



All you ever wanted to know about your annual leave entitlements

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Annual leave is one of the oldest entitlements available to employees. Paid annual leave dates back to 1935 when employees with the Printers Union successfully fought for one week of paid leave per year.

It is fair to say that times have changed since 1935 – now annual leave entitlements apply to the majority of the workforce and in 2009, annual leave was enshrined in the [National Employment Standards \(NES\)](#) as one of the 10 minimum entitlements available to employees.

However, there is still a degree of variation in annual leave entitlements, depending on the terms of the applicable award, enterprise agreement, or even the terms of an individual's contract of employment.

In this post, we set out to answer some of the common questions regarding annual leave entitlements for employees in the federal system in Australia.

What are my annual leave entitlements?

Under the NES, employees (other than casual employees) working 38 hours per week, are entitled to 4 weeks of paid annual leave per year. Employees who are classified as 'shift workers' under the *Fair Work Act 2009* (the Act) are entitled to 5 weeks of paid annual leave per year.

Importantly, [in the recent Federal Court decision in the matter of *Workpac v Skene* \[2018\] FCAFC 131](#), the Full Court of the Federal Court confirmed that paid annual leave under the Act is an entitlement afforded to all employees other than casual employees.

The decision in *Skene* cast the entitlement to annual leave in a broad light and confirmed that it is not so much **what you are** that gives you an entitlement to annual leave, but **what you are not**. That is, you don't have to prove that you are a permanent employee, you simply have to prove that you are 'something other than a casual employee'.

Unfortunately for employees who are engaged, paid and work as casual employees, there is no entitlement to paid annual leave under the NES.

Can I be sacked while on annual leave?

Yes, you can still be sacked when you are on annual leave provided that the reasons for your dismissal are unrelated to your taking annual leave.

If your dismissal while on annual leave is nothing more than a coincidence, then the dismissal is not unlawful just because it occurred while you were on annual leave.

Terminating an employee while they are on annual leave can, however, have a bearing on the notice period required to be provided. This issue [may be raised in the course of an unfair dismissal proceeding](#) if it has a bearing on:

- whether the employee was provided with an opportunity to respond to the reasons for termination;
- the harshness of the termination; or
- whether an extension of time should be granted (if the application was made outside the required timeframe due to the employee's leave).

Can my employer force me to take annual leave?

Generally, annual leave should be taken by agreement and at a time that is mutually convenient to both the employee and the employer.

Under s.88 of the Act, the employer cannot unreasonably refuse an employee's request to take paid annual leave however, an employer may refuse a leave request if genuine operational requirements underpin the refusal. Under s.94(5) of the Act, an employer may direct an employee to take a period of annual leave (but only if the direction is lawful and reasonable).

A reasonable direction to take annual leave may arise in circumstances where the employee has accrued an excessive amount of annual leave (for example, over 8 weeks of annual leave) or where the employer's business is being shut down for a period (for example, between Christmas and New Year).

Can I cash out my annual leave?

If you are not covered by an award or an agreement, you can reach an agreement with your employer to the effect that your annual leave entitlements are paid to you without you taking leave (aka 'cashing out' annual leave).

However, each agreement to cash out a particular amount of paid annual leave must be a separate agreement, in writing, and the employer and employee must not agree to cash out annual leave if the result would leave the employee with less than four weeks leave accrued.

If a portion of your annual leave is cashed out, the employer must pay you the full amount that would have been payable if you had taken the leave.

If you are covered by an award or an agreement, there may be clauses in these instruments that set out the steps that need to be followed when cashing out annual leave. If there is no clause in your award or agreement that permits the cashing out of annual leave, then you will not be able to cash out your leave.

Should I be paid leave loading?

There is no entitlement to be paid leave loading (typically an amount of 17.5%) under the Act. An entitlement to leave loading may be found in the applicable award or agreement, or the employee's contract of employment.

In order to determine if you are entitled to leave loading, you will need to check the relevant award or enterprise agreement, and your employment contract.

Can I buy annual leave?

There is no express right to purchase additional leave if your statutory entitlements have been exhausted.

That said, some employers are willing to enter into arrangements with their employees where:

1. additional leave can be purchased;
2. an employee may be permitted to take unpaid leave or leave at half-pay; or
3. in certain circumstances, the employee may be permitted to overdraw their leave balance.

What happens to my accrued annual leave if I am sacked or I resign?

If you are sacked or resign, the employer is required to pay you your accrued but untaken annual leave entitlements. These payments should be processed as soon as possible after your employment ends, but no later than one month after the employment ends.

Get help from an employment lawyer

If you believe your annual leave rights and entitlements are not being met by your employer or you [have any other employment law concerns, you should contact one of our employment lawyers.](#)

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