



DECISION

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009
Sch. 3, Item 20A(4) - Application to extend default period for agreement-based transitional instruments

Pentana Solutions Pty Ltd
(AG2023/4797)

REYNOLDS & REYNOLDS WORKPLACE AGREEMENT (2005)

Business equipment industry

DEPUTY PRESIDENT WRIGHT
DEPUTY PRESIDENT SLEVIN
COMMISSIONER ALLISON

SYDNEY, 26 FEBRUARY 2024

Application to extend the default period for Reynolds & Reynolds Workplace Agreement (2005)

[1] This decision concerns an application made by Pentana Solutions Pty Ltd (**Pentana**) made pursuant to item 20A(4) of Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (Transitional Act) to extend the default period for the *Reynolds & Reynolds Workplace Agreement (2005)* (the **2005 Agreement**).

[2] In accordance with item 20A(1) and (2) of Schedule 3 to the Transitional Act, the 2005 Agreement will terminate unless the 2005 Agreement is extended by the Commission. Pentana has made an application to extend the default period of the 2005 Agreement pursuant to subitem (6)(a) and subitem (7) on the grounds that bargaining is occurring to replace the 2005 Agreement with a proposed enterprise agreement, and that it is otherwise appropriate in the circumstances to extend the default period.

[3] The Full Bench in *ISS Health Services Pty Ltd*¹ described the requirements under subitem (7) that must be satisfied for the Commission to extend a default period on the basis that bargaining for a replacement agreement is occurring. We are satisfied on the material provided that the requirements in subitem (7) are met.

[4] In determining whether it is ‘otherwise appropriate in the circumstances’ to extend the default period as required in subitem (6)(a) we note the following matters.

[5] Pentana employs around 343 employees under the 2005 Agreement across a range of different roles. If employees were not covered by the 2005 Agreement, they would be covered by one of the following Modern Awards:

- *Clerks – Private Sector Award 2020*
- *Restaurant Industry Award 2020*
- *Commercial Sales Award 2020*
- *Professional Employees Award 2020*
- *Miscellaneous Award 2020*
- *Storage Services and Wholesale Award 2020*

[6] The rates of pay in the 2005 Agreement have fallen well below the relevant Awards. However, in accordance with item 13 of Schedule 9 of the Transitional Act, rates of pay under the 2005 Agreement are taken to be equal to the Awards. Pentana submits it pays the relevant base Award rate to employees.

[7] The 2005 Agreement includes some above Award entitlements that are likely to benefit employees (for example, subject to certain conditions regarding length of service, there is improved parental leave and redundancy entitlements).

[8] However, it is clear that the 2005 Agreement also contains a number of less beneficial terms than the Awards, including, among other things:

- Reduced overtime penalties;
- Reduced weekend penalties (in most instances);
- No shift penalties;
- No annual leave loading; and
- Reduced public holiday penalties (in most instances).

[9] Noting Pentana's submission that the majority of its workforce are engaged 8:30AM – 5:00PM Monday to Friday, and the fact that there are some above Award terms that are likely to benefit employees, on balance we have determined it is 'otherwise appropriate in the circumstances' to grant a short extension to the default period to 30 June 2024. This will allow the parties time to finalise negotiations and address any concerns relating to terms that are currently less beneficial than the Awards.

[10] Pursuant to item 20A(6)(a) of Schedule 3 of the Transitional Act, we order that the default period for the Agreement is extended until 30 June 2024.

[11] The 2005 Agreement is published in accordance with subitem 20A(10A)(c) of the Transitional Act, on the Fair Work Commission's website.



DEPUTY PRESIDENT

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¹ [\[2023\] FWCFB 122](#).