

## Terms of Settlement

1 April 2017

McDonald's and Unite have been in negotiations since 13<sup>th</sup> March 2017 to agree new terms and conditions for the Collective Employment Agreement (CEA). This Terms of Settlement represents their best efforts to gain agreement.

This Terms of Settlement amends clauses in the Collective Employment Agreement drafted by Unite Union and McDonald's Restaurants (NZ) Limited. The parties to this agreement are McDonald's Restaurants (NZ) Limited and Unite Union. The parties agree that Franchisees of McDonald's will be subsequent parties provided that the franchisees have signed the Subsequent Parties form and copies of this have been submitted to Unite Union.

These terms have been agreed before the Employment Court has delivered a decision in the *Fraser and Doran v McDonald's Restaurants (New Zealand) Ltd* and parties acknowledge that this decision may impact this terms of settlement.

### 1. Section 13. (Term)

The new CEA shall take effect from 1 April 2017 and will expire on 31 March 2020.

### 2. Appendix A (Schedule of Minimum Pay Rates)

Position	Year 1 (Y1) 1 April 2017 to 31st March 2018	Year 2 (Y2) 1 April 2018 to 31 March 2019	Year 3 (Y3) 1 April 2019 to 31 March 2020
Minimum Crew Rate	\$15.85	Y1 + ('value of increase to NMW from 1 April 2018') + 0.10c	Y2 + ('value of increase to NMW from 1 April 2019') + 0.10c
Crew CCO *	\$16.10		
Crew CCO (12 months) **	\$16.40		
Crew Trainer	\$16.65		
Maintenance Person	\$16.65		
Shift Assistant	\$16.65		
Shift Supervisor / McCafé Team Leader *** (SSC, SMX PCAP complete)	\$18.90		
Certified Shift Supervisor (ASMC PCAP complete)	\$20.15		

\* Upon completion of the Crew Certificate Operations workbook and provided that it has been verified by the Training department.

\*\* Upon completion of 12 months service, provided the Crew Certificate of Operations workbook has been submitted for processing and is verified by the Training department, and subject to a performance rating of "good" or better.

\*\*\* Where applicable.

Note: as agreed on 13 April 2017, on reaching provisional agreement on the terms of settlement, the applicable 2017 rates above, including back pay to 1 April 2017, were applied shortly following this date for all union members.

The parties agreed there will be no industrial action pending ratification of these terms of settlement and that as part of these terms of settlement the union will withdraw the two proceedings it has before the Employment Relations Authority. These proceedings relate to meals (3002871) and hours of work for Olivia Doran, Rosemary Tyacke and Nicole Stimpson (3005832). There will be no issue as to costs.

### **3. Ratification Payment**

The Company recognises that union members pay a fee to Unite on a weekly basis and as such expect a level of service from the union, which includes bargaining for terms and conditions on their behalf.

So that the terms of the Collective Agreement can be passed on to non-union members, the Company has offered the following ratification payment to be paid to Unite union members:

- for employees who work on average 30 hours or less per week a one-off payment of \$200.00 (gross)
- for employees who work on average more than 30 hours per week, a one-off payment of \$300.00 (gross)
- To be eligible to receive the ratification payment an employee must meet all 3 conditions below:
  1. They are a current employee of McDonald's, and
  2. They are a current member of the union, and
  3. They were employed by McDonald's and were a member of the union as of the 13 April 2017.
- Average hours are determined based on review of the previous 8 weeks wages at the date of ratification.

The ratification payment will be paid within 14 days of the Collective Employment Agreement being signed by all parties.

### **4. Amendment to Section 2 (Work Scheduling)**

The parties agree to amend the following paragraphs in respect to the offering of additional hours:

From:

*Where additional hours become available in a restaurant, current employees will be offered additional shifts before new employees are employed.*

*Where practicable, additional shifts will be notified to employees on the crew notice board.*



To:

*Where additional shifts become available in a restaurant, current employees will be offered additional shifts before new employees are employed. To facilitate this process, additional available shifts will be notified to employees electronically and on the crew notice board.*

*Note, this provision is not intended to restrain the employer from recruiting new employees to ensure sufficient cover.*

#### **5. Delete Clause 2.1 (Security of Hours)**

The parties agree that with effect from the implementation date of the below Agreed Hours clause, Clause 2.1 Security of Hours shall be replaced.

