

David Berlusconi

From: David Berlusconi
Sent: Friday, 7 December 2018 8:47 AM
To: Andrew Donaldson
Subject: RE: Annual Leave Requested at 31/05/18 for dates in December

Hi Andrew,

Thanks for your email.

From what I have read, the definition below does not meet your situation. The certificate does not indicate there is any medical illness or injury and it's only saying you need to provide care and support for her post surgery. It is also written by a specialist plastic surgeon. Regarding your question on how you will be paid, that would depend on whether your original AL application was cancelled. I think it's prudent you chat to John and find out what he has done with the annual leave application. I don't get those applications so probably quicker to speak to him on that.

Regards.

David Berlusconi
Human Resources Manager
Australian Automotive Group Pty Limited
60 O'Riordan Street, Alexandria
NSW, 2015, Australia
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M | +61 0417 293 398 E | dberlusconi@aag.com.au

From: Andrew Donaldson
Sent: Thursday, 6 December 2018 2:35 PM
To: David Berlusconi
Subject: RE: Annual Leave Requested at 31/05/18 for dates in December

Hi David,

Thank you for taking the time to respond.

I'd like to clarify whether I am being granted the carers leave, not the annual leave? As I am entitled to carers leave as stipulated below:

97 Taking paid personal/carer's leave

An employee may take paid personal/carer's leave if the leave is taken:

- (a) because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or
- (b) to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:
 - (i) a personal illness, or personal injury, affecting the member; or
 - (ii) an unexpected emergency affecting the member.

Note 1: The notice and evidence requirements of section 107 must be complied with.

Subdivision D—Notice and evidence requirements

107 Notice and evidence requirements

Notice

- (1) An employee must give his or her employer notice of the taking of leave under this Division by the employee.
- (2) The notice:
 - (a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
 - (b) must advise the employer of the period, or expected period, of the leave.

Evidence

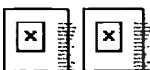
- (3) An employee who has given his or her employer notice of the taking of leave under this Division must, if required by the employer, give the employer evidence that would satisfy a reasonable person that:
 - (a) if it is paid personal/carer's leave—the leave is taken for a reason specified in section 97; or

I look forward to your reply.

Regards

Andrew Donaldson
Assistant New Vehicle Sales Manager
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From: David Berlusconi
Sent: Thursday, 6 December 2018 1:05 PM
To: Andrew Donaldson
Subject: RE: Annual Leave Requested at 31/05/18 for dates in December

Hi Andrew,

Thanks for your email.

Andrew there are many points being raised in the email string below. I will attempt to answer them one by one and if anything, please let me know.

- I have just had a look at the roster and have noticed that John Sultana now has that time period off as he mentioned on 29/08/18 that he would like to go away for his 50th birthday to New York. I am in no way against this, but I am just concerned that considering my leave is not on the roster, whether I will still have my time off to care for my loved ones. Could you please confirm whether my leave is still applicable as I would hate to think that considering I put my leave in over 6 months in advance and also 2 months before John Sultana's leave was discussed, that I would not be able to do so.
- Finally, I would very much appreciate your confidentiality in this matter.

= Andrew on this point above, Victor is the dealer principal and not the department manager. Had Victor not referred this back to John, Victor would have been undermining John's role within the business. Additionally, Victor cannot address the questions you raised unless he brought them up with your manager. For those reasons I cannot fault Victor for liaising with John on this and this is generally what a DP would do in a similar position.

- I have attached my original leave form that is dated 31/05/18 which has not been signed by John, and nor have the checklists been done at the bottom of the form. If my leave is rejected, could you please give in writing on what grounds it is being rejected?

= On this point and like any other business, leave is typically rejected for operational requirements. These operational requirements can be quite broad. Here I am guessing it was simply because the request was so far in advance and over the Christmas period, John did not feel comfortable approving it. From what I understand John wanted to take leave during this period and as the department manager, he is entitled to do so. Ultimately the department is results driven and run by John. Hence he has complete discretion to grant and decline annual leave requests for his staff if he believes there are operational considerations.

