Ordinary Hours and Time Off In Lieu Policy

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Appendix A:	Educational Services (Post-Secondary Education) Award 2020 Extracts

1. Introduction

1.1 From time to time, Administration staff members may be required to work additional hours or outside of their ordinary hours in order to fulfil the inherent requirements of their roles. Examples include:

1.1.1 Open Days;

1.1.2 Graduation Ceremonies;

1.1.3 Exhibition Openings;

1.1.4 Emergency situations; and

1.1.5 Other relevant functions.

1.2 The Adelaide Central School of Art (**the School**) provides the option for Administration staff members to negotiate Time Off In Lieu of receiving overtime penalties (commonly referred to as '**TOIL**').

1.3 The School has developed this Policy document to ensure that all staff members and management are aware of the use and procedures for using TOIL at the School so that the TOIL is applied consistently and in compliance with the requirements of relevant laws, including:

1.3.1 *Fair Work Act 2009* (Cth); and

1.3.2 *Educational Services (Post-Secondary Education) Award 2020* (**the Award**).

2. Scope

This policy applies to all Administration staff and relevant management personnel involved in TOIL processes and procedures.

3. Policy

Ordinary Hours

3.1 The School's ordinary hours reflect the requirements in the Award and your employment agreement. If there is any inconsistency between this Policy and the Award or your employment agreement, the Award or your employment agreement (in that order) will prevail.

3.2 The ordinary hours of work for full-time employees should not exceed an average of 38 hours per week and not more than 10 consecutive hours (exclusive of meal breaks) in any one day.

3.3 The ordinary hours of work for a part-time employee will be set out in writing in the employee's employment agreement. A part-time employee's ordinary hours may be changed by written agreement between the employee and the School.

3.4 Subject to the below, the ordinary hours of Administration staff at the School mirror the requirements of the Award and are to be performed as follows:

3.4.1 Monday to Friday: between 7am and 7pm;

3.4.2 Saturday: between 7am and 12:30pm.

3.5 The School may require a staff member to work until 8pm on up to a maximum of 8 weekdays within a 28 day period without the entitlement to overtime if the ordinary hours worked do not exceed the number of hours within the nominated cycle.

3.6 For ease of reference, clauses 10, 14 and 20.1 of the Award are extracted in Schedule 1 to this Policy.

3.7 Subject to the above, any hours worked in excess of ordinary hours as set out above will be considered 'overtime' and attract overtime rates in accordance with the Award.

Time Off In Lieu

Applying for TOIL

3.8 If a staff member is required to perform any overtime, they may seek to take time off instead of being paid for a particular amount of overtime that has been worked.

3.9 Only prior approved overtime can be the subject of an application for TOIL. If employees chose to stay late to complete work without prior approval, they will not be eligible to make a request for TOIL and will need to discuss the matter with their immediate supervisor.

3.10 TOIL is not a right. Before any TOIL can be taken, it must be applied for and approved by management in accordance with this Policy. Management has sole discretion as to whether TOIL will be approved.

3.11 For any overtime worked, a staff member may request TOIL by applying in the internal TOIL Spreadsheet located here: I:\STAFF\ADMINISTRATION

3.12 The staff member must put in the following information into the Spreadsheet:

3.12.1 the number of overtime hours to which the TOIL application applies; and

3.12.2 when those overtime hours were worked.

3.13 TOIL can only be taken after the application is made and approved. No TOIL in retrospect will be approved.

3.14 The TOIL application will be assessed and can only be approved by the CEO or the CEO's delegate.

3.15 If the above information is not provided in the Spreadsheet, the TOIL application will not be approved.

Taking TOIL

3.16 TOIL can only be taken at a time agreed between the staff member and the School.

3.17 The period of time off that an employee is entitled to take is the same as the number of overtime hours worked. For example, an employee who worked 2 overtime hours is entitled to 2 hours' time off.

3.18 The staff member must consult the CEO in terms of the dates of taking the accrued TOIL. Generally, TOIL days should be taken during break or on quiet days.

3.19 Any TOIL accrued should be taken as soon as possible and within the month it has accrued.

3.20 If accrued TOIL has not been taken within six months after the overtime is worked, the School will pay the staff member for the overtime worked in the next pay period following the six months at the applicable overtime rate when the overtime was worked and the staff member will not be entitled to time off.

3.21 At any time, a staff member may request to be paid for the overtime that has been the subject of an approved TOIL application where they have not taken the time off. If such request is made, the School will pay the staff member of the overtime worked in the next pay period following the request at the applicable overtime rate when the overtime was worked.

