after the last consecutive day, do they receive OT?  
If so, how does Overtime apply?  
a. Before 30 hours?  
b. After 30 hours?  
c. until they receive 48 hour break ?

2. Split shifts: If 3rd shift goes outside of 12 hours, is the whole shift OT or just the hours outside of 12 hours, OT?


Found KNO-028536 and KNO-035967

Keywords – MA009, OHOW, O/T, B/S

CLIENT DETAILS



CLIENT DETAILS

Source	Infoline Escalation	Copy To
Internal Business Unit	Frontline Voice	Internal Contact  s.22
External Business Unit		External Contact

EMPLOYER / EMPLOYEE DETAILS

Employer	 [Redacted]	Occupation
Employer ABN	[Redacted]	Main Duties Hospitality
State	Vic	
Employee Status	Full-time	

INDUSTRIAL INSTRUMENTS

Modern Award	Title	Created On	Pre Modern Award	Title	Created On
No Modern Award records are available in this view.			No Pre Modern Award records are available in this view.		
0 - 0 of 0 (0 selected)			0 - 0 of 0 (0 selected)		
Page 1			Page 1		

INFOLINE ENQUIRY DETAILS (IF ASSOCIATED)

QUESTIONS AND BACKGROUND INFORMATION

Description	[Redacted]		Legislation/Industrial Instruments Considered	MA000009: Hospitality Industry (General) Award 2020
	1. Does OT apply if the EE does not get a minimum break of 10 hours between shifts? What does changeover in roster entail?			
	2. If EE is rostered to work more than 10 ordinary hours on more than 3 consecutive days but does not receive a 48 hour break after the last consecutive day, do they receive OT?			
	3. Split shifts: If 3rd shift goes outside of 12 hours, is the whole shift OT or just the hours outside of 12 hours, OT?			
Question	2. If EE is rostered to work more than 10 ordinary hours on more than 3 consecutive days but does not receive a 48 hour break after the last consecutive day, do they receive OT?	View	Advisor has noted - HIGH RISH ENQ - due to [Redacted] is pay roll system	
	2.A does Overtime apply re question 2 - for			
	a. Before 30 hours			
	b. After 30 hours			
	c. until they receive 48 hour break ?			
	----			
	3. Split shifts: If 3rd shift goes outside of 12 hours, is the whole shift OT or just the hours outside of 12 hours, OT?			
Background information	Covered a lot of questions for ER in the notes section re OB call			
	[Redacted] - MA09 clause 15.1			
	Section C			


CONSULTATION

Date Started	Consultation Type	Consulted By	Consultation Complet...	Date Completed...	Created On
No Consultation records are available in this view.					
0 - 0 of 0 (0 selected)					Page 1

APPROVAL/OUTCOME

SUBMISSION					
RO Approver	No	Submit to TL	Yes	Submit to EL	No

TLEApproval

TL APPROVAL			EL APPROVAL		
Approved	Yes		Approved	No	
Approver	 s.22		Approver		
Date Approved	17/03/2023		Date Approved		
Returned	No		Returned	No	
Returned By			Returned By		
Date Returned			Date Returned		
Reason			Reason		

OUTCOME

OUTCOME DETAILS			
Date Finalised	20/03/2023	Outcome Details	MA09 - Overtime- Rostering Arrangements - Enquiry reference number: 2949716
Outcome	Advice Provided		Dear [REDACTED] Thank you for your enquiry regarding ordinary hours and overtime under the Hospitality Industry (General) Award 2020 [MA000009](the Award). Specifically, you have asked: 1. Breaks and Overtime: If an employee is rostered to work more than 10 ordinary hours on more than 3 consecutive days, but does not receive a 48-hour break after the last consecutive day, do they receive overtime? 2. Split Shifts: If a third shift goes outside of 12 hours, is the whole shift paid at overtime rates, or only the hours worked outside of the 12-hour span? Both of these questions relate to rostering arrangements which are not provided for in the Award. Clause 15.1(c) of the Award provides: (c) The arrangement agreed must adopt one of the options mentioned in clause 15.1(b) and must satisfy the following conditions: ... '(iii) an employee who is rostered to work more than 10 ordinary hours on more than 3 consecutive days is entitled to a break of at least 48 hours after the last consecutive day on which the employee works more
Letter Attached	Yes		

