

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

**QUESTIONS ON NOTICE
Supplementary Budget Estimates 2010-2011**

Outcome 5 - Workplace Relations

DEEWR Question No.EW0600_11

Senator Fisher asked on 20/10/2010, Hansard page 105.

Question

Modern Awards – Leave Loading

Senator FISHER—All right. Does moving to modernised awards in terms of the leave-loading type conditions prescribe that workers will get the higher level of their normal pay, which might include penalties and loadings, or the 17½ per cent holiday bonus? What are the typical provisions in terms of leave loading in modernised awards? Mr Kovacic—I really have to take that on notice because I do not know that I could generalise. There are 122 modern awards, and I could not give you a sensible answer—

Answer

By way of background, the general approach adopted by the Australian Industrial Relations Commission in developing modern awards was to adopt terms and conditions which had wide application in the existing awards in the industry or occupation, or were existing community standards. The Department examined annual leave loading provisions in a sample of 20 modern awards covering a range of industries and occupations. The examination revealed that the provisions had been tailored to the industry and occupation which they cover. The Department's examination revealed that:

Annual leave loading entitlements for non-shiftworkers:

- Six of the 20 modern awards (30 per cent of the sample) provide that employees other than shiftworkers will be paid the higher of an annual leave loading of 17.5 per cent or applicable weekend penalty rates.
- Nine of the 20 modern awards (45 per cent of the sample) provide that employees other than shiftworkers will be paid an additional 17.5 per cent of annual leave loading irrespective of penalty payments.
- A further five of the 20 modern awards (25 per cent of the sample) provide that all employees will be paid an additional annual leave loading of 17.5 per cent irrespective of penalty payments.

Annual leave loading entitlements for shiftworkers:

- Fifteen of the 20 modern awards (75 per cent of the sample) provide that shiftworkers will be paid the higher of an annual leave loading of 17.5 per cent or applicable penalty payments, which may include shift loadings, allowances and weekend penalties.
- The other five modern awards provide that all employees (including shiftworkers) will be paid an additional annual leave loading of 17.5 per cent irrespective of penalty payments.

Annual Leave Loading Provisions in Selected Modern Awards

Award	Annual Leave Loading Provisions	Summary
Aged Care Award 2010	<p>28.3 Annual Leave Loading</p> <p>(a) In addition to their ordinary pay, an employee, other than a shiftworker, will be paid an annual leave loading of 17.5 % of their ordinary rate of pay.</p> <p>(b) Shiftworkers, in addition to their ordinary pay, will be paid the higher of:</p> <p>(i) annual leave loading of 17.5% of their ordinary rate of pay; or</p> <p>(ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.</p>	<p>An employee other than a shiftworker will be paid an additional 17.5% annual leave loading.</p> <p>Shiftworkers will be paid the higher of an annual leave loading of 17.5% or the relevant weekend and shift penalties.</p>
Aircraft Cabin Crew Award 2010	<p>25.3 Annual leave loading</p> <p>In addition to the entitlement to payment under clause 25.2, an employee when proceeding on annual leave will be paid in respect of the first 28 of 42 days' annual leave falling due each year (inclusive of Saturdays, Sundays and public holidays) an annual leave loading equivalent to 17.5% of the base rate of pay.</p>	<p>Employees must be paid the additional 17.5% annual leave loading.</p>
Banking, Finance and Insurance Award 2010	<p>23.3 Annual leave loading</p> <p>(a) During a period of annual leave an employee will receive a loading calculated on the rate of wage prescribed in clause 13—Classifications and minimum wage rates. Annual leave loading payment is payable on leave accrued.</p> <p>(b) The loading is as follows:</p> <p>(i) Day work</p> <p>Employees who would have worked on day work only had they not been on leave—17.5% or the relevant weekend penalty rates, whichever is the greater but not both.</p> <p>(ii) Shiftwork</p> <p>Employees who would have worked on shiftwork had they not been on leave—17.5% or the shift loadings and relevant weekend penalty rates, whichever is the greater but not both.</p>	<p>Day workers will be paid the higher of an annual leave loading of 17.5% or their relevant weekend penalty rates.</p> <p>Shiftworkers will be paid the higher of an annual leave loading of 17.5% or the shift loading and relevant weekend penalty rates.</p>
Broadcasting and Recorded	23.7 Before the start of the employee's annual leave the employer must pay	Television broadcasting employees

