

## Annual Leave

The table below sets out employer obligations and employee entitlements to annual leave.

Temporary changes to workplace laws during COVID-19 have affected the way in which some employees can take annual leave, and how some employers may direct employees to take a period of annual leave.

Jurisdiction	Overview of Legislation, Modern Award or Agreement
<p><b>All employees</b></p> <p><i>Fair Work Act 2009</i></p> <p>National Employment Standards (NES)</p>	<p><b>How much annual leave are employees entitled to?</b></p> <ul style="list-style-type: none"> <li>• 4 weeks’ annual leave for each year of continuous service.</li> </ul> <p><b>Who is entitled to take annual leave?</b></p> <ul style="list-style-type: none"> <li>• Full-time and Part-time employees.</li> <li>• Casual employees are <u>NOT</u> entitled to annual leave.</li> </ul> <p><b>How does annual leave accrue?</b></p> <ul style="list-style-type: none"> <li>• Annual leave accrues continuously based on the number of ordinary hours an employee works.</li> <li>• Annual leave continues to accumulate when an employee:             <ol style="list-style-type: none"> <li>1. takes a period of paid annual leave;</li> <li>2. takes a period of paid sick leave (or paid personal/carers leave); and</li> <li>3. when an employee has been stood down.</li> </ol> </li> <li>• Annual leave does not accumulate on unpaid leave (unless it is community service leave or it is provided for in an award or enterprise agreement).</li> </ul> <p><b>When can an employee take annual leave?</b></p> <ul style="list-style-type: none"> <li>• Annual leave can be taken any time after it has accumulated, at a time agreed by the employer and employee.</li> <li>• An employee is not required to work for one year before accessing their annual leave.</li> </ul> <p><b>Can an employer refuse an employee’s request to take annual leave?</b></p> <ul style="list-style-type: none"> <li>• An employer must not unreasonably refuse an employee’s request to take annual leave.</li> </ul> <p><b>Can the employee be directed to take annual leave?</b></p> <ul style="list-style-type: none"> <li>• Yes and No.</li> <li>• <b>No</b> – an employer and employee must agree when a period of leave will be taken.</li> <li>• <b>Yes</b> – if a modern award or agreement allows an employee to be directed to take annual leave, and the requirement to take leave is reasonable.</li> <li>• The following modern awards allow an employer to direct an employee to take annual leave when the employee has an ‘excessive annual leave balance’:             <ol style="list-style-type: none"> <li>1. <a href="#">Live Performance Award 2010</a> (clause 19.8);</li> <li>2. <a href="#">Broadcasting and Recorded Entertainment and Cinemas Award 2010</a> (clause 23.7);</li> <li>3. <a href="#">Amusement Events and Recreation Award 2020</a> (clause 21.6); and</li> <li>4. <a href="#">Clerks- Private Sector Award 2020</a> (clause 24.4)</li> </ol> </li> <li>• <b>Yes</b> – if no modern award or enterprise agreement applies to an employee, an employer can direct the employee to take leave if the requirement to take leave is reasonable.</li> </ul>

