Annual Leave

eBook

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Overview

This eBook contains an overview of annual leave under the Fair Work Act (2009).

Should you have any questions in relation to the information below, please reach out to one of our Employment Relations experts on:

Tel: 1300 887 458

Email: enquiries@liquidhr.com.au

Annual Leave

Annual leave is one of the eleven National Employment Standards. It applies to all full-time and part-time employees.

The Fair Work Act 2009 provides that the equivalent of four weeks annual leave is accrued per twelve months continuous service for all non-shift workers including award-free workers such as managerial employees. An employee's entitlement to paid annual leave accrues progressively during a year of service.

Annual leave for shift workers

The NES provides for the equivalent of five weeks of annual leave per annum for shift workers.

A "shift worker" is defined as an employee who is employed in a business in which shifts are continuously rostered twenty-four hours a day for seven days a week, and is regularly rostered to work those shifts, and regularly works on Sundays and public holidays.

Shift workers in a specified class (as prescribed by the Fair Work Regulations 2009) may be excluded from the entitlement to the additional week of annual leave.

"More Favourable" test

The "more favourable" test must be used to determine whether the provisions of the NES or contract of employment or Enterprise Agreement apply. The NES will apply unless the entitlement under the contract of employment or Enterprise Agreement is "more favourable".

Example

An Enterprise Agreement, which provides that a full-time employee is entitled to 20 days of annual leave would not be less favourable than the NES (as 20 days is the equivalent of 152 hours of annual leave for a full-time employee working 38 hours per week).

Annual leave for casual employees

The NES does not provide an annual leave entitlement for casual employees.

Accrual of annual leave

Paid annual leave accrues progressively during a year of service according to the employee's ordinary hours of work and accumulates from year to year.

A part time employee will accrue annual leave on a pro rata basis.

Payment for annual leave

An employee on annual leave must be paid at least their base rate of pay for the employee's ordinary hours of work in the period. The base rate of pay does not include entitlements such as incentive-based payments, bonuses, loadings, monetary allowances, overtime or penalty rates.

On termination of employment an employee must be paid any accrued annual leave at the base rate of pay.

Cashing out of annual leave

Award employees

A modern award or enterprise agreement may include terms providing for the cashing out of paid annual leave by an employee.

The terms must require that:

Paid annual leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to annual leave being less than 4 weeks; and

Each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and the employee; and

The employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

Award/agreement free employees

An employer and an award/agreement free employee may agree to the employee cashing out a particular amount of the employee's accrued paid annual leave. The agreement must be in writing.

The employee must have at least 4 weeks annual leave remaining after the annual leave has been cashed out.

The employer must pay the employee at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has cashed out.

Taking annual leave

The NES does not prescribe a minimum amount of leave to be taken at any one time. The employer must not refuse an application to take annual leave, unless there are reasonable business grounds. The employer and employee should mutually agree on when an employee can take a period of annual leave.

Directing an employee to take annual leave

For award/agreement covered employees, you should refer to the annual leave clause to determine if the award/agreement allows you to direct an employee to take annual leave and if so, the conditions associated with it.

For award or agreement-free employees, the National Employment Standards allow you to direct the employee to take annual leave, when the requirement is reasonable. A requirement to take annual leave may be considered reasonable if the employee has an excessive annual leave balance or if the business if being shut down for a period (i.e. over the Christmas/New Year period).

In determining whether it is reasonable, the following factors are considered:

- The needs of the employee
- The needs of the business
- Any agreed arrangement in place with the employee
- The custom and practice of the business
- The timing of the direction or requirement to take leave

Annual leave loading

Award employees

If an employee is covered by a modern award, then he or she may be entitled to annual leave loading. Annual leave loading is normally an additional 17.5% paid to the employee when they take annual leave. It is important to refer to the applicable modern award to determine whether annual leave loading is applicable.

