

**Circular No. 175/2021**

30 November 2021

## ***Educational Services (Teachers) Award 2020:***

Additional non-contact time for teachers appointed as Educational Leaders in early childhood services operating for at least 48 weeks per year

## ***Children's Services Award 2010:***

Variation to higher payments provision

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### ***Summary of key changes***

On 24 November 2021, the Fair Work Commission (**FWC**) issued a decision and determinations:

- varying the ***Educational Services (Teachers) Award 2020 (Teachers Award)***, providing teachers employed in early childhood services operating for at least 48 weeks per year and who are appointed as *Educational Leader*, a minimum of two hours' non-contact time per week;
- removal of the exception from 'higher payment' in clause 18.1(e) of the ***Children's Services Award 2010 (CS Award)***. Clause 18.1(e) (which is being removed) currently excludes an employee from payment under the 'higher payment' clause in circumstances where they are required to undertake the duties of another employee by the reason of the latter employee's absence for attending an approved training course.

### ***Background***

#### Education Leader – non-contact time – Teachers Award

Members would be aware from [AFEI Circular 216/2020](#) last year, that the FWC issued a determination introducing a minimum of two hours' non-contact time per week for an *Educational Leader* covered by the CS Award. That variation to the CS Award took effect from the first full pay period from 1 November 2020.

On 4 November 2020, the United Workers Union (**UWU**), wrote to the Fair Work Commission (**FWC**) stating that the variation for Educational Leader's non-contact time to the CS Award, but not to the Teachers Award, created an unintended inconsistency. The UWU asked for the same variation made for an Educational Leader in the CS Award to apply to Schedule A of the Teachers Award (teachers employed in early childhood services operating for at least 48 weeks per year).

AFEI opposed the UWU's request to vary the Teachers Award in the manner proposed by the UWU, arguing amongst other matters, that additional non-contact time can increase costs for employers where replacement staff need to be employed in order to ensure ratios are met, and that a determination varying the CS Award is not a sufficient basis to vary the Teachers Award.

In its decision, the FWC determined that the issue pertaining to minimum ratio requirements for educators did not weigh against granting the UWU's claim. The FWC also accepted that the role of an Educational Leader is the same under both the CS Award and the Teachers Award and considered that the evidence demonstrated a need for Educational Leaders to be provided with additional non-contact time in the Teachers Award.

The FWC subsequently issued a decision to vary clause A.3.2 of the Teachers Award to provide for a minimum of two hours' non-contact time for an Educational Leader per week.

### Deletion of clause 18.1(e), CS Award – Higher Payment Exception

In June 2020, the FWC decided to remove clause 18.1(e) from the CS Award, which relates to a higher payment exception where an employee is required to undertake the duties of another employee by the reason of the latter employee's absence for attending an approved training course. However, subsequent determinations issued by the FWC in 2020 did not reflect this decision. The FWC has now issued a determination aligning with the June 2020 decision.

## **When do the variations take effect?**

The variations to the CS Award and Teachers Award outlined above take effect from the first full pay period that starts on or after 1 January 2022.

## **If you need further information or assistance**

If you have any questions, please contact AFEI on 02 9264 2000 and one of our advisors can assist you.

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