



Information for ACWA Members

INDUSTRIAL RELATIONS UPDATE



PENALTY RATE TEST CASE

The Fair Work Commission recently handed down its Decision in the long awaited penalty rates test case. There has been some confusion as to how this will apply to car wash operators including those car washes that have café's attached to their operations.

In my view, this decision will not affect car wash operators, including those operating café's as part of their business at this time. The Decision was confined to the hospitality, restaurant and fast food industries and not the vehicle industry which car washes are covered by. The definition contained in the Award for the position of a roadhouse attendant is reproduced below.

“adult roadhouse attendant means an employee of 20 years of age or over employed in a roadhouse, snack bar, kiosk or restaurant being part of or operated as an integral part of an establishment falling within the area of this award”

Café's or other food businesses that might operate on site but are not integral (this means they will probably be operated independently) to the operation of the car wash business may be covered by either the *Fast Food Industry Award 2010* or the *Restaurant Industry Award 2010*.

ACWA is currently undertaking lobbying activities to have the penalty rates relief provided for by this Decision extended to the *Vehicle Manufacturing, Repair, Services and Retail Award 2010*, however, at this stage no final decision has been made by the Fair Work Commission. Until the outcome of the Association's lobbying activities is known, the status quo remains in relation to penalty rates.

CAR CLEANER VS DRIVEWAY ATTENDANT

An issue that recently arose for an ACWA member related to the classification of work being performed by employees who wash the exterior of cars prior to the vehicle going through the automatic bay or tunnel. Are they employed in the classification of driveway attendant or car cleaner? The classification is relevant because there are different base rates of pay and penalty rates depending on which classification applies.

Clause 33.1 of the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* provides for how employee classifications are determined. The relevant provision is reproduced below.

33.1 All adult employees (other than adult apprentices) covered by this section must be classified according to the structure set out in clause 33.4 according to the skill levels and duties required to be exercised by the employee in order to carry out the principal function of the employment as determined by the employer. The skill level definitions, according to which employees are to be classified, are set out in Schedule B—Vehicle Industry RS&R—Skill Level Definitions

In short, you have to determine what their main activity is and then classify the employee according to skill level definitions. The process is not helped by the fact that the duties of a driveway attendant are not defined in the Award. However, in determining which classification of work is being undertaken, it is probably safe to say that if the employee spends more than half their time engaged in car cleaning activities then they will be a car cleaner for the purposes of the Award. If they spend less than half their time on cleaning, it will then depend what duties they perform to determine which classification of work is being undertaken.

A final point to note is that the Award also has a higher duties clause. Clause 33.6 of the Award states;

33.6 An employee engaged for more than two hours on one day or shift on duties carrying a higher rate than their ordinary classification will be paid the higher rate for such day or shift. If so engaged for two hours or less on one day or shift, they will be paid the higher rate for the time so worked.

How this applies depends on the rostering arrangements you have in place and opens up a number of new issues. Hopefully, over time some of these issues will be addressed by the Fair Work Commission, but until that time arrives members will have to continue to try and comply with an Award that is not always suited to the operation of car wash businesses.

ESSA: Graham Lilleyman t: 08 9240 4230 m: 0402 462 555 e: glilleyman@essa.net.au

YOUR ACWA MEMBERSHIP INCLUDES 2 x HELPLINES

* For assistance you will need to quote your ACWA Membership Number and provide your ACWA Membership carwash or company name and main contact name *



IR & WAGE ADVICE



ACWA has a service agreement with **ESSA** (Employment Services & Solutions Australia) and HR Legal to provide Industrial and Wage advice to financial ACWA members. In today's changing industrial environment it is important to stay informed and comply with all conditions of employment. **ESSA** will maintain an ACWA specific Phone and email advice line, manned by trained industrial relations consultants, to answer queries about:

1. current terms and conditions of employment for the industry including award coverage (*either Transitional Federal Awards, or NAPSAs – transitional state awards*);
2. annual wage increases;
3. changes arising from the new National Employment Standards;
4. changes arising from Upcoming Modernized Awards;
5. general information regarding termination of employment and unfair dismissal (*litigation referred to HR Legal*);
6. general information about Discrimination, Bullying and OH&S (*litigation referred to HR Legal*);

Individual ACWA members will each be entitled to approximately 45 minutes of **FREE telephone support** per annum with additional work being charged at discounted rates. Support includes:

1. telephone advice (*via the dedicated ACWA Phone Service*) or dedicated email advice;
2. review documentation which involves less than 10 minutes reading, preparation of short written correspondence by email (*not requiring formal legal advice*).

It is anticipated the time allocated will enable the majority of members seeking to clarify wage rates, or get general information about agreement making and termination to obtain such advice without charge. However, limits will be applied where the matter requires specific detailed advice or representation, or information on past underpayment of wages. If the advice you seek is more detailed than as described, or if you have reached the limit of your free time allocation, you will be notified in writing (by email or letter) that any additional advice will be chargeable directly to you and charge rates specified. ESSA will consult with HR Legal as required to provide professional and seamless advice.

Contact ESSA: Graham Lilleyman t: 08 9240 4230 m: 0402 462 555 e: glilleyman@essa.net.au

Workplace Health and Safety Advice



Eastman Lynch are the Consultants that developed the template Workplace Health and Safety (WH&S) Manual which is available in the Members Areas of the ACWA website.

Find the WH & S Manual in the Members Area of the ACWA Website From the Members Home page – click on the tab Services to Members and see the tab to WH&S

If you need further WH&S assistance or have any questions regarding your legal obligations, you can now contact **Eastman Lynch** directly. The **FREE Service** is available for up to a 20 minute consultation and does not include researching of information or preparation of specific documentation. If required, further charges for more complex advice or assistance will be negotiated with the individual member. A quotation will always be provided before any extra charges are incurred.

Contact Eastman Lynch : In Victoria: 03 5442 7862 From Interstate: 1300 137 929
Email: admin@eastmanlynch.com.au