#### **6. New insertion Clause 2.1 (Agreed Hours)**

The parties agree that a new clause headed 'Agreed Hours' will be inserted in replacement for 'Security of Hours':

##### **2.1 Agreed Hours**

From a date yet to be confirmed, but using best endeavours no later than the end of quarter 4 2017, all McDonald's employees will have minimum guaranteed hours per week. The scheduling of the days of the week on which work is to be performed and the start and finish times of work is flexible and is as set out in the bullet points below.

The parties are currently awaiting the decision of the Employment Court in *Fraser and Doran v McDonald's Restaurants (New Zealand) Ltd*. It is acknowledged that the particulars of that decision may impact the drafting of the provision in relation to guaranteed hours. The parties wish to record the principles of the agreement that they have reached in relation to hours of work.

It is agreed that once the decision is available the parties will bargain in good faith with a view to reaching an agreement that is consistent with the principles set out below including amending other related provisions such as the Code of Conduct.

- At the time of employment, an employee will have the opportunity to indicate what they desire their minimum number of hours to be.
- The actual minimum guaranteed hours will be mutually agreed and recorded in writing at the time of employment.
- An employee will provide details of preferred working times and these will be agreed and recorded in writing at the time of employment.
- The employee's guaranteed hours will be rostered within those preferred times. Subject to rostering within the preferred times, the scheduling of the days of the week on which work is to be performed and the start and finish times of work are flexible. Additional hours may be offered but will not result in a change to an employee's minimum guaranteed hour's number.
- Where an employee wishes to increase or decrease his/her guaranteed hours, the employee will raise it in writing with the franchisee or restaurant manager and the parties will discuss the matter in good faith to attempt to reach a resolution.

- Any change to the minimum guaranteed hours will require a variation recorded in writing following mutual agreement having been reached.
- An employee will be able to decline hours above their minimum guaranteed hour's number i.e. where additional hours are offered.

Subject to the decision of the Employment Court in *Fraser and Doran v McDonald's Restaurants (New Zealand) Ltd*, and the Agreed Hours working group having met, the parties also agree to the following principles in respect to Agreed Hours:

- As a minimum starting point, an employee's new guaranteed hours number would be their current SOH number;
- All current employees have the opportunity to meet and indicate what they desire their preferred number of hours to be; and
- The new minimum guaranteed hour's number will be mutually agreed and recorded in writing.

**7. Amend Paragraph 3, Section 3 (Breaks):**

The parties agree to record a best practice statement on the timing and order of breaks:

**From:**

*The timings of rest and meal breaks can be flexible and can follow any arrangement agreed between the Employer and Employee. In the absence of agreement between the Employer and the Employee as to when rest and meal breaks may be taken and, so far as is practicable and reasonable breaks should be spread evenly throughout the work period.*

**To:**

*It is acknowledged that best practice timing for rest and meal breaks would be for breaks to follow the order of 15-30-15. Operationally this is not always possible and therefore while managers will make best endeavours to provide breaks in this order, they can follow any flexible arrangement agreed between the Employer and Employee. In the absence of agreement between the Employer and the Employee as to when rest and meal breaks may be taken and, so far as is practicable and reasonable, breaks should be spread evenly throughout the work period.*

**8. Amend Clause 3.1 (Breaks Schedule):**

Total Hours Worked (including breaks i.e. scheduled hours)	Break Entitlement
Less than 3 hours	Nil
3 hours or more but not more than 5 hours	One 15 minute paid drink break
5 hours or more but not more than 7 hours	One 15 minute paid drink break and one unpaid ½ hour meal break
7 hours or more but not more than 8 hours	Two 15 minute paid drink breaks and one unpaid ½ hour meal break

8 hours or more	Repeat the above break entitlements as if the employee's work period had started at the end of the eighth hour
-----------------	--

**9. Amend "three week rule" Clause 4.1 (Public Holidays):**

The parties agree to amend the final paragraph under Clause 4.1:

**From:**

*The "three week rule" is used to decide whether a particular day would "otherwise be a working day" for you. That means if you have worked on any part of a particular day of the week in all of the previous three weeks, then that day of the week is deemed to be a working day for you. For this purpose, any authorised leave on one of those days shall count as a day worked.*