3.22 A staff member cannot apply for TOIL where a staff member has performed overtime due to missing designated breaks (such as lunch breaks).

3.23 For ease of reference, clause 20.5 of the Award is extracted in Schedule 1 to this Policy.

4. Responsibilities

4.1 The CEO of the School is responsible for ensuring that this Policy is implemented by the School.

4.2 All Administrative staff members of the School community are responsible to comply with this Policy.

APPENDIX A:

Schedule 1: Educational Services (Post-Secondary Education) Award 2020 Extracts:

10. Part-time employees

10.1 A part-time employee is an employee employed:

(a) for less than the normal ordinary hours specified for a full-time employee; or

(b) in the case of a teaching staff member for less than the face-to-face teaching load of a full-time teaching staff member at that workplace; and

(c) for which all award entitlements are paid or calculated on a pro rata basis by reference to the time worked.

10.2 Before engagement the employer and the part-time employee will agree in writing on a regular pattern of work ,including:

(a) the number of hours to be worked each week;

(b) the days of the week the employee will work;

(c) the starting and finishing times each day where hours are not averaged; and

(d) any periods during a year when work by the employee will not be required.

10.3 Changes in hours may only be made by agreement in writing between the employer and the employee.

10.4 An employer is required to roster a part-time employee for a minimum of 2 consecutive hours on any day.

10.5 A part-time employee must be paid the minimum hourly rate for the relevant classification in clause 16—Minimum rates for each hour worked.

10.6 Except where hours are averaged, all time worked in excess of the hours mutually arranged will be overtime and paid for at the appropriate overtime rate.

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14. Ordinary hours of work

14.1 Ordinary hours of work—general staff

(a) Ordinary hours of work are worked continuously, except for meal breaks, on:

(i) any of the days from Monday to Friday (inclusive) between 7.00 am and 7.00 pm; and

(ii) Saturday between 7.00 am and 12.30 pm.

(b) An employee may be required to work until 8.00 pm on up to a maximum of 8 weekdays within a 28 day period without the entitlement to overtime if the ordinary hours worked do not exceed the number of hours within the nominated cycle.

(c) The spread of hours may be altered by up to one hour at either end of the spread, by agreement between an employer and the majority of employees concerned.

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20.1 Overtime—general staff—non–shiftworkers classified at Level 7 or below

(a) Definition of overtime

For employees classified at Level 7 or below overtime is any time worked:

(i) in excess of the hours fixed for the relevant work cycle; or

(ii) outside of the hours fixed in clause 14.1.

(b) Overtime rates—full-time and part-time employees

Where a full-time or part-time employee works overtime,the employee must be paid the following overtime rates:

(i) 150% of the minimum hourly rate for the first 2 hours; and

(ii) 200% of the minimum hourly rate after 2 hours.

(c) Overtime rates—casual employees

Where a casual employee works overtime, the employee must be paid the following overtime rates:

(i) 175% of the minimum hourly rate for the first 2 hours; and

(ii) 225% of the minimum hourly rate after 2 hours.

NOTE: The overtime rates for casual employees have been calculated by adding the casual loading prescribed by clause 16.2(b) to the overtime rates for full-time and part-time employees prescribed by clause 20.1(b).

(d) Overtime calculated daily

The overtime rates prescribed by clauses 20.1(b) and 20.1(c) are calculated on a daily basis.

(e) Minimum payment

(i) The minimum period for which an employee must be paid overtime is one half hour per week.

(ii) An employee whose ordinary hours of work are 38 worked between Monday and Friday must be paid a minimum of 3 hours at overtime rates for work performed on a Saturday.

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20.5 Time off instead of payment for overtime

(a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.

(b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 20.5.

(c) An agreement must state each of the following:

(i) the number of overtime hours to which it applies and when those hours were worked;

(ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;

(iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;

(iv) that any payment mentioned in clause 20.5(c)(iii) must be made in the next pay period following the request.

NOTE: An example of the type of agreement required by clause 20.5 is set out at Schedule G—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule G—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 20.5 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

(d) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 20.5 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

(e) Time off must be taken:

(i) within the period of 6 months after the overtime is worked; and

(ii) at a time or times within that period of 6 months agreed by the employee and employer.

(f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 20.5 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.

(g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 20.5(e),the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.

(h) The employer must keep a copy of any agreement under clause 20.5 as an employee record.

(i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.

(j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 20.5 will apply, including the requirement for separate written agreements under clause 20.5(b) for overtime that has been worked.

NOTE: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act).

(k) If,on the termination of the employee's employment, time off for overtime worked by the employee to which clause 20.5 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

NOTE: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 20.5.