

**IMPORTANT NOTICE:** The information outlined below applies to employees and employers who are under State industrial relations jurisdiction. Since the commencement of the federal government's workplace relations laws on 27 March 2006, employers who are constitutional corporations (e.g. a Pty Ltd or Ltd company) and their employees are now covered under federal industrial relations jurisdiction. These employees and employers should contact the Queensland Workplace Rights hotline on **1300 737 841** or visit [www.workplacerights.qld.gov.au](http://www.workplacerights.qld.gov.au) for further information and assistance on the laws.

### What is annual leave?

Annual leave is paid holiday time that all employees (excluding casuals, pieceworkers, school-based apprentices or trainees) receive for each completed year of employment.

Annual leave may also be commonly known as recreation or vacation leave.

### Who is entitled to annual leave?

Since the commencement of the *Industrial Relations Act 1999* (the Act) on 1 July 1999 all employees in Queensland (excluding casuals, pieceworkers and school-based apprentices or trainees) are entitled to annual leave. Before the commencement of the Act annual leave was an entitlement only within awards and agreements or an entitlement negotiated between employers and employees.

From 1 July 1999 employees whose employment is not covered by an award or agreement began to accumulate annual leave in accordance with the Act. Employees who had negotiated an entitlement prior to 1 July 1999 retain that entitlement, and gain an entitlement under the Act from 1 July 1999.

### How much annual leave are employees entitled to?

Under the Act an employee receives a minimum of four weeks annual leave for each full year of employment. Shift workers who actually work a roster that provides for three shifts per day over seven days a week receive a minimum of five weeks per year.

Some awards and agreements provide for a greater period of leave. Employees covered by such awards or

agreements are entitled to the amount of annual leave as specified in the award or agreement.

### Is annual leave payable on termination?

Yes. All annual leave owing is payable on termination, except where the employee is transferred from one employer to another. If an employee has not taken all annual leave they are entitled to, at the time of termination they are presumed to have taken their leave from the date of termination.

### What is pro rata holiday pay?

Pro rata holiday pay is the monetary equivalent of annual leave accumulated for any period of less than one year. Pro rata holiday pay is payable only on termination of employment. Similarly to annual leave, pro rata holiday pay is payable to all employees other than casuals, pieceworkers and school based apprentices or trainees.

### How is annual leave and pro rata holiday pay calculated for employees covered by an award or agreement?

#### Annual Leave

Annual leave is paid at the ordinary current rate of pay. If an employee is being paid at the award rate only, their annual leave attracts a loading of 17.5%.

Effectively, the calculation of payment for each week of annual leave is either the award rate including leading hand or similar allowances (if applicable), plus 17.5% loading OR the over-award rate including all specified allowances.

**The employee is entitled to the higher of the two calculations.**

Normally, overtime payments, allowances for reimbursements and penalty rates are not included in either calculation.

#### Example

An employee works for 18 months and decides to take all annual leave owing to them. The award rate is \$450.00 per week but the actual wage paid at the time of taking leave is \$475.00 per week.

<b>(A)</b> 4 weeks x \$450.00 + 17.5% of \$1,800.00	= = <hr style="width: 50%; margin: 0 auto;"/> =	\$1,800.00 \$ 315.00  <b>\$2,115.00</b>	=    	<hr style="width: 50%; margin: 0 auto;"/> <b>\$760.81</b>
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**OR**

<b>(B)</b> 4 weeks x \$475.00	=	<b>\$1,900.00</b>
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**OR**

<b>(B)</b> 5 weeks x \$475.00 12 weeks x \$485.00	= = =	\$2,375.00 \$5,820.00 \$8,195.00	=  	<hr style="width: 50%; margin: 0 auto;"/> <b>\$682.92</b>
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The employee would receive payment in accordance with calculation (A).

The employee would receive payment in accordance with calculation (A).

**Pro rata holiday pay**

Most awards and agreements make provision that the amount of pro rata holiday pay owing on termination is determined using one of the following calculations. The calculation of pro rata holiday pay for any period will be:

**EITHER**

- Total of the award rate for the period including leading hand or similar allowances (if applicable), divided by 12, plus 17.5% loading.

**OR**

- Total of the over-award wages for the period including all specified allowances divided by 12.

