

Employers Get Way on Leave

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Within the past few weeks we have been considering the impact of the review of modern awards since the decision of the Full Bench of the Fair Work Commission.

One of the factors considered was the taking of leave in advance, resulting in the inclusion of a clause in some 48 awards that:

- Allows for the taking of annual leave prior to it being accrued (by agreement between the employer and employee); and
- Determines what happens when an employee has a negative leave balance upon termination of their employment.

Despite resistance from the employee groups, the Full Bench agreed with the view of the employer group and as a result drafted and imposed the “model term” into those 48 awards. Furthermore, it was the opinion of the FWC that the “model term” would be appropriate for other awards, and invited opinions on that particular matter for future consideration.

The FWC considered various surveys, including a survey that addressed how many employees who have applied for annual leave (prior to it being formally accrued). Of the employers surveyed, 61.2% of them had received requests from employees for taking leave in advance.

There are numerous situations that may arise where employees might need to apply for leave in advance rather than unpaid leave, so employers will, from time to time need to know how to deal with requests of that nature

Some 74 modern awards already contain a clause permitting the taking of annual leave in advance (see paragraph 387). The remaining 48 modern awards shall now include the “model term”.

What this means is that the taking of annual leave in advance is now addressed in all modern awards in one way or another but it remains to be seen if the Fair Work Commission will establish a uniform approach across all 122 awards on how to apply for, grant, and be reimbursed for leave in advance.



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