

Change to cashing out of leave arrangements to impact all modern awards

As part of its review of all modern awards, the Full Bench has recently made a bold move to amend all modern awards so as to allow for the cashing out of annual leave, in certain circumstances.

The discussion to include provisions in all modern awards to allow for the cashing out of annual leave is not new and has been consistently debated and considered since the commencement of the Fair Work Commission's four yearly review of all modern awards back in 2014.

The Full Bench however, following the Commission's reluctance to make any changes of its own regarding the issue, has only just recently closed the book on the issue by declaring that all modern awards will be varied to include a model term that enables employees to cash out their annual leave entitlements.

Under the new modern award provision, in order for an employee to cash out annual leave:

- an agreement between the employer and employee must be reached and be in writing (and specific content requirements for such agreements will also apply);
- if the employee is under 18 years of age, the agreement to cash out paid annual leave must be signed by the employee's parent or guardian;
- the employee must retain a minimum of four weeks of accrued annual leave after they cash out a portion of their accrued entitlements;
- the employee must be paid the full amount they would have received had they taken leave at the time that it is cashed out;
- a maximum of two weeks paid annual leave can be cashed out in any 12-month period (in the case of part-time employees, this is based on the employee's weekly ordinary hours);
- employers will be required to adhere to specific record keeping obligations for all agreements reached to cash out an employee's annual leave; and
- employers cannot influence or misrepresent an employee's rights under the clause.

In addition, the Full Bench also moved to vary the model term to allow for annual leave to be paid in an employee's regular pay cycle where the employee is paid by electronic funds transfer, instead of the current requirement for the employee to be paid in advance of taking leave.

Certain awards that already contained provisions dealing with excessive annual leave and taking leave in advance have also been amended to ensure consistency across all modern awards.
