



MEMBER UPDATE

AFPA Update – Operations Working Pattern

Dear members,

This message is a reminder the current averaging period for the Operations Working Pattern concludes at the end of August 2017. You are required to manage your hours in accordance with the **1056** hours maximum for this averaging period. Please bear the following points in mind as we approach the end of the period:

For employees:

- The Operations Working Pattern buys **1056** hours to be acquitted over the course of this six-month averaging period; it does not buy your attendance from the first day of the averaging period until the last.
- If you are approaching the limit of your hours for the period you should advise your team leader in the first instance.
- You should seek a written undertaking from your supervisor regarding the payment of overtime for excess hours before you continue to work more than the **1056** required hours.
- If such an undertaking is not forthcoming, you may refuse to work any additional hours until the commencement of the new averaging period. Protections exist under the *Fair Work Act* in respect of this issue.
- If this results in your absence from the workplace, it will likely be viewed by the Fair Work Commission as an intended consequence of the design of the working pattern.
- If you think this is happening to you, contact the AFPA for advice on your best course of action.

For managers:

- The entitlement conferred at Section 19(13) of the EA is not discretionary – if an employee has excess hours they are entitled to have them paid out as overtime.
- The provisions of the *Fair Work Act* stipulate you must compensate employees for all additional work they perform, either by the payment of additional remuneration or by providing time off.
- The provisions of the Enterprise Agreement provide the only permissible mechanism by which these additional hours may be acquitted is through the payment of overtime.
- If an employer is aware that at the end of the averaging period no budget will exist to pay out excess hours as overtime, they may be committing offences against the *Fair Work Act* by forcing employees to continue working once their required hours are acquitted.

In general:

- Excess approved hours are not the product of impropriety on the part of employees. They reflect the work performed over the course of the averaging period, as validated by the individual's supervisor. They are not the product of 'cheating the system' and are an entitlement which at law an employee cannot be denied.
- The practice of 'ghosting' hours at the commencement of the new averaging period is not permitted as it requires the falsification of attendance records, which are Commonwealth Government documents.
- This has been found by the Federal Court to be an offence and is clearly an integrity issue.
- 'Ghosting' on a 1 for 1 basis devalues overtime hours, which ought to be compensated at a higher rate.
- There is also no provision within the EA for Annual Leave which has already been used to be recredited to generate 'capacity' towards excess hours in an averaging period.

Historical Excess Hours:

The issue around employees being denied the payment of excess hours has existed over the life of the now expired Enterprise Agreement, since September 2012. At the end of May 2017, the AFPA wrote to NMPSS alerting the AFP to what we believed was widespread noncompliance with this entitlement and calling on the AFP to address the issue as a matter of priority. I am pleased to report work is underway to correct this noncompliance. Last Friday, I met with NMPSS to discuss this issue and was assured the AFP is not ignoring this problem. In particular, it was reinforced to me the pay-out of excess hours as overtime is not a discretionary entitlement but an absolute. If employees have excess hours, they **MUST** be paid. I understand information will be provided to Superintendents/Coordinators in respect of this issue in time for the end of this Averaging Period, so the problem does not continue.

To begin the process, the AFP is focussing upon the Averaging Period ending March 2017, when about 2000 employees had excess hours for which they have not been paid. These employees will be contacted by the AFP with information about how the process will be conducted, it will not be necessary for employees to approach the AFP seeking payment. There are implications in respect of tax and possibly superannuation which are being explored by the AFP and which will form part of the information for employees. Given the size of this problem, the AFP has indicated it may take three months for this first period to be addressed.

I am hoping this will be seen as good news by those of you who are affected by this issue. It will certainly be a significant undertaking by the AFP and I will keep you updated with any more details about this process as I become aware of them.

Cheers,

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