

# ACTUS WORKPLACE LAWYERS

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## **FWC 'short shift' decision will have implications for many industries**

On 20 December, Deputy President Saunders [decided](#) to retrospectively vary the *Road Transport and Distribution Award 2020* (RTD Award) to clarify the operation of the 'short shift' clause, in response to an application by Toll Transport. A similar clause appears in many other awards, including the *Manufacturing and Associated Industries and Occupations Award 2020* (Manufacturing Award).

The clause in question provides a penalty for an afternoon or night shift which does not continue for at least five consecutive afternoons or nights.

Consistent with the history of the clause which can be traced back to at least the 1930s in the metal industry, the variation to the RTD Award clarifies that the penalty applies to *shift rosters* which do not continue for five afternoons or nights; not to the work patterns of individual employees. For example, an employee who is rostered for three nights on an afternoon shift is not entitled to the penalty if the afternoon shift roster is ongoing or continues for at least five nights.

The relevant penalty rate for 'short shifts' in the RTD Award and the Manufacturing Award is 150% for the first three hours and 200% thereafter. Therefore, if the FWC had accepted the Transport Workers Union's submissions in the case, there would have been very costly implications for employers in numerous industries.

For advice or assistance with any shift work or award issues, please contact **Stephen Smith**, Principal of Actus Workplace Lawyers on 0418 461 183 or Email: [stephen.smith@actuslawyers.com.au](mailto:stephen.smith@actuslawyers.com.au)