**To:**

*The "three out of five week rule" is used to decide whether a particular day would "otherwise be a working day" for you. That means if you have worked on any part of a particular day of the week in three out of the five previous weeks, then that day of the week is deemed to be a working day for you. For this purpose, any authorised leave on one of those days shall count as a day worked.*

**10. Amend Clause 4.2 (Annual Holidays):**

The parties agree to amend the Annual Holidays clause:

**From:**

*Crew are entitled to 4 weeks annual holidays from their first anniversary. A week's leave is calculated by crediting your leave account with 1/52 of an hour for each hour worked.*

*Be sure to discuss your holiday preferences with your Restaurant Manager/Franchisee so that as far as practicable your wishes can be accommodated. Please keep in mind that our busy periods often coincide with holiday periods so annual leave may need to be taken at other times.*

**To:**

*Crew are entitled to 4 weeks annual leave after each anniversary of their employment.*

*Up to your anniversary your leave will be estimated by crediting your accrued leave balance with 4/52 of an hour for each hour worked.*

*Leave may be taken in advance of your anniversary by agreement.*

*Your holiday pay will be calculated by taking the greater of your Ordinary Weekly Pay (4 week average) or your Average Weekly Earnings (52 week average) and paying you for the proportion of a week's leave you are taking, as per the Holiday's Act.*

*Be sure to discuss your holiday preferences with your Restaurant Manager/Franchisee so that as far as practicable your wishes can be accommodated. Please keep in mind that our busy periods often coincide with holiday periods so annual leave may need to be taken at other times.*

The parties also agree to the following principles in respect to Annual Holidays:

- McDonald's will complete an audit of historical holiday pay and will compensate any employees who may have been underpaid, taking into account any overpayments that may have been made.
- To continue to work in good faith to reach agreement under Section 17 of the Holiday's Act, and amend the Agreement by variation to reflect this.

**11. Amend Clause 4.6 (Parental Leave):**

The parties agree to amend the Parental Leave clause:

**From:**

*Parental leave will be in accordance with the provisions of the Parental Leave and Employment Protection Act 1987 and its amendments. If the legislation changes then this clause will change accordingly.*

*Parental leave includes the following types of leave:*

- *Maternity leave – up to 14 weeks for the mother, at the time of the birth or adoption*
- *Paternity leave – up to two weeks leave for the partner around the time of the birth of adoption of the child*
- *Extended leave – up to a total of 52 weeks leave which can be taken by either partner or shared by both*

*All parental leave provided under the Act is unpaid. Paid parental leave can be applied for through the Inland Revenue Department.*

*Employees are required to send their application for unpaid leave to their Restaurant Manager in writing at least three months prior to the date that baby is due.*

**To:**

*Parental leave will be in accordance with the provisions of the Parental Leave and Employment Protection Act 1987 ('PLEPA') and its amendments. If the legislation changes then this clause will change accordingly.*

*Parental leave includes the following types of leave, which shall be available and taken in accordance with the PLEPA:*

- *Primary carer leave – up to 18 weeks for the primary carer, at the time of the birth or adoption*
- *Partner's leave – up to two weeks leave for the partner around the time of the birth or adoption of the child*



- *Extended leave – up to a total of 52 weeks leave which can be taken by either partner or shared by both*

*All parental leave provided under the Act is unpaid with the exception of 40 hours 'Keeping in touch' days by agreement. Paid parental leave can be applied for through the Inland Revenue Department.*

*Employees are required to send their application for unpaid leave to their Restaurant Manager in writing at least three months prior to the date that baby is due.*

## **12. Amend Clause 7.3 (Meals):**

The parties agree to amend the Meals clause:

### **From:**

*During half hour meal breaks you will be entitled to a meal at half the displayed single item price (a la carte menu). Such meals are also available to you just before or after a shift provided they are consumed by you in the crew room or another designated area. For clarity, employees are entitled to one half price meal to be taken either before, during or after their shift. Carbonated drinks, tea or coffee will be supplied free of charge for breaks.*

*Any employee employed between 10.30pm – 4.30am shall receive a free meal (as per the meal policy) during that shift.*

### **To:**

*Where an employee is eligible for a half hour meal break per the breaks schedule at clause 3.1, they will be entitled to a meal at half the displayed single item price (a la carte menu and as per the meal policy in their restaurant). Carbonated drinks, tea or coffee will be supplied free of charge for breaks.*

