



Effective Workplace Solutions

## CLIENT ALERT

### CASHING OUT OF ANNUAL LEAVE PROVISIONS FINALLY DECIDED BY THE FWC

**AUGUST 2016**

To All of My Valued Clients,

This Client Alert is to advise that the FWC has finally announced the details of the variations to Awards regarding the cashing out of Annual Leave and the taking of excessive annual leave. These variations arise from the decision of the Commission over 12 months ago. If you need further information in relation to this issue please do not hesitate to contact me.

**Greg Arnold**

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**FWC finally changes  
Annual Leave  
Provisions in  
Awards**

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# FWC FINALLY RELEASES ANNUAL LEAVE CASHING OUT PROVISIONS

The Fair Work Commission (FWC) has finally announced the details of the changes to Awards to reflect the outcome of last years decision in relation to the cashing out of annual leave and the taking of excessive annual leave. These provisions shall operate from the first pay period after 29 July 2016.

Whilst the wording of the variations for each Award have been released, the official Awards from the FWC have not been varied at this point in time.

The majority of Awards are to be varied by the FWC, and the wording for these clause in the Awards are basically the same for all Awards with some subtle differences depending on the industry. However a summary of the changes is as follows:

## 1. Cashing out of Annual Leave

Awards will now allow employees to cash out annual leave, provided they:

- have at least 4 weeks annual leave left after the cash out
- have a signed written agreement with their employer
- cannot cash out more than two weeks each 12 months.

## 2. Taking Annual Leave in Advance

Awards will allow employees to take annual leave before they have accrued it if their employer agrees in writing. The agreement needs to:

- be signed by both the employer and the employee
- state how much annual leave is being taken in advance
- state the day the leave will start.

## 3. Managing Excessive Annual Leave Balances

Employers are now able to more precisely manage excessive annual leave and there is now certainty about the directions employers are able to give to staff about the taking of excessive leave. Excessive annual leave is when an employee has accumulated at least eight weeks of leave (or 10 weeks in the case of a shiftworker).

### (a) Direction by employer

If an employee has an excessive annual leave balance and can't agree with an employer on when to take the leave, the employer can:

- direct the employee, in writing, that they must take annual leave
- provide the employee with at least eight weeks' notice (and not more than 12 months) of when the leave will start.

There are also provisions about the length of the period of leave and the number of weeks of leave that the employee must retain as a "bank" after the taking of leave in these circumstances.

### **(b) Notice by employee**

Some awards will now have a new clause allowing employees with excessive annual leave balances to advise their employer when they will take a period of leave. This clause however has a different operative date and takes effect from **29 July 2017**.

Until July 2017, employees who are covered by these awards and have large amounts of accrued annual leave should follow the normal process for requesting annual leave.

### **4. Payment for Annual Leave**

Most awards provide that annual leave has to be paid prior to an employee commencing leave. A new clause has been added to these awards. Now, if an employee is paid by electronic funds transfer (EFT), they can continue to be paid using their usual pay cycle during periods of leave.

If you require a copy of the precise wording of the clause for your Award, let me know I shall forward it to you. However it is hoped that the official variation to the Awards in the FWC should be completed very soon.

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