

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Budget Estimates 2011-2012**

Outcome 5 - Workplace Relations

DEEWR Question No. EW0053_12

Senator Abetz provided in writing.

Question

Leave Loading

In relation to annual leave loading being payable on eligible employees untaken leave when employment has ceased: a. What advice has the Government given to the Ombudsman giving to employers about paying the loading? b. Where an employer acts on advice from an employer organisation and does not pay the loading, what position does the Government if the employee makes a complaint about not being paid the loading? c. Will the payment of the loading on unused annual leave be applied retrospectively? i. If yes, who would determine what arrangements an employer can reasonably apply in order pay such an entitlement?

Answer

- a. What advice has the Government given to the Ombudsman giving to employers about paying the loading?

The Government shared with the Fair Work Ombudsman (FWO) advice it received from the Australian Government Solicitor about the rate at which unpaid annual leave is to be paid on termination of employment. No advice has been provided about the approach the FWO is taking in individual cases.

- b. Where an employer acts on advice from an employer organisation and does not pay the loading, what position does the Government if the employee makes a complaint about not being paid the loading?

The FWO has publicised its view of the operation of the *Fair Work Act 2009* in this regard, and the Government would encourage all parties to comply with the law.

The FWO is working with employers to voluntarily resolve any issues around leave loading. This is the way that the vast majority of cases that come to the FWO are resolved.

- c. Will the payment of the loading on unused annual leave be applied retrospectively? If yes, who would determine what arrangements an employer can reasonably apply in order to pay such an entitlement?

The National Employment Standards commenced on 1 January 2010. From that date, any unused annual leave is to be paid out on termination at the rate the

employee would have paid had they taken the leave loading. This is the case whether the leave accrued before or after 1 January 2010.

The FWO will work with employers to attempt to voluntarily resolve any issues regarding non payment of annual leave loading on termination. Where the FWO considers it appropriate, this may include allowing an employer to pay any outstanding entitlements owed to an employee by instalments.