

## Annual Leave in Australia

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 2010</a> (clause 24.5); and</li> <li>4. <a href="#">Clerks - Private Sector Award 2010</a> (clause 29.5)</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> <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 2010</a> (cl 24.3); and</li> <li><a href="#">Clerks - Private Sector Award 2010</a> (cl 29.9).</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 of work.</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 2010</i>.</li> <li>From 1 June 2020, leave loading of 17.5% must be paid for employees covered by the <i>Amusement Events and Recreation Award 2010</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> </li></ul>
<p><b><u>JOBKEEPER</u></b></p> <p><b>TEMPORARY COVID-19 AMENDMENTS to the FW Act</b></p> <p><i>Fair Work Act 2009 (s789 GJ)</i></p>	<p><b><u>This section only applies to employers receiving JobKeeper payments and their eligible employees from 9 April 2020 to 28 September 2020</u></b></p> <p><b>Can an employer receiving JobKeeper payments direct an employee to take annual leave?</b></p> <ul style="list-style-type: none"> <li>No. An employer can request, but not direct, that an employee take paid annual leave.</li> <li>The agreement to take leave must be in writing.</li> <li>Taking the leave must not result in the employee having an annual leave balance of less than two weeks.</li> <li>The employee must consider and <u>not unreasonably refuse</u> the request.</li> </ul> <p><b>Can an employee take annual leave at half pay?</b></p> <ul style="list-style-type: none"> <li>If agreed by the employer and employee, annual leave can be taken at half pay.</li> </ul> <p><b>How does annual leave accrue for employees who have been stood down, or are working reduced hours under a JobKeeper enabling direction?</b></p> <ul style="list-style-type: none"> <li>Annual leave accrues as if the direction had not been given.</li> </ul>

	<ul style="list-style-type: none"> <li>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.</li> </ul>
<p><b>MODERN AWARDS</b></p> <p><b>TEMPORARY COVID-19 AMENDMENTS</b></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 2010 (Clerks Award)</i></p>	<p><b><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></b></p> <p><i>Note:</i> The Fair Work Commission varied <a href="#">99 modern awards</a>. The below only addresses the modern awards most relevant to LPA Members.</p> <p><b>Do the temporary amendments to modern awards allow an employer to direct an employee to take annual leave?</b></p> <ul style="list-style-type: none"> <li>Yes and No.</li> <li>No – if the employee is covered by the Live Performance Award, Broadcasting Award or the Amusement and Events Award.</li> <li>Yes – if an employee is covered by the <b>Clerks Award</b>, providing:             <ol style="list-style-type: none"> <li>If the business is closing down:                 <ol style="list-style-type: none"> <li>employers must give one weeks’ notice, or an agreed shorter period, to take annual leave;</li> <li>if the employee does not have annual leave to cover the close down period, the employee can be directed to take leave without pay.</li> </ol> </li> <li>If the business is not closing down:                 <ol style="list-style-type: none"> <li>employers must give one weeks’ notice, or an agreed shorter period, to take annual leave; and</li> <li>the employee must have at least 2 weeks of accrued annual leave remaining.</li> </ol> </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 30 June 2020.</li> </ul>