

# Cashing in Leave Addressed

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Last week we offered some explanation in the Full Bench of Fair Work Commission's decision in relation to excessive annual leave ([2015] FWCFB 3406). This week we will consider what the Full Bench decided in relation to cashing out annual leave.

Currently the *Fair Work Act 2009* deals with cashing out annual leave for those employees subject to a modern award or enterprise agreement (section 93) and for those employees who are "award or agreement free" (section 94).

The Full Court considered the need for a model term to be inserted into modern awards, dealing with how an employee may cash out their annual leave.

Despite union groups submitting that such a term would undermine the very purpose of annual leave, the Full Court pointed out that the National Employment Standards include provisions regarding the need for annual leave, and those particular standards already set out minimum entitlements, along with the cashing out of those entitlements in certain circumstances.

The Full Bench decided that it would be appropriate for a model term to be incorporated into all modern awards to ensure that the modern awards are relevant to the needs of the modern workplace while also providing an adequate safety net to protect employees. The Full Bench considered that such a model term would facilitate the making of mutually beneficial agreements (paragraph 322).

As a result, the model term incorporates various requirements to do with:

- Ensuring employees don't cut themselves short in terms of the annual leave that they save for a rainy day;
- Precise record keeping of agreements to cash out;
- Protection of employees under the age of 18 years (by involving a parent/guardian in the process); and
- Protections against undue influence and misrepresentation.

The outcome is that the model term addressing the way in which an agreement shall be made as to cashing out of annual leave shall be incorporated into all 122 modern awards.



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Elspeth's articles can be accessed on the Daily Mercury website at <http://www.dailymercury.com.au/topic/elspeth-ledwy/> or you can find Elspeth's column "Mind Your Own Business" in the Daily Mercury newspaper each Wednesday.



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