**The employee is entitled to the higher of the two calculations.**

For any period in excess of 12 months, the calculation includes 4 weeks for each completed year of employment (less any leave taken) plus pro rata holiday pay calculated as above for the period after the last completed full year of employment.

**Example**

An employee commenced employment on 21 May 2001 and terminated on 14 September 2001. The award rate on commencement was \$450.00 per week (for 5 weeks) but the employee was actually paid \$475.00 per week. On 25 June 2001 the award rate was increased to \$460.00 per week (for 12 weeks) and the employee's actual rate was increased to \$485.00 per week.

<b>(A)</b> 5 weeks x \$450.00 12 weeks x \$460.00	= = <hr style="width: 50%; margin: 0 auto;"/> =	\$2,250.00 \$5,520.00  <b>\$7,770.00</b>
1/12th of \$7,770.00 + 17.5% of \$647.50	= =	\$647.50 113.31

**How is annual leave and pro rata holiday pay calculated for employees NOT covered by an award or agreement?**

**Annual Leave**

Employees not covered by an award or agreement are paid their ordinary current rate of pay during annual leave. These employees have no entitlement to be paid the 17.5% loading. An employer and employee can however negotiate for payment of the loading to be made.

**Example**

An employee who is not covered by an award or agreement works for 18 months and decides to take all annual leave owing to them. Their wage paid at the time of taking leave is \$475.00 per week.

4 weeks x \$475.00	=	<b>\$1,900.00</b>
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**Pro rata holiday**

Employees whose employment is not covered by an award or agreement can determine pro rata holiday pay owing for periods of less than 12 months on termination with the following calculation:

- Total number of days (including weekends) divided by 365 days multiplied by 4 weeks at the current rate of pay

For any period in excess of 12 months, the calculation includes 4 weeks for each completed year of employment (less any leave taken) plus pro rata holiday pay calculated as above.

**Example**

An employee commenced employment on 21 May 2001 and terminated on 14 September 2001. On commencement the employee was being paid \$475.00 per week (for 5 weeks). On 25 June 2001 the employee's rate was increased to \$485.00 per week (for 12 weeks).

$$\begin{array}{rcl}
117/365 \times 4 \text{ weeks pay:} & & \\
= & 117/365 \times (4 \times \$485.00) & \\
= & 117/365 \times \$1,940.00 & \\
= & \underline{\hspace{1.5cm}} & \\
& & \mathbf{\$621.86}
\end{array}$$

**Note:** 117 = number of days from 21 May to 14 September 2001.

## What effect does annual leave have on notice of termination?

An employer does not have the authority to instruct that an employee take annual leave during a notice of termination period. Annual leave cannot be counted as or form part of a notice period. Notice can be given by the employer whilst the employee is on annual leave, however the notice will not commence until the employee returns to work after taking the annual leave.

In a situation where notice has been given and this notice extends into an annual leave period the notice will cease while the employee is on annual leave and recommence when the annual leave concludes.

Alternatively an employee is entitled to give notice whilst on annual leave provided that an industrial instrument has no provision in relation to notice forming part of the annual leave. If the required notice is in excess of the period of annual leave, the employee may lose part payment in lieu of the appropriate notice not being given or return to work for the balance of the notice to which the employer is entitled.

## Am I able to "cash in" on my annual leave?

No. Annual leave cannot be paid out to an employee unless the employee is actually taking time away from work for annual leave purposes or has terminated employment with the employer. Employers should be aware that at law, payment for annual leave at any other time would not be considered payment for annual leave.

## Does annual leave continue to accumulate?

Generally, annual leave continues to accumulate indefinitely. However, some awards and agreements restrict the accumulation (e.g. to two years).

## When can an employee take annual leave?

An employee receives their annual leave credit at the end of each completed year of employment. However, the Act permits an employer and employee to agree that annual leave be taken by the employee before they become entitled to it.

The Act also provides that an employer and employee may agree on when annual leave is to be taken but if no agreement can be reached, the employer:

- may decide when the employee is to take annual leave; and
- must give the employee at least 14 days written notice of the starting date of the leave.

## When must annual leave payments be made?

Unless an employee and employer otherwise agree, annual leave payments must be made before the employee begins their leave. Payment for annual leave cannot be made instead of taking the leave, except on the termination of employment. Special arrangements exist relating to the transfer of employees at the time of the sale of a business.

