CIRCULAR:	GEN/084/NAT/084/19
DATE:	Tuesday 8 October 2019
SUBJECT:	Modern Award Updates
ATTENTION:	Chief Executive Officer

As part of the 4-yearly review of Modern Awards, the Fair Work Commission (FWC) has updated 82 Modern Awards. Affected awards include the *Registered and Licensed Clubs Award 2010* and the *Clerks – Private Sector Award 2010.* The determinations alter the public holiday provisions of the Awards, with the changes taking effect from the **first full pay period on or after 4 October 2019.**

Overview of the changes

The FWC conducted a review into the public holiday clauses of Modern Awards, noting that several Awards allowed for the substitution of public holidays by mutual agreement of the employer and a majority of employees. The context for the review was the *Fair Work Act 2009* (Cth) (**the Act**), which allows for a substitute holiday only where an employer and an *individual* employee agree.

The Full Bench held that Modern Award provisions which allow for the substitution of a public holiday by agreement with a majority of employees or by a unilateral decision of the employer were inconsistent with the Act. The relevant provisions have therefore been re-drafted to ensure compliance with the National Employment Standards.

Employers should review their current policies and any applicable Awards relating to the substitution of public holidays, noting each individual employee must now agree to the substitution.

A link to the decision can be accessed at **Appendix 1,** and the determinations for the following Modern Awards can be accessed below:

- Clerks Private Sector Award 2010
  https://www.fwc.gov.au/documents/awardsandorders/html/pr712220.htm

- General Retail Industry Award 2010
  https://www.fwc.gov.au/documents/awardsandorders/html/pr712173.htm

- Health Professionals and Support Services Award 2010
  https://www.fwc.gov.au/documents/awardsandorders/html/pr712231.htm

- Miscellaneous Award 2010
  https://www.fwc.gov.au/documents/awardsandorders/html/pr712214.htm

- Nurses Award 2010
  https://www.fwc.gov.au/documents/awardsandorders/html/pr712243.htm

- Pharmacy Industry Award 2010
  https://www.fwc.gov.au/documents/awardsandorders/html/pr712257.htm

- Registered and Licensed Clubs Award 2010
  https://www.fwc.gov.au/documents/awardsandorders/html/pr712281.htm

- Restaurant Industry Award 2010
  https://www.fwc.gov.au/documents/awardsandorders/html/pr712266.htm

- Fast Food Industry Award 2010
  https://www.fwc.gov.au/documents/awardsandorders/html/pr712221.htm

A list of all the determinations can be accessed below at **Appendix 2.**

If you have any questions or if you require further information, please contact the SIAG National Advisory Service on 03 9644 1400 or 1300 (SIAG HR) / 1300 742 447.

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Brian Cook
Managing Director

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APPENDIX 1

Link to the decision:

https://www.fwc.gov.au/documents/decisionssigned/html/2019fwcfb5145.htm?utm_medium=email&utm_campaign=Award%20matters%20-%20award%20updates&utm_content=Award%20matters%20-%20award%20updates+CID_d3b3111984aef02c7075fb8b12b9fe40&utm_source=campaign%20monitor&utm_term=2019%20FWCFB%205145

APPENDIX 2

Link to the determinations for all affected Awards:

https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/schedule-determinations-substitution-public-holidays.pdf?utm_medium=email&utm_campaign=Award%20matters%20-%20award%20updates&utm_content=Award%20matters%20-%20award%20updates+CID_d3b3111984aef02c7075fb8b12b9fe40&utm_source=campaign%20monitor&utm_term=20%20September%202019%20schedule%20of%20determinations

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