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**Sent:** Tuesday, 24 April 2018 3:17 PM  
**To:** AMOD  
**Cc:** Leanne Cruden  
**Subject:** Four Yearly Review of Modern Award: Fast Food Industry Award 2010: Proceeding Number AM2017/49

Good afternoon

We refer to the above proceeding and the directions hearing before Commissioner Lee on 21 March 2018.

We attach by way of filing an amended draft determination.

The draft determination has been amended to include full-time employee in the new proposed roster clause 26.

Kind regards  
Katie-Maree

**Katie-Maree O'Brien**  
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# DRAFT DETERMINATION



*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Fast Food Award 2010 (MA000003)** (AM2017/49)

JUSTICE ROSS, PRESIDENT

SYDNEY, XX XXXX 2018

*4 yearly review of modern awards – Fast Food Award 2010 (MA000003).*

A. Further to the decision issued on [insert date]<sup>1</sup> it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Fast Food Industry Award 2010*<sup>2</sup> be varied by:

1. Deleting existing clause 12.
2. Inserting new clause 12:

### **12. Part-Time Employment**

**12.1** A part time employee is an employee who:

- (a) Works at least 8 but less than 38 hours per week;
- (b) Has reasonably predictable hours of work; and
- (c) Receives on a pro-rata basis, equivalent pay and conditions to those of full- time employees.

**12.2** At the time of engagement, the employer and the part-time employee will agree in writing upon:

- (a) the number of hours of work which are guaranteed to be provided and paid to the employee each week or, where the employer operates a roster, the number of hours of work which are guaranteed to be provided and paid to the employee over the roster cycle (**the guaranteed minimum hours**); and
- (b) the days of the week, and the periods in each of those days, when the employee will be available to work the guaranteed minimum hours (**the employee's agreed availability**).

- 12.3** The employee may not be rostered to work less than 3 consecutive hours in any shift.
- 12.4** The guaranteed minimum hours shall not be less than 8 hours per week.
- 12.5** Any change to the guaranteed minimum hours may only occur with written consent of the part-time employee.
- 12.6** Where there has been a genuine and ongoing change in the employee's personal circumstances, the employee may alter the days and hours of the employee's agreed availability on 14 days' written notice to the employer. If the alteration to the employee's agreed availability cannot reasonably be accommodated by the employer within the guaranteed minimum hours then, despite clause 12.2, those guaranteed minimum hours will no longer apply and the employer and the employee will need to reach a new agreement in writing concerning guaranteed minimum hours in accordance with clause 12.2.
- 12.7** An employee may be offered ordinary hours in addition to the guaranteed minimum hours (**additional hours**) within the employee's agreed availability. The employee may agree to work those additional hours provided that:
- (a) The additional hours are offered in accordance with clause 25 – Hours of Work and clause 26 - Rostering;
  - (b) The employee may not be rostered for work outside of the employee's availability;
  - (c) Agreed additional hours are paid at ordinary rates (including any applicable penalties payable for working ordinary hours at the relevant times) and accrue entitlements such as annual leave and personal/carer's leave;
  - (d) The agreement to work additional hours may be withdrawn by a part-time employee with 14 days written notice;
  - (e) Additional hours worked in accordance with this clause are not overtime; and
  - (f) Where there is a requirement to work overtime in accordance with clause 26, overtime rates will apply.
- 12.8** A part-time employee who immediately prior to (**operative date of variation**) has a written agreement with their employer for a regular pattern of hours is entitled to continue to be rostered in accordance with that agreement, unless that agreement is replaced by a new written agreement made in accordance with clause 12.2.
- 12.9** Where a part-time employee has over a period of at least 12 months regularly worked a number of ordinary hours that is in excess of the guaranteed minimum hours, the employee may request in writing that the employer agree to increase the guaranteed minimum hours. If the employer agrees to the request, the new agreement concerning guaranteed minimum hours will be recorded in writing. The employer may refuse the request only upon reasonable business grounds, and such refusal must be provided to the employee in writing and specify the grounds for refusal.
- 12.10** An employee who does not meet the definition of a part-time employee and

who is not a full-time employee will be paid as a casual employee in accordance with clause 13 – Casual Employment.

**12.11** A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the minimum weekly rate prescribed for the class of work performed.

3. In sub-clause 25.5(a)(ii), inserting after the words “25% causal loading.” of clause 25.5(a)(ii):

The evening penalty end time (6.00 am) may be altered by up to one hour at the end of the spread (up to 5.00am), by agreement between an employer and the majority of employees concerned.

4. Inserting a new clause after clause 25:

**26. Rosters**

**26.1** A roster for full-time and part-time employees must be prepared by the employer and made available to the employee which sets out the name of each employee, the days of the week to be worked, and their start and finishing times.

**26.2** The roster will be alterable by mutual consent at any time or by amendment of the roster on seven days’ notice.

5. Renumbering existing clauses 26 to 31 (inclusive), as clauses 27 to 32.

6. Deleting existing clause 26.2 (renumbered 27.2 in accordance with 5, above) and inserting the following new clauses:

**27.2** A full-time employee shall be paid overtime for all work as follows:

- (a) In excess of:
  - 38 hours per week or an average of 38 hours per week averaged over a four week period; or
  - five days per week (or six days in one week if in the following week ordinary hours are worked on not more than four days); or
  - eleven hours on any one day; or
- (b) Before an employee's rostered commencing time on any one day; or
- (c) After an employee’s rostered ceasing time on any one day; or
- (d) Outside the ordinary hours of work.

**27.3** A part-time employee shall be paid overtime for all work as follows:

- (a) In excess of:
  - (i) 38 hours per week; or
  - (ii) five days per week (or six days in one week if in the following week ordinary hours are worked on not more than four days); or

- (iii) eleven hours on any one day; or
- (b) Hours worked by a part-time employee outside the employee's availability; or
- (c) Outside the ordinary hours of work.

**27.4** A part time employee shall be paid overtime if directed to work:

- (a) Before the employee's rostered commencing time on any one day; or
- (b) After the employee's rostered ceasing time on any one day.

**27.5** Provided that no overtime penalty is payable for hours worked within the employee's availability by the part-time employee in excess of the guaranteed minimum hours that are:

- (a) rostered; or
- (b) not rostered in advance but agreed to be worked consistent with clause 12.7.

7. Renumbering existing clauses 26.3 to 26.6 (inclusive) as clauses 27.6 to 27.9.

B. This determination comes into effect on [insert date].

PRESIDENT

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<sup>1</sup> [insert citation].

<sup>2</sup> MA000003.