

ACTUS WORKPLACE LAWYERS

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Professional Employees Award – FWC coverage, hours of work and overtime decision

A Full Bench of the FWC has handed down a [decision](#) in a long-running case about the coverage, hours of work and overtime provisions in the *Professional Employees Award 2020*. This award covers professional engineers and scientists. It also covers IT professionals who work for IT companies.

The FWC has decided to vary the Award to:

- Clarify that the classifications in the Award do not apply to an employee is employed in a wholly or principally managerial position;
- Prescribe that:
 - (a) Subject to (b), (c), (d) and (f) below, an employee shall be paid the award ordinary hourly rate for all hours worked in excess of 38 in a week. This includes call-backs and remote work.
 - (b) An employer and an employee may agree to the employee having time off instead of being paid for hours worked in excess of 38 hours in a week.
 - (c) A penalty rate of 125% will be payable for all hours worked (whether ordinary or overtime hours) before 6.00 am or after 10.00 pm on any day Monday to Saturday.
 - (d) A penalty rate of 150% will be payable for rostered hours (whether ordinary or overtime hours) worked on a Sunday or public holiday.
 - (e) The employer must keep records of all hours worked by an employee in excess of 38 per week, or worked before 6.00 am or after 10.00 pm on any day Monday to Saturday, or worked at any time on a Sunday or public holiday.
 - (f) The requirements in (a), (b), (c), (d) and (e) above will not apply to employees who have a contractual entitlement to an annual salary that is 25% or more in excess of the minimum annual award wage for the appropriate classification.

The award has not yet been varied and therefore the above new requirements do not yet apply.

The FWC has issued a draft determination to give effect to the decision. Any submissions on the draft determination must be filed by 10 February.

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