

# Fair Work | Fact Sheet

## Annual Leave

The information in this sheet only concerns national system. It sets out the National Employment Standards (NES) entitlement to annual leave under the *Fair Work Act 2009 (Cth) (FW Act)*. The NES entitlement commenced 1 January 2010. The NES entitlement differs from the minimum annual leave entitlement in the *Workplace Relations Act (WR Act)* in the following respects:

- NES annual leave accrues progressively. *The WR Act* provides that annual leave accrues for each completed 4 week period of continuous service;
- Under the NES provisions, there is more scope for an employer to require employees to take paid annual leave than under the *WR Act*; and

### NES entitlement

Permanent employees are entitled to 4 weeks' paid annual leave for each year of service. This is prorated for part-time employees.

Shift workers are entitled to 5 weeks paid annual leave. A shiftworker is one defined as such under a modern award or enterprise agreement, or if award/agreement free, falls within the definition of shiftworker in the FW Act (s 87(3)).

Casual employees are not entitled to annual leave.

### When does an employee accrue an NES entitlement to paid annual leave?

Leave accrues progressively according to an employee's ordinary hours of work and accumulates from year to year.

#### Definition: Service

Service includes all periods of employment other than periods of unpaid leave, unpaid absence (other than community service leave) and unauthorised leave.

## Annual Leave

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### Definition: Ordinary hours of work

Ordinary hours of work for an employee to whom an award of enterprise agreement applies are the ordinary hours set in the award or agreement.

Ordinary hours of work for an award/agreement free employee are the hours agreed as such between the employer and employee. If not agreed they will be 38 hours per week for full-time employees or in the case of other employees, the lesser of 38 hours or the employee's usual weekly hours of work.

### Calculating annual leave payments

During periods of annual leave the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work (as defined above) in the period.

Employees who work irregular hours and therefore do not have ordinary hours will accrue leave on the basis of hours actually worked.

If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee had the employee taken that period of leave.

### Definition: Base rate of pay

Base rate of pay is the rate of pay payable to the employee for his or her ordinary hours of work, but not including incentive-based payments and bonuses, loadings, monetary allowances, overtime or penalty rates or any other separately identifiable amounts.

### When can the employee take an NES entitlement to paid annual leave?

Usually, paid annual leave is taken for a period agreed between an employee and their employer.

However, in certain circumstances the employer can require an employee to take paid annual leave, but only if the requirement is reasonable.

Reasonableness will be assessed having regard to:

- the needs of the employee and the employer's business;
- any agreed arrangement with the employee;
- the custom and practice in the employer's business; and
- the timing of the employer's requirement and the notice given.



## Annual Leave

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A requirement to take paid annual leave may be reasonable if:

- the employee has accrued an excessive amount of paid annual leave; or
- the employer's business is being shut down for a period between Christmas and New Year.

Employers need to ensure that employees maintain sufficient leave to entitle them to take paid leave during any customary periods of shutdown. If an employee does not have sufficient leave, it may mean that the employer must still pay the employee during the shutdown.

A modern award or enterprise agreement may include terms entitling employers to impose reasonable requirements on employees to take paid annual leave.

Equally, employers must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

Paid annual leave is not taken on a public holiday or when another NES leave entitlement is taken (other than unpaid parental leave).

### When can an NES entitlement to paid annual leave be cashed out?

Employers may reach agreement with an employee to cash out a particular amount of the employee's accrued paid annual leave. 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.

This agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks. Each agreement to cash out a particular amount of paid annual leave must be a separate agreement in writing.

Subject to the above terms, modern awards and enterprise agreements may include terms relating to cashing out and taking paid annual leave (e.g. twice the leave at half pay).

Employers and award/agreement free employees may agree to the provision of extra annual leave in exchange for foregoing an equivalent amount of pay e.g. 8 weeks leave (rather than 4 weeks) on half pay.

### Tips for compliance

- To assist employees in understanding what is permissible and required with regard to annual leave, it would be helpful for employers to draft a human resources policy, which deals with:
  - taking paid annual leave in advance of accrual;
  - a requirement that paid annual leave be taken within a fixed period of time after it is accrued; and



## Annual Leave

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- a requirement that an employee give certain notice before taking paid annual leave.
- Employers should make employees aware of their entitlement to require them to take annual leave in certain circumstances (if the relevant criteria are met – see above). To further assist, employers should draft a letter to be used as a template document which can be sent to employees when they wish to implement this process.
- Employers should make sure employees have enough annual leave ‘in the bank’ before directing them to take annual leave.
- When an employee requests a portion of their annual leave be cashed out, it may be helpful for employers to utilise a register type document which deals with and processes these requests. Further, employers should draft a cashing-out agreement to be signed by both parties in the event the request is accepted.

## Templates

Cashing Out Annual Leave Application



Find out more at:  
[www.fairworkaustralia.ahri.com.au](http://www.fairworkaustralia.ahri.com.au)