

Save our
weekend.

protect penalty rates

Save our
weekend.

Australian Unions
Join. For a better life.

BUILD A BETTER
FUTURE



STOP CUTS TO TAKE HOME PAY. PROTECT PENALTY RATES.

PENALTY RATES – Q&A

What is the Penalty Rates Case?

The Penalty Rates Case (AM2014/305) is part of the Fair Work Commission's (FWC) broader 4-yearly review of modern awards. The Full Bench handed down its main decision in the penalty rates proceedings on Thursday, 23 February 2017.

What was the outcome and which industries are affected?

The decision reduces Sunday penalty rates in four hospitality and retail modern awards: *Hospitality, Fast Food, Retail and Pharmacy Awards*; reduces public holiday rates in those awards plus the *Restaurant Award*; and reduces early morning loadings in the *Restaurant Award* and late night loadings in the *Fast Food Award*.

How many Australians will be affected and how much will they lose from their pay?

700,000 retail, hospitality and pharmacy workers are facing up to a \$6,000 per year pay cut. At the same time big business profits are up by 20% and the Turnbull government is also giving them tax cuts.

Isn't it mainly students in these industries?

Contrary to the employers' arguments that the penalty rate cuts will primarily only affect students who will go on to better jobs or who are being supported by their parents, a new report suggests only a minority of retail and hospitality workers are students and only a third of retail and hospitality workers are dependent students.

When will the cuts come into effect?

The cuts to early/late night rates in the *Restaurant Award* and *Fast Food Award* are due to take effect on 27 March 2017. The cuts to Sunday and public holiday rates are due to take effect on 1 July 2017.

Will other awards be affected by these changes?

The Commission gave mixed signals in the decision about whether it is likely to vary penalty rates in other awards down the track. It has endorsed the idea that penalty rates are justifiable in 'essential services and many other industries' but not necessarily in all awards. This leaves the door open in other awards.

Will this decision have a flow-on affect to other industries?

Legal advice from Maurice Blackburn stated “these findings are not confined to the retail and hospitality industries and hence are applicable to other awards...it is our view that the reasoning in the penalty rates decision may open the door to changes in other industries. However, it is clear from the decision that each application would be reviewed on a case by case basis.”

Can a legal avenue be taken to stop penalty rate cuts coming into effect?

Retail and hospitality union barristers are currently considering whether judicial review of the decision can be sought. A court could only overturn the Commission’s decision if it finds that a legal error has occurred, for example, if the Commission misinterpreted the relevant legislative test, applied an irrelevant criteria, failed to consider a relevant criteria or found the decision was so outrageous in its defiance of logic or accepted moral standards that no reasonable person could have made such a decision.

When is the next review due?

A further 4-year review is due to commence in 2018, however future 4-yearly reviews are likely to be cancelled after peak employer group bodies wrote to the Minister for Employment requesting the requirement be removed from the FW Act. A Bill to achieve this has now been introduced. The Commission is unlikely to initiate further review of weekend penalty rates and loadings in other awards on its own motion, apart from those already flagged, and would almost certainly require a party, like an employer, to make a claim.

Can the results from this review be used in future challenges of penalty rates?

It is open to any party to make a claim to vary any award at any time. Hence, the likely risk is that employers will try and use aspects of this decision to mount claims to reduce penalty rates, public holiday rates and other loadings in the future

Will there be any other surprises to come out of this review?

The Commission is also considering abolishing the term ‘penalty rates’ and replacing it with ‘additional remuneration’ in all modern awards. There is also a proposal to consider ‘loaded rates’ in retail modern awards. Loaded rates are rates higher than the minimum rate that is paid for all hours worked instead of certain penalty rates.

Will this decision change how we define our weekends?

The decision invites a public debate about how we as a society wish to organise work and whether we wish to preserve the specialness of Sundays and the weekend as a time for collective social and family activity. Those who work on weekends and public holidays are socially excluded and as a result ought to be remunerated.

What does this mean for our society?

The decision invites critical discussion of inequality, the conditions of the lowest paid, particularly in retail and hospitality sectors and the stagnation of wage growth.