FACTSHEET

# Annualised Wage Arrangements under the Hospitality Industry (General) Award 2020 and the Restaurant Industry Award 2020

*as at September 2022*

This factsheet provides information about annualised wage arrangements and the obligations employers must comply with under the Hospitality Industry (General) Award 2020 (Hospitality Award) and the Restaurant Industry Award 2020 (Restaurant Award).

## What is an annualised wage arrangement?

An annualised wage arrangement is an agreement, between an employer and employee, to pay the employee an annual wage under the terms of their award that is more than the minimum award rate.

Using an annualised wage arrangement is an alternative to calculating and paying an employee's wages based on their hours actually worked (including penalty rates and overtime) in each individual pay period.

For clarity, an annualised wage arrangement not the same as being paid a salary under an employment contract, and imposes obligations on an employer to create agreement and complete a reconciliation at the end of each 12 month period.

## Which employees can be on annualised wage arrangements?

Only full-time employees, by a written agreement, can enter into annualised wage arrangements under the Hospitality Award and Restaurant Award.

For clarity, part-time and casual employees cannot be put on annualised wage arrangements under these awards.

## Managerial staff in hotels

The annualised wage arrangements do not apply to hotel managers engaged within the Managerial Staff (Hotels) classification of the Hospitality Award.

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# Applying Annualised Wage Arrangements

## Step 1: Check what can and can't be included in the annualised wage

Under the Hospitality Award and the Restaurant Award, an annualised wage arrangement can include some or all the following entitlements:

- the minimum award rates for the employee's classification level;
- overtime rates;
- penalty rates for early morning, evening, late night, weekend, and public holiday work; and
- annual leave loading.

In the Restaurant Award, annualised wage arrangements may also include a split shift allowance. While under the Hospitality Award, an annualised wage arrangement may also include additional public holiday arrangements and allowances listed in clause 26.

Any entitlements listed above not included in the annualised wage arrangements, will need to be paid separately as they arise.

For clarity, any entitlement not listed above cannot be covered by the annualised wage arrangement and will also need to be paid separately.

### Outer Limits

There are limitations on the maximum number of hours that can attract overtime or penalty rates that an employee can be required to work in a roster cycle and included in their annual wage arrangement, known as the 'outer limits'.

Under the Hospitality Award and the Restaurant Award, in any roster cycle an annualised wage can only cover up to the following number of hours:

- an average of 18 ordinary hours per week that attract a penalty rate (except for evening work); and
- an average of 12 overtime hours per week.

Any hours worked in a roster cycle beyond the above 'outer limits' are not covered by the annualised wage and must be separately paid for at the relevant award rate for the pay period they are worked.

### Evening Work

Under the Restaurant Award and the Hospitality Award, evening work does not count towards the 'outer limit' if the work occurs between:

- 7.00 pm and midnight, Monday to Friday – in the Hospitality Award;
- 10.00 pm and midnight, Monday to Friday – in the Restaurant Award.

Time worked by an employee during these hours doesn't count towards the average of 18 ordinary hours per week 'outer limit'.

## Step 2: Calculate and set the amount

There are rules around how to set an annualised wage for employees, including a minimum amount needed to be paid to have the benefit of an annualised wage arrangement. To avoid owing large shortfalls to the employee at the end of the year, it's also a good idea to set the wage at a level that will cover what the employee would have been entitled to receive under their award over a year.

The annualised wage that is set must be at least 25% higher than the employee's minimum award wage for their classification under the award.

To do this, the employer needs to:

- consider the employee's duties and experience;
- work out their classification level based on this;
- identify the minimum weekly rate under the award for that classification; and
- work out the minimum annualised wage based on the following formula:
  - apply 25% on top of the weekly minimum wage and multiply by 52.

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## Step 3: Make an agreement

An annualised wage arrangement must be recorded in writing and agreed to by an employee and employer. At a minimum the written agreement needs to set out:

- the annualised wage;
- which award entitlements are covered by the annualised wage (for example, penalty rates, overtime, annual leave loading, and allowances); and
- the maximum overtime and penalty hours that the employee can be required to work in a roster cycle without being entitled to additional payment (the 'outer limits').

However, it's also a good idea to include:

- the date the agreement was entered into;
- how the annualised wage has been calculated;
- information about the records that must be kept by the employer and signed or acknowledged by the employee;
- the date/s the employer will complete a reconciliation; and
- how the agreement can be terminated by the employer or the employee.

The employer must keep a copy of the agreement as a time and wages record, as well as issue a copy to the employee.

The agreement can be terminated by either party by providing 12 months' notice of the termination in writing. The agreement will cease to operate at the end of the notice period. However, the agreement can be terminated earlier if there is a mutual agreement in writing between the employer and the employee.

## Step 4: Record-keeping

Despite the amount paid to the employee on an annualised wage arrangement from week to week does not fluctuate, the employer must still record an employee's hours of work. Additionally, the employee must sign or acknowledge these records as correct in writing each pay period or roster cycle. This can be done electronically.

These records will assist the employer in the reconciliation process at the end of each 12-month period.

The employer will need to keep a record of:

- the employee's start and finish times each day; and
- any unpaid breaks the employee took.

Further, the employer must comply with other record-keeping and pay slip requirements under the Fair Work Act, including for entitlements that are paid to the employee beyond the outer limits or not covered by the annualised wage arrangement.

## Step 5: Monitor each pay period

For each pay period the employer must pay their employee:

- their annualised wage;
- any additional amounts for any hours worked beyond the 'outer limits' for overtime or penalty hours; and
- any entitlements that are not covered by the annualised wage they are entitled to for the pay period.

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## Step 6: Review and reconcile

Business requirements can change and the hours an employee works may vary throughout the year. As such, the employer is required to reconcile annualised wage payments on an annual basis to account for this and to make sure that the employee receives at least their minimum entitlements under the award for their work over the year.

If an annualised wage arrangement is terminated (either because the employer or the employee had given notice, or both parties agreed to end the arrangement), or the employee stops working for the business, the employer must also undertake this reconciliation. In this case, the reconciliation must cover the period the annualised wage arrangement was in place since the previous reconciliation period, or since it began if it is within the first year of the arrangement.

Every time a reconciliation is conducted, the employer must:

- Calculate what the employee would have been entitled to if they weren't receiving an annualised wage for the period (including minimum award rates, penalty rates, overtime, and allowances that are covered by the annualised wage).

  Note: it is not necessary to include any entitlements that are not covered by the annualised wage arrangement, that has been paid separately paid throughout the period as they arise (i.e., work performed outside the outer limits or entitlements not covered by the annualised wage arrangement).

- Compare the amount the employee was actually paid (i.e., the annualised wage amount) with what has been calculated in Step 1. If the employee's annualised wage is equal to or higher than what they would have otherwise been entitled to receive under the award, the minimum annualised wage amount requirements under the award have been met.

What if there is a shortfall?

If there is any shortfall, meaning the employer has paid the employee less than what they would have been entitled to under the award for the period, the employer must pay the employee the shortfall amount within 14 days of completing the reconciliation.

What if an employer doesn't meet their minimum obligations?

An employer can be penalised by a court if it determines that there has been a breach of workplace law. Penalties can be up to $13,320 per contravention for an individual and $66,600 per contravention for a company. Higher amounts can apply if it is a 'serious contravention'. A director or manager can also be ordered by a court to pay penalties and any unpaid entitlements.