

Annual leave and the National Employment Standards

Overview

Annual leave forms part of the National Employment Standards (NES). The NES apply to all employees covered by the national workplace relations system, regardless of any award, agreement or contract.

The NES establish the minimum entitlements to annual leave, how and when annual leave can be taken, and the pay rate employees should receive.

The NES also set out what happens with annual leave when there is a transfer of employment, and the arrangements that apply to the cashing out of annual leave.

What are the minimum entitlements to annual leave?

An employee (other than a casual employee) accumulates four weeks of paid annual leave for each year of service with the employer. An employee's entitlement to annual leave accumulates continuously based on the number of ordinary hours they work. Annual leave continues to accumulate when an employee takes a period of paid annual leave or paid personal/carer's leave. Annual leave will not accumulate on unpaid leave unless it is community service leave or it is provided for in an award or registered agreement.

An employee classified as a 'shiftworker' is entitled to five weeks of paid annual leave. This is the case if an award or registered agreement applies to the employee, and defines or describes the employee as a shiftworker for the purposes of the NES.

An award and agreement-free employee can also qualify for the shiftworker entitlement to five weeks of annual leave if all of the following apply to the employee:

- they are employed in an enterprise where shifts are continuously rostered 24 hours a day for seven days a week
- they are regularly rostered to work those shifts
- they regularly work on Sundays and public holidays.

Awards and registered agreements provide additional annual leave entitlements on top of the NES. Award and agreement-free employees can agree with their employer to purchase extra annual leave in exchange for forgoing an equal amount of pay.

When can annual leave be taken?

Annual leave can be taken as soon as it is accumulated; it does not have to be taken each year. It is up to each employer and

employee to agree on when and for how long annual leave can be taken.

However, the employer must not unreasonably refuse an employee's request to take annual leave. There is no maximum or minimum period of annual leave that can be taken.

An employee is not on annual leave if the period during which an employee takes annual leave:

- includes a day or part-day that is a public holiday
- includes a period of any other leave (other than unpaid parental leave), or a period of absence from employment due to community service leave.

What payments are required when annual leave is taken?

Annual leave is paid at the employee's base pay rate for all ordinary hours worked. Ordinary hours under the NES cannot exceed 38 hours in a week. The base rate does not include:

- overtime rates
- penalties
- allowances
- bonuses.

Awards and registered agreements can set out:

- a different method of payment for annual leave
- that annual leave loading is paid for annual leave.

On termination of employment, an employer must pay an employee for any period of untaken annual leave. The payment for the untaken leave has to be the same as what the employee would have been paid if they took the leave.

Rules for taking annual leave

Awards and registered agreements can set out rules about taking, directing and granting annual leave.

An employer and an award and agreement-free employee can agree on when and how annual leave is taken. Award and agreement-free employees can agree on matters that include:

- taking annual leave in advance
- taking annual leave within a fixed period of time after it is accumulated
- providing a specified period of notice before taking annual leave
- cashing out annual leave.

Annual leave in advance

Some awards and registered agreements allow an employee to take annual leave in advance when their employer agrees in writing.

The agreement needs to:

- be signed by both the employer and the employee
- say how much annual leave is being taken in advance
- say the date the leave will start.

The employer must keep the agreement with the employee's records.

If an employee takes leave in advance and their employment ends before they've accumulated it all back, the employer can deduct the amount still owing from their final pay.

Direction to take annual leave

An employer can direct an employee to take annual leave, but only when an award or registered agreement allows it and the requirement is reasonable.

Similarly, the NES allow an employer to require an award or agreement-free employee to take a period of annual leave, but only if the requirement is reasonable.

A requirement to take annual leave may be reasonable if, for example:

- the employee has an excessive annual leave balance
- the employer's enterprise is being shut down for a period (such as between Christmas and New Year).

In assessing reasonableness, the following factors are relevant:

- the needs of the employee and the employer's business
- any agreed arrangement with the employee
- custom and practice of the business
- timing of the direction or requirement to take leave
- the length of the period of notice given.

Excessive annual leave

Some awards and registered agreements include terms about taking annual leave when an employee has an excessive annual leave balance.

In certain circumstances the employer can direct an employee to take annual leave when they have an excessive annual leave balance.

From 29 July 2017, some awards and registered agreements will give employees who have an excessive annual leave balance, the right to notify their employer that they will take leave.

Generally, under these new rules, an annual leave balance is considered 'excessive' if an employee has more than:

- 8 weeks of annual leave, or
- 10 weeks of annual leave if they are a shiftworker.

Until July 2017, employees with large amounts of annual leave should follow the normal process for requesting annual leave.

Can annual leave be cashed out?

Some awards and registered agreements allow annual leave to be cashed out. Award and agreement-free employees may agree with their employer to cash out annual leave at any time. However, in all cases the following applies:

- the employee must retain at least four weeks annual leave
- there must be a signed, written agreement with their employer on each occasion (that outlines the amount of leave being cashed out, the amount they will be paid and the date it will be paid)
- the payment for the cashed out leave has to be the same as what the employee would have been paid if they took the leave.

It is unlawful for an employer to force (or try to force) an employee to make (or not make) an agreement to cash out annual leave. For more information, please see our [Protections at work fact sheet](#).

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