## How do periods of unpaid leave affect annual leave?

Any period of unpaid leave granted by an employer or any period of unpaid leave on account of illness or injury, of three months or less will not affect when annual leave becomes due to an employee. However, any period in excess of the three months will affect the due date accordingly. An absence of five months, for example, would postpone the date on which leave comes due by two months (i.e. the period in excess of three months).

For example this means that annual leave accumulates only during the first three months of parental leave.

## I've fallen ill whilst I have been on holidays.

Unless there is specific provision made in an award or agreement to cover the situation it is considered that an employee cannot legally claim additional leave in lieu of illness that occurred during annual leave.

## How do public holidays affect annual leave?

Annual leave is exclusive of public holidays. Therefore any public holidays falling within a period of annual leave must be added to the leave.

In some awards and agreements additional annual leave has been granted instead of receiving penalty rates for work on specified public holidays. Refer to those awards for specific particulars.

### **How does a public holiday affect annual leave payable on termination?**

The Act provides that when employment ends and an employee has not taken all their annual leave, they are presumed to have taken annual leave from the day of termination. An employer must immediately pay an employee for annual leave not taken including any public holiday occurring during the presumed leave period.

### **Can annual leave transfer from one employer to another?**

The Act provides for certain leave entitlements to transfer from one employer to another when a transfer of a calling takes place. For example, when a business changes hands or is sold and the new employer continues to employ any existing staff, responsibility for annual leave entitlements accumulated with the previous employer transfers to the new employer.

The transfer of entitlement also occurs if an employee is dismissed at the time the business changes hands or within the preceding month and is subsequently employed by the new employer within three months.

However, if an employee is paid all annual leave owing at the time of the transfer by their previous employer, they cannot subsequently claim entitlement to that leave from their new employer.

### **What is an 'annual close down'?**

An employer may wish to close down their business operations for a period of time around Christmas. Some awards and agreements do make specific provision regarding annual closedown (also known as stand down), however, where there is no such provision, employers could use the following options in negotiations with employees:

For employees (excluding casuals) with annual leave due, the employees would be paid annual leave for the period of the closure (in addition to payment for public holidays). The employer is required to give notice as prescribed by the Act or by the relevant award or agreement (the latter if it includes such a provision).

For employees (excluding casuals) who do not have annual leave due, the employer could, by mutual agreement, grant annual leave in advance.

### **Can an employer terminate an employee who is on annual leave?**

No. The initial notification of Termination may be given by the employer whilst the employee is on annual leave, however the notice will not commence until the employee returns to work after the conclusion of annual leave.

In a situation where Notice has been given and this notice extends into an annual leave period the notice will cease while the employee is on annual leave and recommence when the annual leave concludes.

### **Can an employee terminate their employment while on annual leave?**

Yes, provided the relevant industrial instrument does not contain a specific provision precluding annual leave from being counted as notice .

**Note:** An employee may forfeit wages if they fail to return to work when the notice period exceeds the annual leave period.

### **Employer obligations after 1 September 2005**

On 1 September 2005 the Industrial Relations Act 1999 was amended to protect certain employee's entitlement to 17.5% leave loading.

### **Who is affected by these changes?**

Generally employers and workers annual leave will be unaffected unless they are covered by:

- State awards, agreements or an order for apprentices and trainees made after 1 September 2005, (certified agreements where the applications to certify were made on or before 1 September 2005 are excluded).
- Federal awards made or varied after 1 September 2005.
- Federal agreements made, varied or approved after 1 September 2005 (federal agreements, where the application to certify were made on or before 1 September 2005 are excluded).

## Where can I get more information?

### Contact

- Wageline  
4<sup>th</sup> Floor, Centro Lutwyche  
543 Lutwyche Road, Lutwyche Q. 4030  
(or) PO Box 820, Lutwyche Q. 4030
- Wageline Information Centre: Ph: 1300 369 945\*
- Fax: (07) 3872 0519
- Web site: [www.wageline.qld.gov.au](http://www.wageline.qld.gov.au)
- Telephone Interpreter Service: Ph: 131 450

\* Local call cost (mobiles & payphones may be extra)

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