MASTER BUILDERS AUSTRALIA

Australian Government Fair Work OMBUDSMAN

Comparative Table

BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2010

Frequency of payment under pre-modern awards

In early 2011, the Fair Work Ombudsman in conjunction with Master Builders commenced a national education campaign on the Building and Construction General On-Site Award 2010. The campaign has been funded by the Australian Government through the Fair Work Ombudsman's Shared Industry Assistance Projects (SIAP) Grant Program, which aims to better inform employers (particularly small to medium businesses) about changes brought about by the modern awards applicable to their industry sector. Following a competitive selection process, Master Builders was one of 15 successful organisations selected to deliver the education campaign in conjunction with the Fair Work Ombudsman.

As a general rule, employers covered by the *Building and Construction General On-Site Award 2010* ('*Modern On-Site Award*') must pay their employees on Thursday of each working week. However, certain employers covered by the *Modern On-Site Award* can pay their employees at different intervals (i.e. fortnightly or otherwise) by reference to pre-modern awards. That exception is found in subclause 31.3 of the *Modern On-Site Award*, the effect of which is that employers which existed prior to the introduction of the *Modern On-Site Award* may continue to pay their employees as they did under pre-modern awards. For the purposes of subclause 31.3, those employers are:

- incorporated businesses (e.g. Pty Ltd or Ltd companies) which had employees prior to 26 March 2006; and
- unincorporated businesses (e.g. sole traders and partnerships) which had employees prior to 1 January 2010.

If an employer falls into one of the above categories, then they may refer to the pre-modern award which they were bound by before the introduction of the *Modern On-Site Award*, in order to see whether they can pay their employees fortnightly or otherwise. However, where a pre-modern award required agreement from the affected employee or a majority of employees, before payments could be made fortnightly or otherwise, then such agreement will still be required. An employer can also only pay at frequencies other than weekly where they have actually been used by the employer at some time prior to the introduction of the *Modern On-Site Award*. This means that even if a pre-modern award allowed an employer to pay their employees fortnightly, an employer will now only be able to pay their employees fortnightly under the *Modern On-Site Award* if that was a payment frequency which the employer had previously used.

Overleaf is a Comparative Table of 'Frequency of payment under pre-modern awards,' which identifies whether relevant pre-modern awards allowed for payments to be made fortnightly or otherwise. It also indicates whether agreement from affected employees was required. By clicking on the award code, a copy the pre-modern award can be accessed. For copies of other pre-modern awards, employers should refer to the Fair Work Ombudsman's 'Award Finder'.[1] Employers should also see Fact Sheet 6 - 'Payment of wages'.[2]

NOTE: The pre-modern awards in the Comparative Table below are taken from Fair Work Australia's *Draft Awards Audit by Modern Awards* (*Draft Awards Audit*)'.[3] However, as noted by Fair Work Australia in [2010] FWAFB 9916,[4] the *Draft Awards Audit* is indicative only and 'does not represent a binding decision as to the coverage of a modern award.' In other words, the Comparative Table is not a complete list of potentially relevant pre-modern awards. If employers are uncertain about pre-modern award or *Modern On-Site Award* coverage they should call the Fair Work Infoline on ph: 13 13 95. Employers may also wish to see the decision by Fair Work Australia which preserved pre-modern regulation regarding frequency of payment ([2010] FWA 2894).[5]