*Where an employee works a majority of their shift hours between 10pm and 5am, their meal shall be free (in conjunction with the applicable meal policy).*

*Meals can be eaten either just before, during (on a meal break), or immediately after a shift provided they are consumed by the employee in the crew room or another designated area in the restaurant, with food safety and hygiene principles applied.*

*Overall, the entitlement is to only one meal per shift (either half price or free as set out above) where eligibility criteria is met.*

## **13. Amend Clause 9.1 (Termination):**

The parties agree to amend the resignation period.

### **From:**

*Written notice of termination must be given and, unless otherwise agreed, the notice period will be the greater of two scheduled work days or the period until the end of your last rostered shift for that week.*

*If you want to terminate your employment you must give notice to your Restaurant Manager/Franchisee.*

*Where you do not give the required notice, the unworked period of notice will be deducted from your final pay. Where you are not given the required notice you will be paid for the unexpired portion of the notice period.*

To:

*Written notice of termination must be given and, unless otherwise agreed, the notice period will be two weeks.*

*If you want to terminate your employment you must give notice to your Restaurant Manager/Franchisee.*

*Where you do not give the required notice, up to 2 shifts, calculated on the basis of the employee's average hours per shift over the last 8 weeks, will be deducted from your final pay as compensation for costs incurred. This is a genuine pre-estimate of the losses caused by a failure to give the required notice, including administration costs in for example, arranging cover and any loss of customer service by being short staffed. The employer will consult with you prior to making any deduction under this clause.*

*Where you are not given the required notice you will be paid for the unexpired portion of the notice period.*

#### **14. New Clause 9.3 (Redundancy Compensation)**

*The parties agree to the addition of a redundancy compensation clause as follows:*

*Where an employee's employment is terminated due to redundancy and he/she has greater than one (1) year of uninterrupted employment with the employer, a two week one-off redundancy compensation payment will be paid, based on an average of the previous 8 weeks' pay at the date of cessation of employment.*

*Employees will not be entitled to the redundancy compensation payment if the employee is offered employment with another McDonald's restaurant within a reasonable distance of their current restaurant and on the same or substantially similar hours of work.*

*Employees will not be entitled to the redundancy compensation payment where the redundancy arises in circumstances covered by cl 9.2 of this collective agreement.*

#### **15. Amendment to Clause 13 (Term)**

The parties agree to amend the following clause:

From:

*While this CEA is in place, McDonald's and Unite Union agree to meet once annually to discuss operational topics. The annual meetings will be held midway through the term, unless otherwise*

*agreed. These meetings are not deemed CEA or wage negotiations and cannot result in industrial action.*

To:

*While this CEA is in place, McDonald's and Unite Union agree to meet quarterly to discuss operational topics. These meetings are not deemed CEA or wage negotiations and cannot result in industrial action.*

#### **16. Remove Appendix D (Union Membership Form)**

The parties agree to remove Appendix D from inside the Agreement and instead insert it as part of overall McDonald's offer documentation.

#### **17. Operational Issues**

The parties agree that there are a number of operational areas which were agreed to and require development, focus, or education by the Company:

- Development and introduction of a standard online leave application system by a date yet to be confirmed, but using best endeavours no later than the end of quarter 4 2017 Educating managers about the importance of spreading breaks evenly throughout a shift including that best endeavors be made to provide breaks in the order of 15/30/15.
- Posting of rosters to take place by Tuesday evening for shifts commencing on a Monday 12 days in advance.
- System to be introduced for the election of health and safety representatives in restaurants, as per legislative requirements by a date yet to be confirmed, but using best endeavours no later than quarter 4 2017 .
- McDonald's will consult on a McDonald's approved Drug and Alcohol policy.
- The McOpCo Employee Choice form will continue to sit outside the Agreement.
- That a working group will review the Unite Union and McDonald's protocol.

All other terms and conditions remain as per the CEA drafted between Unite Union and McDonald's.

  
..... Date 17/5/17  
Katrina Felton  
For and on behalf of **McDonald's Restaurants (NZ) Ltd**

  
..... Date 17/5/17  
Mike Treen  
For and on behalf of **Unite Union**