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## Changes to the Real Estate Award

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On 1 May 2019, the Fair Work Commission (“FWC”) issued a notice to implement a two-stage process for changes to the Real Estate Award (“the Award”) which will impact how commission-only payments for salespersons (in real estate) apply and who they apply to. These changes will affect employers and employees alike.



### Phase 1 Changes

As of 30 April 2019, the FWC has amended the pre-requisites for employees in the real estate sector who are able to be employed as part-time commission-only employees. The old pre-requisites provided that an employee had to, amongst other requirements, be an active licensed real estate agent. This requirement has now been amended to require the employee to operate his or her own real estate business. This change will require employers to ensure that employees who do not meet the new requirements to qualify as a part-time commission-only employee are reviewed and their wages are adjusted in line with the Award. When considering what constitutes the operation of their own real estate business, a definition of a real estate business has been provided by FWC as “a business involved in the sale of real property or businesses”. The FWC has introduced these amendments to clarify the coverage of part-time commission-only employment.

### Phase 2 Changes

As of 30 June 2019, employers in the real estate sector will no longer be able to employ part-time employees as commission-only salespeople. There are no “grandfathering” rules with regards to the amendment, which means the amendment will affect all current part-time commission-only

employees as opposed to only affecting any new part-time commission-only employees gaining employment after 30 June 2019. The impact of this amendment will be that all part-time commission-only employees must be transitioned onto hourly rates provided by the Award.

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## **Impact of the amendments**

The largest impact on employers and employees will be the upcoming 30 June 2019 amendments which alter payment structures for part-time commission-only employees. Employers need to ensure they comply with the amendments within the first pay cycle on or after 30 June 2019. If employers fail to comply with the amendments to the Award, this may give rise to disputes over underpayment of wages.

## **How to ensure compliance with the amendments**

Employers should review the employment contracts of any part-time commission-only employees prior to 30 June 2019 to ensure they are fully informed as to which employees are affected by the amendments. The amendments constitute an automatic rollover, with no transition period, onto hourly rates provided by the Award. Employers need to be aware that even if employment contracts are not immediately updated, they are still required to pay part-time commission-only employees in line with the Award's hourly rates from 30 June 2019.

If you would like further information, assistance with preparing new contracts or are concerned you may be affected by the amendments to the Award, please contact JHK Legal on 02 8239 9600.