Award	State	Award code	Clause	Frequency of payment
A.W.U. Miscellaneous Workers' (ACT) Award 1998	ACT	AP765606	Cl 18	Weekly. Employees engaged prior to 8 January 1999 may be paid at the frequency used at that time.
Air Conditioning and Refrigeration Industry (Construction and Servicing) Award No. 10 of 1979	WA	AN160008	Cl 14	Weekly or fortnightly. May pay otherwise with agreement of a majority of affected employees.
Asphalt and Bitumen Industry (NSW and ACT) Award 1999	NSW & ACT	AP766022	Cl 17	Weekly. May pay otherwise with written agreement of affected employee that works outside County of Cumberland.
Asphalt and Bitumen Industry (Queensland) Award 2000	Qld	AP765981	Cl 23	Weekly. May pay fortnightly with agreement of a majority of employees.
Asphalt and Bitumen Industry (Southern States) Award, 1999	SA, Tas & Vic	AP766012	Cl 18	Weekly or fortnightly. May pay three weekly, four weekly or monthly for an individual employee with their agreement, or for all employees with agreement of a majority of employees.
Asphalt and Bitumen Industry (State) Consolidated Award	NSW	AN120023	Cl 9	Weekly. Method of payment is in accordance with agreement of affected employee that works outside County of Cumberland.
Asphalt and Bitumen Industry (WA) Award 2000	WA	AP766093	Cl 18	Weekly.
Australian Workers' Union Construction and Maintenance (Western Australia) Award 2003	WA	AP825520	Cl 35	No frequency. Employers may pay at frequency previously used.
Australian Workers' Union Construction and Maintenance Award 2002	NSW, Qld, SA, Tas, Vic & WA	AP815828	Cl 22	Weekly. May pay otherwise when a public holiday falls on pay day, with agreement of affected employee.
Australian Workers' Union Construction-on-Site and Civil Engineering (A.C.T.) Award 1999	ACT	AP765604	Cl 20	Weekly. Employees engaged prior to 11 October 1999 may be paid fortnightly if then paid at that frequency.
Australian Workers Union Road Maintenance, Marking and Traffic Management Award 2002	WA	AN160016	Cl 4.5	Weekly. May pay otherwise when a public holiday falls on pay day, with agreement of affected employee.

AWU Geomembrane and Geotextile Installation Award 2003	National	AP823562	Cl 14	No frequency. Employers may pay at frequency previously used.
AWU/CFMEU Construction & Maintenance Award (South Australia) 1989	SA	AN150011	Cl 33	Weekly. May pay otherwise when a public holiday falls on pay day, with agreement of affected employee.
Bricklayers & Tuckpointers (Mixed Industry) (SA) Award	SA	AN150018	Cl 14	Weekly. May pay fortnightly with the agreement of affected employee.
Broken Hill Commerce and Industry Agreement Consent Award 2001	NSW	AN120088	Cl 1.36	Weekly or fortnightly.
Building & Construction Workers (State) (Mixed Industry) Award	SA	AN150021	NA	No frequency. Employers may pay at frequency previously used.
Building and Construction Industry (ACT) Award 2002	ACT	AP817145	Cl 21	Weekly. May pay otherwise when a public holiday falls on pay day, with agreement of affected employee.
Building and Construction Industry (Northern Territory) Award 2002	NT	AP812941	Cl 5.7	Weekly. May pay otherwise with agreement of affected employee.
Building and Construction Industry (State) Award	NSW	AN120089	Cl 23	Weekly. May pay otherwise when a public holiday falls on pay day, with agreement of affected employee.
Building and Construction Industry Award	Tas	AN170010	Cl 18	Weekly. May pay otherwise when a public holiday falls on pay day, with agreement of affected employee.
Building and Construction Workers (State) Award	SA	AN150022	Cl 32	Weekly. May pay otherwise when a public holiday falls on pay day, with agreement of affected employee.
Building Construction Industry Award - State 2003	Qld	AN140043	Cl 5.4	Weekly. May pay otherwise when a public holiday falls on pay day, with agreement of affected employee.
Building Employees Mixed Industries (State) Award	NSW	AN120091	Cl 23	Weekly. May pay otherwise with agreement of a majority of employees. Employees engaged prior to 3 September 1992 may be paid at frequency used at that time.

Building Industry - Contract Floor Layer Minimum Rate Order Award	NSW	AN120092	Cl 11	Weekly. May pay otherwise when a public holiday falls on pay day, with agreement between principal contractor and contract floor layer.
Building Trades (Construction) Award 1987	WA	AN160034	Cl 34	Weekly. May pay otherwise when a public holiday falls on pay day, with agreement of affected employee.
Building Trades (Government) Award 1968	WA	AN160036	Cl 10	Weekly or fortnightly.
Building Trades (SA) Construction Award	SA	AN150023	Cl 35	Weekly. May pay otherwise when a public holiday falls on pay day, with agreement of affected employee.
Building Trades Award 1968	WA	AN160037	Cl 11	Weekly. May pay otherwise with the agreement of a majority of affected employees.
Civil Construction, Operations and Maintenance General Award - State 2003	Qld	AN140061	Cl 5.7	Weekly or fortnightly.
Earth Moving and Construction Award	WA	AN160104	Cl 19	No frequency. Employers may pay at frequency previously used.
Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973	WA	AN160114	Cl 19	Weekly or fortnightly. May pay otherwise with agreement of a majority of affected employees.
Engine Drivers' (General) Award	WA	AN160115	Cl 18	Weekly. May pay otherwise for employees in remote areas with the agreement of the affected employee.
Engine Drivers' and Firemen's (ACT) Award 2000	ACT	AP805250	Cl 20	Weekly. Employees engaged prior to 16 Feb 2001 may be paid fortnightly if then paid at that frequency.
Engine Drivers General (State) Award	NSW	AN120196	Cl 9	Weekly or fortnightly.
Foremen (Building Trades) Award 1991	WA	AN160133	Cl 17	Weekly.
Gangers (State) Award	NSW	AN120225	Cl 14	Weekly. Employers which existed prior to 23 August 2001 may pay in accordance with the practice prior to that date if it is not in their opinion reasonably practicable to pay weekly.

