

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.

(Fair Work Act 2009)

129 Regulations about what can be agreed to etc. in relation to award/agreement free employees

The regulations may:

- (a) permit employers, and award/agreement free employees, to agree on matters that would or might otherwise be contrary to this Part; or
- (b) prohibit employers and award/agreement free employees from agreeing on matters, or prohibit employers from making requirements of such employees, that would or might otherwise be permitted by a provision of this Part.

(Fair Work Regulation 2009)

2.03 What can be agreed to etc. in relation to award/agreement free employees

For paragraph 129(a) of the Act, employers and award/agreement free employees may agree to the provision of either or both of:

- (a) extra annual leave in exchange for foregoing an equivalent amount of pay; and
- (b) extra personal/carer's leave in exchange for foregoing an equivalent amount of pay.