

## **87 Entitlement to annual leave**

### *Amount of leave*

- (1) For each year of service with an employer (other than periods of employment as a casual employee of the employer), an employee is entitled to:
  - (a) 4 weeks of paid annual leave; or
  - (b) 5 weeks of paid annual leave, if:
    - (i) a modern award applies to the employee and defines or describes the employee as a shiftworker for the purposes of the National Employment Standards; or
    - (ii) an enterprise agreement applies to the employee and defines or describes the employee as a shiftworker for the purposes of the National Employment Standards; or
    - (iii) the employee qualifies for the shiftworker annual leave entitlement under subsection (3) (this relates to award/agreement free employees).

Note: Section 196 affects whether the FWC may approve an enterprise agreement covering an employee, if the employee is covered by a modern award that is in operation and defines or describes the employee as a shiftworker for the purposes of the National Employment Standards.

### *Accrual of leave*

- (2) An employee's entitlement to 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.

Note: If an employee's employment ends during what would otherwise have been a year of service (other than periods of employment as a casual employee of the employer), the employee accrues paid annual leave up to when the employment ends.

### *Award/agreement free employees who qualify for the shiftworker entitlement*

- (3) An award/agreement free employee qualifies for the shiftworker annual leave entitlement if:
  - (a) the employee:
    - (i) is employed in an enterprise in which shifts are continuously rostered 24 hours a day for 7 days a week; and
    - (ii) is regularly rostered to work those shifts; and
    - (iii) regularly works on Sundays and public holidays; or
  - (b) the employee is in a class of employees prescribed by the regulations as shiftworkers for the purposes of the National Employment Standards.
- (4) However, an employee referred to in subsection (3) does not qualify for the shiftworker annual leave entitlement if the employee is in a class of employees prescribed by the regulations as not being qualified for that entitlement.
- (5) Without limiting the way in which a class may be described for the purposes of paragraph (3)(b) or subsection (4), the class may be described by reference to one or more of the following:
  - (a) a particular industry or part of an industry;

- (b) a particular kind of work;
- (c) a particular type of employment.

(Fair Work Act 2009)

## **89 Employee not taken to be on paid annual leave at certain times**

### *Public holidays*

- (1) If the period during which an employee takes paid annual leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid annual leave on that public holiday.

### *Other periods of leave*

- (2) If the period during which an employee takes paid annual leave includes a period of any other leave (other than unpaid parental leave) under this Part, or a period of absence from employment under Division 8 (which deals with community service leave), the employee is taken not to be on paid annual leave for the period of that other leave or absence.