

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>All employees</p> <p><i>Fair Work Act 2009</i></p> <p>National Employment Standards (NES)</p>	<p>How much annual leave are employees entitled to?</p> <ul style="list-style-type: none"> • 4 weeks’ annual leave for each year of continuous service. <p>Who is entitled to take annual leave?</p> <ul style="list-style-type: none"> • Full-time and Part-time employees. • Casual employees are <u>NOT</u> entitled to annual leave. <p>How does annual leave accrue?</p> <ul style="list-style-type: none"> • Annual leave accrues continuously based on the number of ordinary hours an employee works. • Annual leave continues to accumulate when an employee: <ol style="list-style-type: none"> 1. takes a period of paid annual leave; 2. takes a period of paid sick leave (or paid personal/carers leave); and 3. when an employee has been stood down. • 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). <p>When can an employee take annual leave?</p> <ul style="list-style-type: none"> • Annual leave can be taken any time after it has accumulated, at a time agreed by the employer and employee. • An employee is not required to work for one year before accessing their annual leave. <p>Can an employer refuse an employee’s request to take annual leave?</p> <ul style="list-style-type: none"> • An employer must not unreasonably refuse an employee’s request to take annual leave. <p>Can the employee be directed to take annual leave?</p> <ul style="list-style-type: none"> • Yes and No. • No – an employer and employee must agree when a period of leave will be taken. • Yes – if a modern award or agreement allows an employee to be directed to take annual leave, and the requirement to take leave is reasonable. • 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"> 1. Live Performance Award 2010 (clause 19.8); 2. Broadcasting and Recorded Entertainment and Cinemas Award 2010 (clause 23.7); 3. Amusement Events and Recreation Award 2010 (clause 24.5); and 4. Clerks- Private Sector Award 2020 (clause 24.4) • Yes – 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.

	<ul style="list-style-type: none"> • A requirement to take paid annual leave may be reasonable if: <ol style="list-style-type: none"> 1. the business is being shut down for a period; or 2. the employee has an excessive leave balance, generally more than 8 weeks' leave. <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>Can an employee “cash out” their annual leave?</p> <ul style="list-style-type: none"> • Yes. • 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"> 1. the employee has a balance of at least 4 weeks' annual leave remaining; 2. the employer and employee agree in writing to cash out the leave; 3. the payment for the annual leave is the same as if the employee actually took the leave. • Some Awards and Agreements allow employees to cash out their annual leave, including: <ol style="list-style-type: none"> 1. Live Performance Award 2010 (cl 19.6); 2. Broadcasting and Recorded Entertainment and Cinemas Award 2010 (cl 23.11); 3. Amusement Events and Recreation Award 2010 (cl 24.3); and 4. Clerks - Private Sector Award 2020 (cl 24.3). <p>How is an employee paid when they take a period of annual leave?</p> <ul style="list-style-type: none"> • Annual leave is paid at the employee's base rate of pay for all ordinary hours worked. • It does not include: <ol style="list-style-type: none"> 1. overtime rates; 2. penalties; 3. allowances; 4. bonuses. • 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 2010</i>. • 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 2010</i>. <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>What is an employee entitled to on termination of employment?</p> <ul style="list-style-type: none"> • Any untaken accrued annual leave must be paid to the employee.
<p><u>JOBKEEPER</u></p> <p>TEMPORARY COVID-19 AMENDMENTS to the FW Act</p> <p><i>Fair Work Act 2009 (s789GJ)</i></p>	<p><u>This section only applies to employers receiving JobKeeper payments and their eligible employees from 9 April 2020 to 28 September 2020</u></p> <p>Can an employer receiving JobKeeper payments direct an employee to take annual leave?</p> <ul style="list-style-type: none"> • No. An employer can request, but not direct, that an employee take paid annual leave. • The agreement to take leave must be in writing. • Taking the leave must not result in the employee having an annual leave balance of less than two weeks. • The employee must consider and <u>not unreasonably refuse</u> the request. <p>Can an employee take annual leave at half pay?</p> <ul style="list-style-type: none"> • If agreed by the employer and employee, annual leave can be taken at half pay.

	<p>How does annual leave accrue for employees who have been stood down, or are working reduced hours under a JobKeeper enabling direction?</p> <ul style="list-style-type: none"> • Annual leave accrues as if the direction had not been given. • The employee continues to accrue leave based on their usual hours of work that applied before their hours of work were reduced or they were stood down.
<p><u>MODERN AWARDS</u></p> <p>TEMPORARY COVID-19 AMENDMENTS</p> <p><i>Fair Work Act 2009 (s 157)</i></p> <p><i>Live Performance Award 2010 (Live Performance Award)</i></p> <p><i>Broadcasting and Recorded Entertainment and Cinemas Award 2010 (Broadcasting Award)</i></p> <p><i>Amusement Events and Recreation Award 2010 (Amusement and Events Award)</i></p> <p><i>Clerks – Private Sector Award 2020 (Clerks Award)</i></p>	<p><u>This section applies to all employers and employees who are covered by the relevant modern awards from 8 April 2020 to 30 June 2020.</u></p> <p><i>Note: The Fair Work Commission varied 99 modern awards. The below only addresses the modern awards most relevant to LPA members.</i></p> <p>Do the temporary amendments to modern awards allow an employer to direct an employee to take annual leave?</p> <ul style="list-style-type: none"> • Yes and No. • No – if the employee is covered by the Live Performance Award, Broadcasting Award or the Amusement and Events Award. • Yes – if an employee is covered by the Clerks Award, providing: <ol style="list-style-type: none"> 1. If the business is closing down: <ol style="list-style-type: none"> a. employers must give one weeks’ notice, or and agreed shorter period to take annual leave; b. if the employee does not have annual leave to cover the close down period, the employee can be direct to take leave without pay. 2. If the business is not closing down: <ol style="list-style-type: none"> a. employers must give one weeks’ notice, or and agreed shorter period to take annual leave; and b. the employee must have at least 2 weeks of accrued annual leave remaining. <p>Can an employee take annual leave at half pay?</p> <ul style="list-style-type: none"> • Under all the relevant modern awards, employers and employees can agree that an employee takes their leave at half pay. • Therefore, an employee can take twice the amount of their accrued leave, and be paid half their usual rate of pay. • The leave must commence before 30 June 2020.