



Workplace Relations Amendment Regulations 2006 (No. 5)¹

Select Legislative Instrument 2006 No. 341

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Workplace Relations Act 1996* and the *Workplace Relations Amendment (Work Choices) Act 2005*.

Dated 13 December 2006

P. M. JEFFERY
Governor-General

By His Excellency's Command

KEVIN ANDREWS
Minister for Employment and Workplace Relations

Contents

	1	Name of Regulations	2
	2	Commencement	2
	3	Amendment of <i>Workplace Relations Regulations 2006</i>	2
	4	Amendment of <i>Workplace Relations Regulations 2006</i>	2
Schedule 1		Amendments	3
Schedule 2		Further amendments relating to leave entitlements	7

1 Name of Regulations

These Regulations are the *Workplace Relations Amendment Regulations 2006 (No. 5)*.

2 Commencement

These Regulations commence as follows:

- (a) on the day after these Regulations are registered — regulations 1, 2 and 3 and Schedule 1;
- (b) immediately after the commencement of Schedule 1 to the *Workplace Relations Amendment Regulations 2006 (No. 4)* — regulation 4 and Schedule 2.

3 Amendment of *Workplace Relations Regulations 2006*

Schedule 1 amends the *Workplace Relations Regulations 2006*.

4 Amendment of *Workplace Relations Regulations 2006*

Schedule 2 amends the *Workplace Relations Regulations 2006*.

Schedule 1 Amendments

(regulation 3)

Part 1 Amendment relating to wage agreements and instruments

[101] Chapter 2, subregulation 7.1 (3), example

substitute

Example 1 — seasonal employees

An employee works in an industry in which there are significant seasonal fluctuations in work demands. As a result, the employee is required to work more hours during peak season and fewer in the off season in a 12 month period. However, under the employee's workplace agreement the employee is paid the same amount each pay period despite the fluctuations.

If, over the 12 month period, the employee is paid on average at least the guaranteed basic rate of pay, and the employer and employee have agreed, in writing, that the wages guarantee will be complied with over a 12 month period, the Standard will not be more favourable.

Example 2 — employees on commission

An employer and employee, a salesperson, agree that the employee will be paid by commission (eg percentage of sales), rather than by weekly pay, even though the employee is guaranteed a basic hourly rate of pay under the wage guarantee in section 182 of the Act.

They agree in writing that the employee's wage guarantee will be satisfied at the end of every quarter.

- If the employee's commission earnings over a particular quarter are greater than the guaranteed amount under the employee's wage guarantee for the same quarter, no further amount is payable. The Standard will not be more favourable.
- If the employee's commission earnings over a particular quarter fall below the amount guaranteed for the same quarter, the employer must make up any shortfall at the end of the quarter. Otherwise, the Standard will be more favourable and the employee's wage guarantee will not have been satisfied.

The agreement under subregulation 7.1 (3) does not change the obligation to pay the guaranteed basic rate of pay for each hour worked.

Part 2 Amendments relating to disclosure of information

[201] Chapter 2, subregulation 5.1 (1)

omit

- (1) For subparagraph 151 (1) (i) of the Act,

insert

For subparagraph 151 (1) (i) of the Act,

[202] Chapter 2, subregulation 5.1 (2)

omit

[203] Chapter 2, regulation 5.3, heading

substitute

5.3 Identity of parties to AWA not to be disclosed — exception relating to analyses and reports

[204] Chapter 2, after regulation 5.3

insert in Division 3 of Part 5

5.4 Identity of parties to AWAs not to be disclosed — exception relating to court proceedings initiated by workplace inspector

- (1) For paragraph 165 (1) (e) of the Act, a disclosure by a person (the *discloser*) to any other person of protected information that the discloser knows, or has reasonable grounds to believe, will identify another person as being, or having been, a party to an AWA is permitted if:
- (a) a proceeding is initiated by a workplace inspector; and
 - (b) the protected information relates to the proceeding.

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- (2) In subregulation (1):

protected information has the same meaning as in subsection 165 (2) of the Act.

5.5 Identity of parties to AWAs not to be disclosed — exception relating to information in public domain

- (1) For paragraph 165 (1) (e) of the Act, a disclosure by a person (the *discloser*) to any other person of protected information that the discloser knows, or has reasonable grounds to believe, will identify another person as being, or having been, a party to an AWA is permitted if the protected information has previously been disclosed to the public, but has not previously been disclosed to the public in contravention of the Act or these Regulations.

- (2) In subregulation (1):

protected information has the same meaning as in subsection 165 (2) of the Act.

[205] Chapter 2, regulation 6.6

substitute

6.6 Disclosure of information

- (1) For subsection 170 (3) of the Act, a workplace inspector is authorised to disclose to:
- (a) the Minister; or
 - (b) the Secretary; or
 - (c) an SES employee or an APS employee (within the meaning given by section 34 of the *Public Service Act 1999*) performing duties in the Department;
- any information acquired by the workplace inspector in the course of exercising powers, or performing functions, as a workplace inspector for the purpose of providing assistance or advice to that person in relation to the rights and obligations of an employer, an employee or a registered organisation under the Act or regulations made under the Act.

