

Fair Work | Case Study

Annual Leave – Case Study 2

Phil runs a printing business in Victoria. Phil wants to direct those employees who have accrued excessive annual leave to take the leave in December 2009 and January 2010. His company is bound by the Graphic Arts - General - Award. Clause 7 of the Award provides that:

- annual leave accrues upon completion of each year of service;
- annual leave must be taken at a time fixed by the employer within 6 months of accrual or by agreement within 2 years of accrual; and
- an employer can require an employee to take annual leave by giving not less than 4 weeks' notice.

The employer is a Victorian employer. Prior to the commencement of the Work Choices amendments on 26 March 2006 the Award provisions applied. However since that date the minimum statutory entitlements of all employees to annual leave have been governed by Part 7, Division 4 of the Workplace Relations Act 1996 (Cth) (WR Act). That is because the Award's annual leave provisions are not more generous than the WR Act provisions, so the WR Act provisions operate in place of the Award provisions.

Although the WR Act was repealed on 1 July 2009, the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (the Transition Act) provides that Division 4 of the WR Act continues to apply until 1 January 2010.

On 1 January 2010 the annual leave National Employment Standard (NES) contained in the FW Act will apply.

Part 7, Division 4 of the WR Act provides that:

- annual leave accrues upon completion of each month of service;
- annual leave must be taken at a time fixed by the employer;
- an employer can require an employee to take up to ¼ of his/her accrued annual leave with no notice provided the employee has accrued no less than 8 weeks' leave.

The Graphic Arts, Printing and Publishing Award 2010 will replace the Award on 1 January 2010 and will bind Phil's company on and from that date. Clause 37 deals with annual leave and is supplemented by the NES.

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This means that for Phil's employees:

- annual leave accrues progressively;
- annual leave must be taken at times agreed between the employer and employee provided that the employer must not unreasonably refuse an employee's request to take leave at a particular time for a particular period;
- provided that an employee has accrued no less than 8 weeks' leave and an employer has genuinely tried to reach agreement with an employee as to the timing of taking annual leave, the employer can require the employee to take up to $\frac{1}{4}$ of his/her accrued annual leave by giving not less than 4 weeks' notice.



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