	<ul style="list-style-type: none"> <li>A requirement to take paid annual leave may be reasonable if:             <ol style="list-style-type: none"> <li>the business is being shut down for a period; or</li> <li>the employee has an excessive leave balance, generally more than 8 weeks’ leave.</li> </ol> </li> </ul> <p>(A COVID-19 temporary amendment has been made to the <i>Clerks - Private Sector Award 2010</i> to allow employers to direct an employee to take annual leave at short notice. Details are set out below).</p> <p><b>Can an employee “cash out” their annual leave?</b></p> <ul style="list-style-type: none"> <li><b>Yes.</b></li> <li>An employee who is not covered by a modern award or an enterprise agreement can cash out their annual leave, providing:             <ol style="list-style-type: none"> <li>the employee has a balance of at least 4 weeks’ annual leave remaining;</li> <li>the employer and employee agree in writing to cash out the leave;</li> <li>the payment for the annual leave is the same as if the employee actually took the leave.</li> </ol> </li> <li>Some Awards and Agreements allow employees to cash out their annual leave, including:             <ol style="list-style-type: none"> <li><a href="#">Live Performance Award 2010</a> (cl 19.6);</li> <li><a href="#">Broadcasting and Recorded Entertainment and Cinemas Award 2010</a> (cl 23.11);</li> <li><a href="#">Amusement Events and Recreation Award 2020</a> (cl 21.4); and</li> <li><a href="#">Clerks - Private Sector Award 2020</a> (cl 24.3).</li> </ol> </li> </ul> <p><b>How is an employee paid when they take a period of annual leave?</b></p> <ul style="list-style-type: none"> <li>Annual leave is paid at the employee’s base rate of pay for all ordinary hours worked.</li> <li>It does not include:             <ol style="list-style-type: none"> <li>overtime rates;</li> <li>penalties;</li> <li>allowances;</li> <li>bonuses.</li> </ol> </li> <li>A leave loading of 17.5% must be paid for employees covered by the <i>Live Performance Award 2010</i> and the <i>Clerks - Private Sector Award 2020</i>.</li> <li>From 1 June 2020 leave loading must be paid of 17.5% must be paid for employees covered by the <i>Amusement Events and Recreation Award 2020</i>.</li> </ul> <p>(A COVID-19 temporary amendment has been made to allow employees to take annual leave at half pay. Details are set out below).</p> <p><b>What is an employee entitled to on termination of employment?</b></p> <ul style="list-style-type: none"> <li>Any untaken accrued annual leave must be paid to the employee.</li> </ul>
<p><b><u>MODERN AWARDS</u></b></p> <p><b>TEMPORARY COVID-19 AMENDMENTS</b></p> <p><i>Fair Work Act 2009</i> (s 157)</p> <p><i>Live Performance Award 2010</i></p>	<p><b><u>This section applies to all employers and employees who are covered by the relevant modern awards</u></b></p> <p>Note: The Fair Work Commission varied 99 modern awards. The below only addresses the modern awards most relevant to LPA members, including</p> <ul style="list-style-type: none"> <li><i>Live Performance Award 2010</i> (applies to 30 June 2021);</li> <li><i>Broadcasting and Recorded Entertainment and Cinemas Award 2010</i> (applies to 29 March 2021);</li> <li><i>Amusement Events and Recreation Award 2020</i> (applies to 29 March 2021); and</li> <li><i>Clerks - Private Sector Award 2020</i> (applies to 30 November 2020).</li> </ul> <p><b>Do the temporary amendments to modern awards allow an employer to direct an employee to take annual leave?</b></p>

<p><b>(Live Performance Award)</b></p> <p><i>Broadcasting and Recorded Entertainment and Cinemas Award 2010</i> <b>(Broadcasting Award)</b></p> <p><i>Amusement Events and Recreation Award 2010</i> <b>(Amusement and Events Award)</b></p> <p><i>Clerks – Private Sector Award 2020</i> <b>(Clerks Award)</b></p>	<ul style="list-style-type: none"> <li>• Yes and No.</li> <li>• No – if the employee is covered by the <b>Live Performance Award, Broadcasting Award</b> or the <b>Amusement and Events Award</b>.</li> <li>• Yes – if an employee is covered by the <b>Clerks Award</b>, providing:             <ol style="list-style-type: none"> <li>1. If the business is closing down:</li> <li>2. employers must give one weeks’ notice, or and agreed shorter period to take annual leave;</li> <li>3. if the employee does not have annual leave to cover the close down period, the employee can be direct to take leave without pay.</li> </ol> </li> <li>• If the business is not closing down:             <ol style="list-style-type: none"> <li>1. employers must give one weeks’ notice, or and agreed shorter period to take annual leave; and</li> <li>2. the employee must have at least 2 weeks of accrued annual leave remaining.</li> </ol> </li> </ul> <p><b>Can an employee take annual leave at half pay?</b></p> <ul style="list-style-type: none"> <li>• Under all the relevant modern awards, employers and employees can agree that an employee takes their leave at half pay.</li> <li>• Therefore, an employee can take twice the amount of their accrued leave, and be paid half their usual rate of pay.</li> <li>• The leave must commence before the following dates:             <ol style="list-style-type: none"> <li>1. <b>30 June 2021</b> - <i>Live Performance Award 2010</i></li> <li>2. <b>29 March 2021</b> <i>Broadcasting and Recorded Entertainment and Cinemas Award</i> and <i>Amusement Events and Recreation Award 2020</i></li> <li>3. <b>30 November 2020</b> - <i>Clerks - Private Sector Award 2020</i></li> </ol> </li> </ul>
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