

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Additional Estimates 2009-2010**

Agency - Fair Work Ombudsman

DEEWR Question No.EW0954_10

Senator Abetz asked on 10/02/2010, Hansard page 39.

Question

PAY ARRANGEMENTS UNDER THE MODERN AWARDS

Senator ABETZ—Thank you, Senator Collins, for that question. In general terms, the modern award has started on 1 January. I am an employer. I read through it and I say, 'Right. I have to do all these things by my employee,' and I do so. Then a variation comes in which, let us say, says that the employee is in fact entitled to just a little bit less pay. Am I able to recover the pay, if I am the employer, from the employee?

Mr Wilson—First of all, the pay arrangements under the modern awards, with the exception of six, do not commence until 1 July. In respect to the specific question of whether money paid pursuant to an award can be recovered, I would need to take that on notice. Senator ABETZ—All right, can you take that on notice.

Answer

The Fair Work Ombudsman has provided the following response:

Fair Work Australia can make an order varying a modern award with retrospective effect but only if it is satisfied that it is appropriate to do so in exceptional circumstances to remove an ambiguity or correct an error.

The terms of such a retrospective order, including whether such an order permits an employer to recover monies from an employee as a consequence of the retrospective effect, is a matter for Fair Work Australia.

The Fair Work Ombudsman will be guided by the specific terms of any such orders.