- I understand that you may not have been trying to be intrusive with your questioning, however it is not only intrusive, it is offensively intrusive and also borderline discriminatory. I don't believe that these questions have any relevance to whether my leave is approved

= Andrew when I read this in context, I think Victor was looking at this matter from an Annual Leave perspective and trying to find a solution – hence his questions. I think Victor has the same understanding as I do regarding carers leave (to which we spoke about a week or so ago). Carers leave is an entitlement for an unexpected emergency or illness. You told me this was not the case and I think Victor was also looking at this in the context of granting annual leave over the Christmas period. I think he was unfortunately straight to the point but trying to find a solution.

- Could you please confirm whether it has been approved, and if not, what is the reason for the rejection? I look forward to your reply.

= Andrew on this point, I can see Victor had asked you to speak to him which you chose not to do. I do understand your anxiety in waiting to hear back however Victor or John at any stage could have simply declined your leave request on operational grounds when you submitted it. Many managers would have just done that on the basis that the request was too far out to see how the operation would be affected. They did not do this and kept the door open. Keep in mind a planned surgery doesn't automatically qualify a person for the granting of annual leave.

- Andrew, Fill out the dates on the Roster for your dates to enable me to determine the overlap and send to me completed. I need to get someone internally to cover and myself included.

On the 18th October, Victor had sent you this above. The following month John had spoken to you about dates so there was conversation going on regarding trying to grant your leave question. I am not privy to those discussion so I cannot say what occurred. However it does appear you leave has been granted (at least some of it).

Regards.

David Berlusconi
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E | dberlusconi@austautogroup.com.au



From: Andrew Donaldson
Sent: Wednesday, 5 December 2018 5:32 PM
To: David Berlusconi
Subject: FW: Annual Leave Requested at 31/05/18 for dates in December

Hi David,

I have been fortunate enough to receive a medical certificate from my partners doctor outlining the need to act as a carer for her during the periods requested.

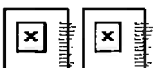
From my understanding from my third party counsel, under section 96 and 97 of the Fair Work Act 2009 I am entitled to receive carers leave provided that supporting documentation is supplied to my employer (section 107).

Please find it attached.

Regards

Andrew Donaldson
Assistant New Vehicle Sales Manager
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From: Andrew Donaldson

Sent: Friday, 30 November 2018 10:57 AM

To: David Berlusconi

Subject: FW: Annual Leave Requested at 31/05/18 for dates in December

Hi David,

I have been in talks with Victor about some annual leave that I requested back in May for my partners surgery which will be commencing on 12/12/18 and we have been trying to find a solution to the possible staffing issue that may arise from this. I had originally put it through as annual leave, but after seeking third party counsel, I had been advised to put it through as carers leave instead. I have attached the original application for leave as well as an amended application for leave for you to understand the dates/timeline a bit better. I had originally put in for a certain timeframe, but after discussions with my partner, we had decided that it might be an idea to extend the carers leave by a couple of days as a contingency in case she requires transport from the hospital.

My original application for leave was denied even though it was put in over 5 months in advance. The reasoning behind the denial was because John Sultana had wanted to take holidays during the same time period. This wasn't mentioned until almost 3 months after I had put my original application in. This obviously caused me a lot of stress as we could not move my partners surgery, and with us having 3 dependants, was not a desirable outcome. John is also denying my additional days requested for carers leave.

This morning, I have been emailed from John Sultana saying that my original leave has now been approved, but he will not approve the additional days requested. As mentioned, after seeking third party counsel, I am actually entitled to having this be put through as carers leave (provided documentation is supplied which will be done after the surgery is completed)

Now, as per my email trail to Victor, I had specifically requested this to be done in confidence as with Victor & John being brothers I was concerned that this may cause discomfort or conflict within the dealership and so wished for it to be resolved between just Victor and I. Unfortunately, it seems as though Victor has forwarded the email trail to John and the privacy and confidentiality has been breached. This has now caused me an extreme amount of anxiety. I do not wish to be put in a position where I have to fight for my entitlements especially when there is a conflict of interest.

Could you please let me know where I stand with this entire issue because I feel as though I am in a predicament with both a conflict of interest with John Sultanas leave being approved even though it was applied for AFTER mine and mine was rejected. Also, the breach of confidentiality has me questioning whether I can approach the Dealer Principal with matters relating to the Manager (his brother John).

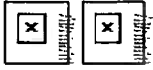
Please see the entire email trail below giving all information required, but if you need me to fill in any blanks, please don't hesitate to contact me.