Award/agreement free employees

Annual leave loading is not prescribed under the Fair Work Act 2009, therefore does not apply to employees not covered by an industrial instrument e.g. award, unless the employee's contract of employment specifies so.

Annual leave templates

On the following pages you will find:

- Leave form
- Request to cash out annual leave form
- Direction to take excess annual leave letter
- Proposed notice of shut-down letter

LEAVE FORM

Name	
Position	
Department	
Date of request	

TYPE OF LEAVE

Leave type (select)

☐ Annual leave ☐ Personal/carers leave ☐ Compassionate leave

☐ Long service leave ☐ Leave without pay

DATE/S

From	
To	
Total number of working days	

EMPLOYEE SIGNATURE

Signed	
Date	

MANAGERS APPROVAL

Signed	
Date	

REQUEST TO CASH OUT ANNUAL LEAVE

Name	
Position	
Department	
Date of request	

I, [EmployeeName], elect to cash out (be paid for) [number] day/s of my current annual leave entitlement.

In making this election, I acknowledge and agree that;

- I am aware that the rate of pay at which my cashed out annual leave will be paid to me will be calculated at the full amount that would have been payable to me had I taken the annual leave;
- I am aware that I can only cash out annual leave accruals greater than 4 weeks and after the cash out I must have no less than 4 weeks of annual leave accrued; (Important – for award covered employees, refer to the annual leave clause to determine the provisions related to cashing out annual leave)
- [Organisation name] will deduct the amount of [number] leave I have cashed out from my accumulated annual leave balance;
- [Organisation name] has not required me to cash-out an amount of annual leave; and
- [Organisation name] has not placed any undue influence or undue pressure on me to make a decision about whether or not to cash-out a portion of my annual leave entitlement.

EMPLOYEE SIGNATURE

Signed	
Date	

MANAGERS APPROVAL

Signed	
Date	

DIRECTION TO TAKE EXCESS ANNUAL LEAVE

Date

Private and Confidential

Insert employee's name

Insert employee's residential address

Dear insert name

Re: Notice of Requirement to Take Annual Leave

As discussed on <insert date of verbal discussion regarding extensive accumulated annual leave>, you currently have <insert amount of accumulated annual leave in weeks and days calculated to the date of this letter>.

Clause <insert relevant clause number> of the <insert applicable award title> (the Award), provides that with at least 8 weeks' notice, and not more than 12 months' notice, an employer can require an employee to take a period of annual leave if the employee has more than 8 weeks accrued annual leave(10 weeks for a shift worker).

Please consider this letter notifying you that you are required to reduce your annual leave balance/accrual to 6 to 8 weeks (but not less than 6 weeks).

The leave you need to take is <insert total number of days> days, from <insert start date of leave> until <insert end date of leave>.

> *You must provide this letter to your employee with at least 8 weeks' notice of when the leave will begin and not more than 12 months after the direction is given.*

Your base rate of pay for your ordinary hours of work will continue to be paid to you throughout the leave period. Annual leave loading may also be payable in some instances.

> *Check your award to find out if you need to pay annual leave loading or other penalty rates during the period of annual leave.*

Should you have any questions in relation to this request, please contact me on <insert phone number>.

Yours sincerely,

Insert name

Insert position

PROPOSED NOTICE OF SHUT DOWN

Date

Employee name

Employee address

Dear employee name,

Proposed notice of shut down

We would like to formally advise you that [Organisation name] gives you notice of a shutdown of the business from date to date ('the **Shut Down Period**').

During the Shut Down Period, you will not be required to attend work to perform your normal duties, as [Organisation name] business will be closed during the Period.

You are required to take annual leave or if you have accrued it, long service leave to cover the period of the shutdown. If you do not have sufficient annual leave accrued to cover the shutdown period, you may elect to take unpaid leave, annual leave in advance or long service leave (if eligible).

If you have any queries, you should contact name.

Yours faithfully

Name

Position

Note: you should ensure the above notice is in line with any applicable modern award provisions that apply to your employees

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