

CIRCULAR: GEN/207/NAT/207/25
DATE: 16 July 2025
SUBJECT: Sleepovers under the SCHADS Award – compliance advice
ATTENTION: Chief Executive Officer

On 8 July 2025, the Federal Court handed down a key decision ([Jats Joint Pty Ltd v Fair Work Ombudsman \[2025\] FCA 743](#)) concerning the compliance requirements under the *Social, Community, Home Care and Disability Services Industry Award 2010* (**SCHADS Award**) with respect to sleepovers and adjacent periods of work. It represents a rare instance of the Fair Work Ombudsman being unsuccessful in litigation pursued against an employer on the grounds of an alleged contravention of an industrial instrument.

The FWO argued that a sleepover and any adjacent work performed (ie before or after) constituted a continuous period of work and that the shift penalty rates were required to be applied accordingly. Therefore, if there was work after a sleepover, the 15% night shift penalty rate was required to be paid.

The crux of the Judgment from Justice Stellios is outlined in the table below.

Proposition	Summary of reasoning
Shifts do not include sleepovers for the purposes of clause 25.4 (rest breaks between rostered work)	Sleepovers are separate and distinct periods of time that do not form part of a shift when considering the period of rest required between rostered work.
Sleepovers are not “ordinary work”	If an employee does not work during a sleepover, they are entitled to the sleepover allowance only (4.9% of the standard rate). If they are required to work, they are entitled to an overtime payment. The sleepover is therefore not ordinary work. Further support for this is found from the first proposition regarding rest breaks between shifts.
A night shift penalty rate will not be payable for work performed after a sleepover	The night shift penalty rate is payable where ‘the shift’ finishing after 12am or commences before 6am. In the case, the morning work did not meet either of the limbs to this definition. The night shift penalty rate was therefore not payable on the shift worked.

With reference to the above pillars, Justice Stellios determined that sleepovers are separate and distinct from a shift or period of work, and clause 25.7 operates as a “stand-alone, specific and complete regulation of sleepover arrangements under the Award, to the exclusion of other, more general provisions”, such as shift penalty rates. Secondly, shifts worked immediately adjacent to sleepovers will stand alone in terms of determining shift work entitlements – therefore, a morning period of work will **not** attract night penalty rates.

As clients may be aware, there is a major case before the Fair Work Commission to hear arguments on the above in terms of addressing a perceived ‘ambiguity’ in terms of the interpretation of the SCHADS Award regarding sleepovers and the interaction with shift penalty rates – see [here](#). It remains to be seen what impact the *Jats* decision may have in the determination of Fair Work Commission case.

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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