than 10 ordinary hours; and  
(iv) the maximum number of days on which an employee may work more than 10 ordinary hours in a 4 week cycle is 8; and  
(v) the maximum spread of hours for an employee who works split shifts is 12; and...'  
[our emphasis added]  
Both of your questions relate to rostering arrangements which are not permitted by the Award, and therefore do not comply with its terms.  
The FWO cannot provide guidance on rostering arrangements that do not comply with the terms of an applicable award. We also draw your attention to section 45 of the Fair Work Act 2009, which provides, 'a person must not contravene a term of a modern award.'

Knowledge Object Title	SharePoint Revision...	Link
No Affected Knowledge Object records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1


Knowledge Object Title	Link
No Linked Knowledge Object records are available in this view.	
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Page 1	

ASSOCIATED RECORDS

Connected To	Role (To)	Description
No Connection records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

ADMINISTRATION

Owner

 s.22

Modified By

 s.22

Created On

21/02/2023 3:26 PM

Modified On

20/03/2023 11:50 AM

- View Customer

Search Customer

Edit Customer

Register Customer

Reset Password

View Organisation

Search Organisation
- Search Employer

View Employer

## Email

Priority  
Normal

Due  
20/03/2023 12:00 AM

Status Reason  
Sent

Owner



s.22

## Email

From



Fair Work Ombudsman (Do Not Reply email)

To



Cc

Bcc

Subject

Communication  
Source

External

Created On

20/03/2023 11:47 AM

### Attachments

File Name	File Size (Bytes)
No Email Attachment records are available in this view.	
0 - 0 of 0 (0 selected)	Page 1

**Fair Work Ombudsman Enquiry reference number:  
2949716**

Dear

**Thank you for your enquiry regarding ordinary hours and overtime under the [Hospitality Industry \(General\) Award 2020 \[MA000009\]](#) (the Award).**

**Specifically, you have asked:**

1. Breaks and Overtime: If an employee is rostered to work more than 10 ordinary hours on more than 3 consecutive days, but does not receive a 48-hour break after the last consecutive day, do they receive overtime?
2. Split Shifts: If a third shift goes outside of 12 hours, is the whole shift paid at overtime rates, or only the hours worked outside of the 12-hour span?

**Both of these questions relate to rostering arrangements which are not provided for in the Award.**

Clause 15.1(c) of the Award provides:

(c) The arrangement agreed must adopt one of the options mentioned in clause 15.1(b) and **must** satisfy the following conditions: ...

‘(iii) an employee who is rostered to work more than 10 ordinary hours on more than 3 consecutive days is **entitled to a break of at least 48 hours after the last consecutive day on which the employee works more than 10 ordinary hours;** and

(iv) the maximum number of days on which an employee may work more than **10 ordinary hours in a 4 week cycle is 8;** and

(v) the **maximum spread of hours for an employee who works split shifts is 12;** and...’

[our emphasis added]

Both of your questions relate to rostering arrangements which are **not** permitted by the Award, and therefore do not comply with its terms.

The FWO cannot provide guidance on rostering arrangements that do not comply with the terms of an applicable award. We also draw your attention to section 45 of the *Fair Work Act 2009*, which provides, ‘a person must not contravene a term of a modern award.’

If you require further assistance, please don't hesitate to call us back on 13 13 94.

Regards,

**S.22**

Fair Work Ombudsman

This message has been sent from an unmonitored account. Please do not reply.

Regarding

 2949716

Duration