Regards

Andrew Donaldson
Assistant New Vehicle Sales Manager
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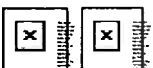
From: Andrew Donaldson
Sent: Friday, 30 November 2018 10:36 AM
To: John Sultana
Subject: RE: Annual Leave Requested at 31/05/18 for dates in December

I understand that, but as Sam might be okay to come out of hospital early, she will need me to pick her up so I have put through the additional days as a contingency. It's not to say that I will definitely need those days, but should I require them, I would like that flexibility for her wellbeing. I would hate for her to have to catch public transport after just having major surgery.

Regards

Andrew Donaldson
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From: John Sultana
Sent: Friday, 30 November 2018 10:33 AM
To: Andrew Donaldson
Subject: FW: Annual Leave Requested at 31/05/18 for dates in December

As per you original request your leave commences on 22/12/18 not 19/12/18

Regards

John Sultana
New Vehicle Sales Manager
Power Ford
The Power to Please
Cnr Victoria & Hoyle Avenue
Castle Hill NSW 2154
Ph: 02 9680 4799
Fax: 02 9899 2198
Email: jsultana@powerford.com.au



RANGER
RAPTOR
COMING IN 2018



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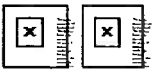
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January:

Regards

Andrew Donaldson
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From: Victor Sultana
Sent: Thursday, 18 October 2018 9:58 AM
To: Andrew Donaldson
Subject: RE: Annual Leave Requested at 31/05/18 for dates in December

Andrew,

Fill out the dates on the Roster for your dates to enable me to determine the overlap and send to me completed.

I need to get someone internally to cover and myself included.

Kind Regards,

Victor Sultana
Dealer Principal



Go Further

POWER FORD CASTLE HILL

17 Victoria Avenue, Castle Hill NSW 2154
Tel ☎: (02) 9680 4799 Mob ☎: 0418 683 852
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Website: www.powerford.com.au

Dealer Code: 28120

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From: Andrew Donaldson
Sent: Thursday, 18 October 2018 9:53 AM
To: Victor Sultana
Subject: RE: Annual Leave Requested at 31/05/18 for dates in December

Good morning Victor,

I'm just following up on this issue as another week has passed and I still don't have clarification on whether my leave is approved or not. This is starting to cause me a lot of anxiety and I'd appreciate an answer as soon as possible.

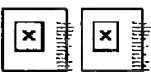
Could you please confirm whether it has been approved, and if not, what is the reason for the rejection?

I look forward to your reply.

Regards

Andrew Donaldson
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From: Andrew Donaldson
Sent: Friday, 12 October 2018 9:46 AM
To: Victor Sultana
Subject: RE: Annual Leave Requested at 31/05/18 for dates in December

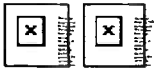
I would very much prefer this be done via email.

Thank you.

Regards

Andrew Donaldson
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From: Victor Sultana
Sent: Friday, 12 October 2018 9:39 AM
To: Andrew Donaldson
Subject: RE: Annual Leave Requested at 31/05/18 for dates in December

Come and talk to me.

Kind Regards,

Victor Sultana
Dealer Principal



Go Further

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From: Andrew Donaldson

Sent: Friday, 12 October 2018 8:56 AM

To: Victor Sultana

Subject: RE: Annual Leave Requested at 31/05/18 for dates in December

Good morning Victor,

Thank you for responding.

I understand that you may not have been trying to be intrusive with your questioning, however it is not only intrusive, it is offensively intrusive and also borderline discriminatory. I don't believe that these questions have any relevance to whether my leave is approved, but out of concern that not answering your questions would somehow impact my leave not being approved, I will respond to them.

Regarding the dates, the surgeon gave us two dates that he was available to do the surgery. The first one being the 12th December, and the other being sometime in in the second quarter of next year. I cannot remember the exact date of the second, but it did not coincide with school holidays and so we chose to go with the date in December. Our reasoning for this, is that 2 of the 3 children are in primary school and 1 is in pre-school so the logistics of getting them to and from school whilst Samantha is recovering would be impossible to do so without affecting my arrival and departure times from work. Therefore, we deemed this date to have the least amount of impact for all involved (including Power Ford).

I don't believe that this matter needs any further discussion as I have applied for leave under the company's guidelines and policies, and also complied with them. I also had submitted my request more than 2 months prior to John Sultanas leave being requested and from the roster, it looks as though Johns request has been approved.

