



Australian Government

# WorkChoices

## **Annual leave and the Australian Fair Pay and Conditions Standard**

Under WorkChoices, annual leave is protected by the Australian Fair Pay and Conditions Standard (the Standard).

All full-time and part-time employees covered by the federal workplace relations system (WorkChoices) are entitled to annual leave.

Employees covered by existing state or federal agreements are not covered by the Standard until their agreement is terminated or they enter into a new agreement.

Casual employees are not entitled to annual leave under the Standard.

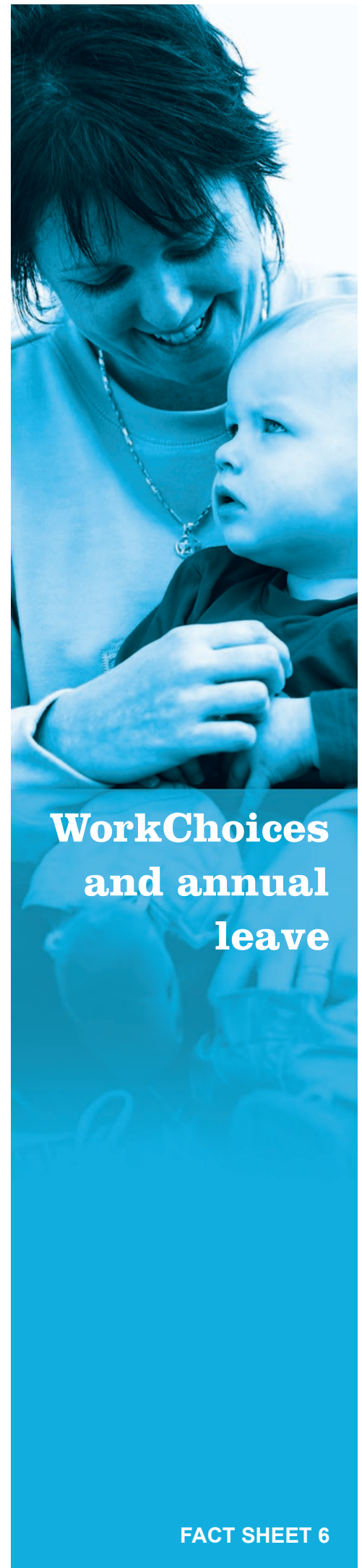
Full-time employees accrue the equivalent of four weeks of paid annual leave each year. Part-time employees accrue paid annual leave on a pro-rata basis. Annual leave accrues for each completed four week period of continuous service.

The Standard provides for a minimum amount of paid annual leave. This means employers and employees can use agreement making to provide for a higher amount of paid annual leave where this is a more beneficial arrangement.

## **Annual leave provisions for shift workers**

Shift workers (as defined in the Workplace Relations Act) are entitled to accrue one week of annual leave each year in addition to the minimum four weeks in the Standard. A shift worker is an employee who:

- is employed in a business in which shifts are continuously rostered 24 hours a day for 7 days a week; and



## **WorkChoices and annual leave**

- is regularly rostered to work those shifts; and
- regularly works on Sundays and public holidays.

### **Annual leave and awards**

Existing award terms relating to annual leave are 'preserved' under WorkChoices. Preserved award terms cannot be varied.

If an employee's preserved award entitlement to annual leave is more generous than the Standard, the preserved award entitlement applies. The preserved award term will be considered more generous where the employee is entitled to a greater amount of paid annual leave than they would be entitled to under the Standard. In that circumstance, the preserved award term will apply to the employee. Any administrative clauses relating to the annual leave entitlements in the award (e.g. how leave is taken) will also apply to the employee.

### **Cashing out annual leave**

Employees may request to cash out up to two weeks of their credited annual leave entitlement every 12 months (or the pro-rata equivalent for part-time employees).

An employee cannot cash out any portion of annual leave unless a term in a workplace agreement expressly permits cashing out. A request to cash out annual leave must be in writing.

An employer must not require an employee to cash out an entitlement to annual leave, or exert undue influence or undue pressure on an employee in relation to a decision about whether or not to cash out a period of annual leave.

### **Calculating annual leave and rates of pay while on leave**

The Standard provides for four weeks of annual leave. An employee who is engaged for a specified number of ordinary hours per week is guaranteed to accrue leave entitlements based on that number of hours, irrespective of the number of hours actually worked. Annual leave accrual for these employees cannot exceed four weeks and must be credited to the employee's leave balance on a monthly basis.

Through agreement making, employers and employees can elect to change this to a more beneficial arrangement.

For example:

- a full-time employee engaged to work 38 hours per week will accrue 11.7 hours of annual leave at the end of each completed 4 week period (1/13 of 152 hours every 4 weeks). If the employee's nominal hours worked do not vary, the employee will accrue 152 hours of annual leave in a 12 month period (which is the equivalent of four 38 hour weeks).
- a part-time employee engaged to work for 19 hours per week will accrue 5.85 hours of annual leave at the end of each completed 4 week period (1/13 of 76 hours every 4 weeks). If the employee's nominal hours worked do not vary, the employee will accrue 76 hours of annual leave in a 12 month period (which is the equivalent of four 19 hour weeks).

An employee can only take a period of annual leave once the leave has accrued and been credited to the employee.

Employees who are engaged to work an irregular number of ordinary hours per week may accrue a variable amount of annual leave from month to month but the total amount accrued cannot exceed four weeks per year.

The rate of pay that an employee receives while on annual leave must be at least equal to the employee's basic periodic rate of pay immediately before the period of leave begins. 'Basic periodic rate of pay' means a rate of pay that does not include entitlements such as incentive-based payments and bonuses, loadings, monetary allowances, or penalty rates.

### **When and how annual leave can be taken**

The Standard does not prescribe the way in which annual leave is to be taken (e.g. over a period of weeks or days). An employee can take any amount of annual leave credited to them provided their employer authorises the proposed period of leave.

An employer can refuse to authorise a period of annual leave because of the operational requirements of the workplace. However, an employer must not unreasonably refuse to approve any period of annual leave or deny an employee annual leave that has already been authorised.

An employer may direct employees to take paid annual leave for a particular period when the employer shuts down the business, or any part of the business, in which an employee works (e.g. between Christmas and New Year's Day or over Easter). An employer can only direct an employee to take annual leave if the employee has accrued and been credited with at least enough annual leave for the proposed shut down period.

An employer may direct an employee to take a period of paid annual leave if the employee has accumulated an annual leave credit greater than what an employee would ordinarily accrue over two years. In this situation, the employer may direct the employee to take up to one quarter of his or her accumulated annual leave credit.

### **Other issues**

An employee's continuity of service with their employer is not affected by taking a period of annual leave. Annual leave counts as service for all purposes under the Standard.

Any provisions in applicable Commonwealth, state or territory workers' compensation legislation or related regulations that cap or prevent annual leave accrual while an employee is on workers' compensation will still apply.

An employee is entitled to receive payment for the balance of their credited annual leave when they cease employment. The rate of payment must be at least equal to the employee's basic periodic rate of pay at the time that the employment ceased.

WorkChoices is a new system of workplace relations legislation that covers up to 85 per cent of Australian employees. This series of fact sheets is available to assist workers and employers to understand their rights and obligations under the legislation.

For more information call the **WorkChoices Infoline** on **1300 363 264** or visit the **WorkChoices** website **[www.workchoices.gov.au](http://www.workchoices.gov.au)**



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