

10 Days Personal Leave for All Employees

A Federal Court decision last week has confirmed that employers are required to provide all part-time and full-time employees with 10 days of personal leave – regardless of the number of hours they actually work.

The ability to access personal leave in times of injury or illness is a vital form of income protection for many Australians. In fact, the entitlement is so important that it's enshrined within the Fair Work Act 2009 (Cth) as one of ten National Employment Standards (**NES**) that apply to Australian workers.

Under the Act, at *section 96*, an employee is entitled to up to 10 days of paid personal/carer's leave for each year of service with his or her employer, ordinarily accrued and **accessed in terms of hours**.

However, the Full Federal Court last week considered whether this approach was actually the correct interpretation of the entitlement.

The case involved Cadbury's parent company Mondelez, arguing that the 10 day entitlement should be construed according to the employee's average daily ordinary hours based on a five-day working week—that is, the worker's average weekly ordinary hours divided by five (the **Notional Day**).

However, two Mondelez employees argued that the word "day" should have its ordinary meaning of a "calendar day", that includes the entire 24 hour period (the **Working Day**).

The workers argued that personal leave should provide for a total of 10 calendar days per year that allow employees to be absent for the entirety of the day without loss of pay, rather than a set number of hours which caused disadvantage to those who employees worked fewer but longer shifts.

Mondelez disagreed with this by stating that it was inequitable to allow some employees access to additional personal/carer's leave in circumstances where employees who work the standard five-day week would receive less.

The Court rejected this by stating that if all classes of employee were able to take an equal number of working days as paid personal leave, and result in neither losing income, then it was not only equitable for employees, but in accordance with the FWA's explicit wording of the 10 day entitlement.

Ultimately, the Full Court upheld the Calendar Day approach and rejected Mondelez's as being inconsistent with the purpose of income protection as provided for under the NES.

Now, all part-time and full-time employees are entitled to 10 Working Days of personal leave, regardless of their hours of work.

The implications of this decision are yet to be fully tested and it's uncertain whether there will be flow on effects for the accrual and access of annual leave. It is also unclear as to whether Mondelez intends to appeal the decision.

Nevertheless, it is clear that employers must now accrue personal leave in terms of days rather than hours and employees should be paid for the entirety of their shift when accessing such leave. We recommend that employers review their current personal leave arrangements with shift workers and those who regularly work in excess of the 9 to 5 shift, as the Mondelez case will obviously affect these employees most.

If you remain uncertain about the implications of this case and how it may affect your business or need to discuss employment matters generally, please contact our [Workplace Team](#).

You can read the full case here: [Mondelez v AMWU & Ors \[2019\] FCAFC 138](#)

For more information contact our [Workplace Team](#).

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