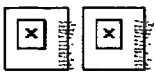
So I would still like some clarification in regards to whether my leave is approved, as you were not clear in your email if it is approved or not. Could you please confirm if my request is approved, and if not, why it is being rejected?

I look forward to your response.

Regards

Andrew Donaldson
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From: Victor Sultana
Sent: Thursday, 11 October 2018 6:49 PM
To: Andrew Donaldson
Subject: FW: Annual Leave Requested at 31/05/18 for dates in December

Andrew,

Let's talk it through, everyone wants a break during this period, It can be challenging to accommodate everyone.

Samantha's operation timing seems odd time of the year to be doing it, right through the Xmas and New Year period when its children and family time. Without being intrusive, why would an planned operation organized back in May be booked in the worst possible time for a family during the festive season, why would Samantha endure pain and suffering when it should be happy family time of the year to enjoy. Does it really take seven (7) months to book this operation?

We need to come up with a plan, I can cover some of this time, having two (2) departmental managers off at the same time is not ideal for the business, ideally when two (2) managers wants the Christmas period off, we usually plan one (1) goes before Christmas plus Public Holidays and the takes the Public Holidays and after Christmas and this way there is no overlap.

Anyway let's talk about, in confidentiality.

Kind Regards,

Victor Sultana

Dealer Principal



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From: Andrew Donaldson

Sent: Thursday, 11 October 2018 5:00 PM

To: Victor Sultana

Subject: RE: Annual Leave Requested at 31/05/18 for dates in December

Good afternoon Victor,

I'm just following up on the below email.

Could you please respond?

Thank you.

Regards

Andrew Donaldson

Assistant New Vehicle Sales Manager

Power Ford

Cnr Victoria & Hoyle Avenue

Castle Hill NSW 2154

Ph: 02 9680 4799

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From: Andrew Donaldson

Sent: Wednesday, 10 October 2018 12:08 PM

To: Victor Sultana

Subject: Annual Leave Requested at 31/05/18 for dates in December

Good morning Victor,

Following on from our discussion on Thursday 04/10/18, I originally put in for annual leave back on the 31/05/18 for a couple of weeks in December (22/12/18 – 06/01/18) as my partner Samantha is going in for major surgery and with us having 3 dependants, require me to be available to help for her recovery period. Her surgery is on the 12th December, and will have to spend about a week in hospital so this is why I had originally booked for the 20th as we have organised the children to stay with their grandparents for that week. The reason we have organised this, is so that I don't have to take extra unnecessary leave so that the impact to the business is minimised. Her recovery period will be about 6 weeks, but I have only asked for 2 weeks as Samantha should be able to get up and move around once she is in week 3 of her recovery period. Again, I have made sure that there is minimal impact to the business during this time period.

I have just had a look at the roster and have noticed that John Sultana now has that time period off as he mentioned on 29/08/18 that he would like to go away for his 50th birthday to New York. I am in no way against this, but I am just concerned that considering my leave is not on the roster, whether I will still have my time off to care for my loved ones. Could you please confirm whether my leave is still applicable as I would hate to think that considering I put my leave in over 6 months in advance and also 2 months before John Sultanas leave was discussed, that I would not be able to do so.

I have attached my original leave form that is dated 31/05/18 which has not been signed by John, and nor have the checklists been done at the bottom of the form. If my leave is rejected, could you please give in writing on what grounds it is being rejected? I trust that this is not the case, but would like confirmation of my leave being approved as we are only 2 months away from the dates being upon us, and as you can see from my history that I like to be booked in advance for any leave I apply for.

Finally, I would very much appreciate your confidentiality in this matter as I do not want to make a scene, nor do I want any awkwardness within our place of work regarding this matter as harmony in the workplace is also very much a priority for me and with John being the manager, I would not want to jeopardise my position here with any confrontation or disagreements we may have relating to this matter.

Please see a screenshot of Decembers roster below, and please confirm whether my leave is approved.

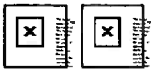
Thank you.