- (2) For subsection 170 (3) of the Act, a workplace inspector is authorised to disclose to:
- (a) the Minister; or
 - (b) the Secretary; or
 - (c) an SES employee or an APS employee (within the meaning given by section 34 of the *Public Service Act 1999*) performing duties in the Department;
- any information acquired by the workplace inspector in the course of exercising powers, or performing functions, as a workplace inspector that has previously been disclosed to the public, but has not previously been disclosed to the public in contravention of the Act or these Regulations.

Part 3 Amendments relating to entitlement to transfer to a safe job or to take paid leave

[301] Chapter 3, paragraph 7.3 (1) (b)

substitute

- (b) the entitlement under section 268 of the Act to transfer to a safe job or to take paid leave.

[302] Chapter 3, paragraph 7.10 (1) (b)

substitute

- (b) the entitlement under section 268 of the Act to transfer to a safe job or to take paid leave.

Schedule 2 Further amendments relating to leave entitlements

[1] Chapter 2, paragraph 7.1 (6) (da)

substitute

- (da) paid personal/carer's leave (but only to the extent to which it is a particular respect for the purposes of subregulations (11C) and (11G));

[2] Chapter 2, subregulations 7.1 (11A) and (11B)

omit

[3] Chapter 2, subregulation 7.1 (11F)

omit

paid personal/carer's leave or

[4] Regulation 7.7A, including the notes

substitute

7.7A Piece rate employees — basic periodic rate of pay

For section 231 of the Act, the *basic periodic rate of pay* for a piece rate employee is worked out in accordance with the formula:

$$\text{BPR} = \frac{\text{TA}}{\text{TH}}$$

where:

BPR is the employee's basic periodic rate of pay, expressed as an hourly rate of pay.

TA is the total amount earned by the employee at the employee's basic piece rate of pay during the relevant period.

TH is the total hours worked by the employee during the relevant period.

the relevant period is:

- (a) for an employee who was continuously employed by the employer for a period of 12 months or more immediately before the basic periodic rate of pay is to be worked out — the 12 months before the rate is to be worked out; or
- (b) for an employee who was continuously employed by the employer for a period less than 12 months immediately before the rate of pay is to be worked out — that period.

Note The Act contains the following relevant definitions:

- (a) **piece rate employee** — section 228;
- (b) **basic piece rate of pay** — section 178.

[5] Chapter 2, after regulation 7.8

insert in Part 7, Division 5

7.9 Piece rate employees — basic periodic rate of pay

For section 243 of the Act, the **basic periodic rate of pay** for a piece rate employee is worked out in accordance with the formula:

$$\text{BPR} = \frac{\text{TA}}{\text{TH}}$$

where:

BPR is the employee's basic periodic rate of pay, expressed as an hourly rate of pay.

TA is the total amount earned by the employee at the employee's basic piece rate of pay during the relevant period.

TH is the total hours worked by the employee during the relevant period.

the relevant period is:

- (a) for an employee who was continuously employed by the employer for a period of 12 months or more immediately before the basic periodic rate of pay is to be worked out — the 12 months before the rate is to be worked out; or
- (b) for an employee who was continuously employed by the employer for a period less than 12 months immediately before the rate of pay is to be worked out — that period.

Note The Act contains the following relevant definitions:

- (a) *piece rate employee* — section 240;
- (b) *basic piece rate of pay* — section 178.

[6] Chapter 2, Part 7, after Division 5

insert

Division 6 Parental leave

7.10 Piece rate employees — basic periodic rate of pay

For section 264A of the Act, the *basic periodic rate of pay* for a piece rate employee is worked out in accordance with the formula:

$$\text{BPR} = \frac{\text{TA}}{\text{TH}}$$

where:

BPR is the employee's basic periodic rate of pay, expressed as an hourly rate of pay.

TA is the total amount earned by the employee at the employee's basic piece rate of pay during the relevant period.

TH is the total hours worked by the employee during the relevant period.

the relevant period is:

- (a) for an employee who was continuously employed by the employer for a period of 12 months or more immediately before the basic periodic rate of pay is to be worked out — the 12 months before the rate is to be worked out; or
- (b) for an employee who was continuously employed by the employer for a period less than 12 months immediately before the rate of pay is to be worked out — that period.

Note The Act contains the following relevant definitions:

- (a) *piece rate employee* — section 263;
- (b) *basic piece rate of pay* — section 178.

[7] Chapter 2, paragraph 8.5 (1) (I)

omit

paid personal/carer's leave or

[8] Chapter 2, paragraph 8.5 (1) (I)

omit

these Regulations.

insert

these Regulations;

[9] Chapter 2, after paragraph 8.5 (1) (I)

insert

- (m) the forgoing of paid personal/carer's leave credited to an employee bound by the agreement for an amount of pay or other benefit otherwise than at the written election of the employee.

[10] Chapter 2, paragraph 21.3 (6) (da)

substitute

- (da) paid personal/carer's leave (but only to the extent to which it is a particular respect for the purposes of subregulations (11C) and (11G));

[11] Chapter 2, subregulations 21.3 (11A) and (11B)

omit

[12] Chapter 2, subregulation 21.3 (11F)

omit

paid personal/carer's leave or

[13] Chapter 7, subregulation 2.23A (2)

after

paragraph 8.5 (1) (l)

insert

or (m)

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.