



## EMPLOYERS GUIDE TO LEAVE VOLUME 1

Made for Allied Health Professionals such as Physio's, Chiropractors, Osteopaths and Yoga/Exercise Specialists

HR/IR is a HR consultancy firm based out of Wollongong. We are legally trained and focus on workplace/employment problem solving and advice. We work with management teams to help manage workplace relations. In addition to advice/problem solving, we write any formal documentation that you require including contracts, policies and onboarding procedures.

### What is Leave?

#### **Law Relating to Leave:**

Right and obligation can be found in respect of annual leave are contained in most Modern Awards. The relevant Modern Award for most Allied Health positions is the 'Health Professionals and Support Services Award. Right and obligations found in an award may provide extra leave for shift work and workers who regularly work overtime.

Each employee is entitled to the leave which is found in the National Employment Standards (NES). The NES states that each employee receives annual, personal and parental leave. Full-time workers are allowed 20 days of annual leave which accrues based on the number of hours an employee works, 10 days of personal leave and 12 months of unpaid parental leave.

#### **Employer's Policies Covering Leave**

Policy allows employers to control leave in the workplace. It allows you to set requirements relating to Christmas close-down, cash-out provisions and when annual leave may be refused.

#### **What are casual's rights to leave?**

Casual employees are not entitled to paid leave but can take 2 days of unpaid carer's leave and compassionate leave per occasion, 5 days of unpaid family and domestic violence leave (in a 12-month period) and unpaid community service leave.

#### **What is Leave Pay? What is included in Leave Pay?**



Leave pay is the ordinary rate of pay that the employee receives. Over time, loading bonuses and commissions are not included when calculating the annual leave and personal leave pay and the leave loading is based on ordinary pay.



Leave pay is tricky, especially when your employee has recently received a promotion. Talk to John Morrissey, who can assist you in solving complex leave problems. Ring John on 0407069507.

## Annual Leave

### All full-time and part-time employees are entitled to Annual Leave

Annual leave is given by the employer and taken by the employee. This means that policies can be implemented to shape leave in your workplace. Leave cannot be refused if it complies with your policies. A policy can dictate things such as how much notice is needed for leave to be taken.

The National Employment Standards (NES) outlines the annual leave an employee can accrue. A full-time employee (who is contracted to work 38 or more hours per week) accrues 2.9 hours of annual leave per week. You should also be aware that shift workers may be entitled to more annual leave.

Case Study: A permanent part-time receptionist at a physio office is contracted to work 20 hours per week. How do you calculate annual leave?

To calculate annual leave, you must use this formula:

$$\text{Annual Leave per week} = \text{Hours worked per week} \times \frac{1}{13}$$

In this case, the answer is 1.54 hours of annual leave accrued per week.

Annual leave does not accrue on unpaid annual leave, unpaid sick leave, unpaid parental leave and unpaid family and domestic violence leave.

Annual leave accrues on paid leave, community service leave such as jury duty and long service leave.

*Tip: When drafting an annual leave policy, review the relevant modern award that covers your workplace.*



If you are not sure about the amount of annual leave policy contact John Morrissey at HRIR Solutions on 040706507 for out template workplace policies relating to Annual Leave and Personal leave.

### **Annual leave loading:**

Most modern awards provide that in addition to the ordinary pay rate, leave loading is added. Currently, the leave loading is 17.5% of the amount of the ordinary rate of pay. Award-free employees are not entitled to leave loading.

*Tip: Make sure that award-free contracts state that they're not entitled to leave loading.*

### **When can annual leave be taken?**

Annual Leave can be taken as soon as it is accrued and does not have to be taken each year. The employer can, however, reasonably refuse an application for annual leave. Consider:

- Requirements of the business
- The period in which leave is requested
- Would the leave be detrimental to the business?
- Was reasonable notice given?

An employer can sometimes direct an employee to take leave when the annual leave balance is in excess of eight (8) weeks the employee must be left with an annual balance of at least six (6) weeks left after the annual leave is directed to be taken. The employer would give an employee 8 weeks' notice of requiring the employee to take the excess annual leave. Similar provisions exist for employees requesting leave.

Should your business close down on holidays, you may direct the employees to take annual leave must have this written in a workplace policy or employment contract and provision that all employees are to take annual leave either paid or unpaid at the business close down times.

### **Payslips:**



It can be good practice to show an employee's leave balance on payslips, but it is not a requirement. You must tell your employee how much leave is accrued if asked.

**Cashing out annual leave:**

Cashing out annual leave is complex and based on agreements. The modern award may have a cash-out provision. If an award-free employee wishes to cash out, there must be another document that allows for it, such as a contract. If you want your employees to be able to cash out their annual leave, have a cash-out clause written into your employee's contract. An employer cannot force the employee to cash out annual leave.

An employee cannot cash out more than 2 weeks' worth of annual leave per year, and must not cash out if they have less than 4 weeks' leave.

**Common Issues for Annual Leave:**

**Using Annual leave as personal (sick) leave:**

When an employee uses all the accrued personal leave, most employers allow the employee to use accrued annual leave as sick leave. Make sure that you receive a doctor's certificate for the period of time used as personal leave.

*Tip: If the employee has not provided a doctor's certificate for 2 or more days, you should not pay annual or personal leave. This needs to be a provision in your leave policy.*

**Paying out annual leave on termination of employment:**

On termination, annual leave is paid out based on the employee's ordinary pay rate. Leave loading is paid on accrued leave exclusive of the leave accrued in the current year of employment.

**Paying leave out in advance:**

Always agree in writing on how leave can be taken before an employee starts. If the employee leaves with a negative leave balance, you cannot offset the negative leave balance against ordinary pay or termination pay of accrued long service leave.

Case Study: You hire a casual office manager who works 24 hours per week. Each week this person works 9-5 on Mondays, Tuesdays and Wednesdays. Come Christmas time, you tell your employee not to worry about their usual hours as you will be shutting down for Christmas.

The employee then enquires as to their right to annual leave because they believe that they have become a part-time member of the team. What is the correct response?

The employment relationship is tricky, but when it comes down to it, it is contractual. You must make sure your employment contract is specific enough for the required job.

Otherwise, the employee may have a valid reason to assume they are part-time, as they are receiving the same regular hours.



The above scenario is unlikely to happen if you have your documents correctly formatted and drafted. For a profession employment contract or any other official documentation, ring John on 040706507.

### **The Most Important Take Aways:**

- You must know what law applies to your employees. This includes:
  - o Your employment contracts
  - o Relevant Modern Awards
  - o Relevant State/Federal Laws
- You need to make sure your leave calculations are correct. This goes for both your employee's base rate of pay and how much leave is accrued
- You need to have updated annual leave policies. These policies allow you to dictate how leave works in your workplace, including when leave can be taken.



If you need help with any of the above, talk to us at HR/IR Solutions  
Wollongong.



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