	A	B	C	D	E	F	G	H	I	J	K
1	Power Ford Decem										
2											
3				RETAIL							
4			John Sultana	David Moore	Marian VDW	Andrew Donaldson	Danny Zaia	Mel Hulbert	Dean Nash	Alain	Ga Rec
5	Saturday	1					RDO	RDO			
6	Sunday	2					RDO	RDO	RDO		
7	Monday	3							RDO		
8	Tuesday	4				RDO			RDO		
9	Wednesday	5		RDO					OWE		
10	Thursday	6			RDO						
11	Friday	7									
12	Saturday	8					RDO	RDO	RDO		
13	Sunday	9						RDO	RDO		
14	Monday	10									
15	Tuesday	11				RDO					
16	Wednesday	12		RDO							
17	Thursday	13			RDO						
18	Friday	14									
19	Saturday	15					RDO	RDO			
20	Sunday	16					RDO	RDO			
21	Monday	17									
22	Tuesday	18				RDO					
23	Wednesday	19		RDO							
24	Thursday	20			RDO						
25	Friday	21									
26	Saturday	22	RDO				RDO	RDO			
27	Sunday	23	RDO					RDO			
28	Monday	24	AL								
29	Tuesday	25	PH	PH	PH	PH	PH	PH	PH	PH	P
30	Wednesday	26	PH	PH	PH	PH	PH	PH	PH	PH	P
31	Thursday	27	AL		RDO						
32	Friday	28	AL								
33	Saturday	29	RDO				RDO	RDO			
34	Sunday	30	RDO				RDO	RDO			
35	Monday	31	AL								
36	RDO'S		4 days	3 days	4 days	3 days	8 days	10 days	5 days	0 days	0 d
37	Annual Leave		4 days	0 days	0 days	0 days	0 days	0 days	0 days	0 days	0 d
38	Public Holidays		2 days	2 days	2 days	2 days	2 days	2 days	2 days	2 days	2 d
39											

Regards

Andrew Donaldson
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AUSTRALIAN AUTOMOTIVE GROUP – LEAVE REQUEST FORM

Employee Name ANDREW BENACOSON

Department NEW CARS

Manager's Name JOHN SULTANA

Site Location: CASTLE HILL

Leave Being Requested	First Day on Leave	Last Day on Leave	First Day Back	Hours Requested
Sick <input type="checkbox"/>				
Carers <input checked="" type="checkbox"/>	<u>19/12/18</u>	<u>06/01/19</u>	<u>07/01/19</u>	<u>76.0</u>
Bereavement <input type="checkbox"/>				
Annual <input type="checkbox"/>				
Long Service <input type="checkbox"/>				
Maternity or Paternity <input type="checkbox"/>				
Jury or Community Service <input type="checkbox"/>				
Time in lieu (please specify below) <input type="checkbox"/>				
Other leave (please specify below) <input type="checkbox"/>				
Leave Without Pay <input type="checkbox"/>				

TOTAL HOURS LESS _____ PUBLIC HOLIDAY HOURS = _____

Reasons for time in lieu or other types of leave: THIS LEAVE WAS ORIGINALLY PUT IN AS ANNUAL LEAVE BUT AFTER THIRD PARTY COUNSELLING, IT WAS ADVISED TO UTILISE CARERS LEAVE INSTEAD.
SUPPORTING DOCUMENTATION TO FOLLOW BY 13/12/18

Employee Declaration:

I understand the information I am submitting on this form is a true record of my absence (or intended absence) and that any misrepresentations misleading statements may lead to disciplinary action including summary dismissal. I also understand my leave will not be formally approved until my manager notifies me.

[Signature]

Employee Sign

Manager Sign

09/11/18

Today's Date

For manager use only

	Please tick	
Has a medical certificate or statutory declaration been attached? (if applicable)	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Has the departments notification requirements been met?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Does the manager approve the leave based on the operational requirements?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Does the manager object to this leave being approved (if yes, contact HR)	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Has the manager told the employee their leave request is not approved until notified	<input type="checkbox"/> YES	<input type="checkbox"/> NO

Dr Mahyar AMJADI
FRACS (Plast), FRACDS
Specialist Plastic Surgeon
4884394J

05/12/2018

Ms Samantha Parsonage
43 Stephan Street
HORNSBY NSW 2077

To whom it may concern

This is to certify that

Mr Andrew Donaldson is unfit for usual duties from 19 December 2018 to 7 January 2019
inclusive as he is required to act as carer for Samantha Parsonage who is unable to care for herself
and 3 dependents during this post surgery period.

If you have any questions please do not hesitate to contact us at any time.

Best regards



Dr Mahyar AMJADI
FRACS (Plast), FRACDS
Specialist Plastic Surgeon

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