General Construction and Maintenance, Civil and Mechanical Engineering, &c. (State) Award	NSW	AN120228	Cl 30	No frequency. Employers may pay at frequency previously used.
Industrial Spraypainting and Sandblasting Award 1991	WA	AN160180	Cl 32	Weekly. May pay otherwise when a public holiday falls on pay day, with agreement of affected employee.
Landscape Gardeners, &c., on Building and General Construction and Maintenance, Civil and Mechanical Engineering (State) Award	NSW	AN120309	Cl 23	No frequency. Employers may pay at frequency previously used.
Metal and Engineering On-Site Construction Industry Award	Tas	AN170063	Cl 23	Weekly or fortnightly. May be paid otherwise with agreement of affected employee.
Metal Trades (General) Award 1966	WA	AN160206	Cl 16	Weekly or fortnightly. May pay otherwise with agreement of a majority of employees.
National Building and Construction Industry Award 2000	NSW, Qld, SA, Tas, Vic & WA	AP790741	Cl 23	Weekly. May pay otherwise when a public holiday falls on pay day, with agreement of affected employee.
National Metal and Engineering on-site Construction Industry Award 2002	ACT, NSW, Qld, SA, Tas, Vic	AP816828	Cl 17	No frequency. Employers may pay at frequency previously used.
North Rankin Construction Award	WA	AN160228	NA	No frequency. Employers may pay at frequency previously used.
Plant, &c., Operators on Construction (State) Award	NSW	AN120419	Cl 28	No frequency. Employers may pay at frequency previously used.
Risdon Prison Redevelopment Project Enterprise Award	Tas	AN170089	Cl 15	Weekly. May pay otherwise when a public holiday falls on pay day, with agreement of affected employee.
Roof Slaters and Tilers (Victoria) Award 2002	Vic	AP818507	Cl 17	Weekly. May pay fortnightly with agreement of affected employee. May pay otherwise when a public holiday falls on pay day, with agreement of affected employee.

Sinter Machine Emission Reduction Project Consent Award	NSW	AN120707	NA	No frequency. Employers may pay at frequency previously used.
South Australian Civil Contracting Industry Award 1999	SA	AP798273	Cl 5.6	Weekly. May pay fortnightly with the agreement of a majority of affected employees. May pay otherwise when a public holiday falls on pay day, with agreement of affected employee.
UCIW Christmas Island Building and Construction Award 2004	Christmas Is.	AP834773	Cl 17	Weekly. May pay otherwise when a public holiday falls on pay day, with agreement of affected employee.
Unions NSW Port Kembla Steelworks Construction Award 2006	NSW	AN120701	NA	No frequency. Employers may pay at frequency previously used.
WA Government Health Services Engineering and Building Services Award 2004	WA	AN160329	Cl 17	Weekly or fortnightly.
Western Australian Civil Contracting Award 1998	WA	AP803190	NA	No frequency. Employers may pay at frequency previously used.

Disclaimer

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The information contained in this publication is:

- general in nature and may not deal with all aspects of the law that are relevant to your specific situation; and
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[1] See: www.fairwork.gov.au/awards/award-finder/pages/default.aspx
[2] See: http://www.masterbuilders.com.au/SIAP
[3] See: www.fwa.gov.au/index.cfm?pagename=awardsmodernresearch
[4] See: www.fwa.gov.au/decisionssigned/html/2010fwafb9916.htm
[5] See: www.fwa.gov.au/decisionssigned/html/2010fwa2894.htm