Annual Leave Loading Provisions in Selected Modern Awards

<p>Entertainment Award 2010</p>	<p>the employee:</p> <p>(a) subject to clause 30.8, instead of the base rate of pay referred to in s.90(1) of the Act, the amount the employee would have earned for working their normal hours, exclusive of overtime had they not been on leave; and</p> <p>(b) an additional loading of 17.5% of the relevant minimum wage for their classification as set out in this award.</p>	<p>will be paid annual leave loading equivalent to 17.5% of the minimum wage for their classification.</p> <p>All other employees will be paid the amount they would have received for working their normal hours plus annual leave loading equivalent to 17.5% of the minimum wage for their classification.</p>
<p>Building and Construction General On-site Award 2010</p>	<p>38.2 Payment for annual leave</p> <p>(a) Instead of the base rate of pay as referred to in s.90(1) of the Act, an employee under this award, before going on annual leave, must be paid, in advance, the amount which they would have received for working ordinary time hours if they had not been on leave.</p> <p>(b) In addition to the payment prescribed in clause 38.2(a), an employee must receive during a period of annual leave a loading of 17.5% calculated on the rates, loadings and allowances prescribed by:</p> <ul style="list-style-type: none"> • clause 19.1(a)—Minimum wages; • clause 21.2—Industry allowance; • clause 21.3—Underground allowance; • clause 20.1—Tool and employee protection allowance; • clause 24—Living away from home—distant work; • clause 25—Fares and travel patterns allowance; and • clause 19.2—Leading hands (if applicable). <p>This loading will also apply to proportionate leave on lawful termination.</p> <p>(c) Instead of the payment in respect of annual leave loading provided for in clause 38.2(b), an employee who would have worked on shiftwork had they not been on leave and where the employee would have received shift loadings prescribed by clause 34—Shiftwork, had they not been on leave during the relevant period and such loadings would have entitled them to a greater</p>	<p>An employee other than a shiftworker will be paid an additional 17.5% annual leave loading.</p> <p>Shiftworkers will be paid the higher of an annual leave loading of 17.5% or the relevant shift loading.</p>

Annual Leave Loading Provisions in Selected Modern Awards

	amount than the loading of 17.5%, then the shift loading as prescribed in clause 34 will be included in the rate of wage prescribed by clause 38.2(b) instead of the 17.5% loading.	
Cleaning Services Award 2010	<p>29.4 Payment of annual leave</p> <p>(a) The terms of the NES prescribe the basis for payment for annual leave, including payment for untaken leave upon the termination of employment. In addition to the terms of the NES, an employer is required to pay an additional leave loading of 17.5% calculated on an employee's ordinary time rate of pay.</p> <p>(b) Provided that where the employee would have received a saved or transitional rate of pay, or shift, weekend (Saturday or Sunday), or public holiday penalty payments according to the roster or projected roster, had the employee not been on leave during the relevant period, and such saved, transitional or penalty payments would have entitled to employee to a greater amount than the loading of 17.5% on the rates set out in clause 16—Minimum wages of this award, then such rates will be paid instead of the 17.5% loading.</p>	Employees will be paid the higher of an additional 17.5% annual leave loading or a saved/transitional rate of pay, shift, weekend or public holidays penalty payment according to the roster or projected roster.
Clerks-Private Sector Award 2010	<p>29.3 Annual leave loading</p> <p>(a) During a period of annual leave an employee will receive a loading calculated on the rate of wage prescribed in clause 16—Minimum weekly wages. Annual leave loading payment is payable on leave accrued.</p> <p>(b) The loading is as follows:</p> <p>(i) Day work</p> <p>Employees who would have worked on day work only had they not been on leave—17.5% or the relevant weekend penalty rates, whichever is the greater but not both.</p> <p>(ii) Shiftwork</p> <p>Employees who would have worked on shiftwork had they not been on leave—a loading of 17.5% or the shift loading (including relevant weekend penalty rates) whichever is the greater but not both.</p>	<p>Day workers will be paid the higher of an annual leave loading of 17.5% or the relevant weekend penalty rates.</p> <p>Shiftworkers will be paid the higher of an annual leave loading of 17.5% or the shift loading (including relevant weekend penalty rates).</p>
Electrical, Electronic and	28.2 Payment for annual leave	An employee other than a shiftworker will

Annual Leave Loading Provisions in Selected Modern Awards

<p>Communications Contracting Award 2010</p>	<p>(a) The NES prescribes the basis for payment for annual leave, including payment for untaken leave upon the termination of employment.</p> <p>(b) Instead of the base rate of pay specified in the NES, an employee under this award, before going on annual leave, must be paid the wages they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period, exclusive of payments in respect of overtime, special rates, travel and fares or any other payment which might have been payable to the employee as a reimbursement for expenses incurred.</p> <p>28.3 Annual leave loading</p> <p>In addition to the payment provided for in clause 28.2, an employer is required to pay an additional leave loading as follows:</p> <p>(a) Day work</p> <p>When an employee takes a period of paid annual leave, the employee will be paid an annual leave loading of 17.5% of the payment under clause 28.2.</p> <p>(b) Shiftwork</p> <p>Where the employee would have received shift loadings had the employee not been on leave during the relevant period and such loadings would have entitled the employee to a greater amount than a loading of 17.5% of the payment under clause 28.2, then the shift loadings must be added to the rate of wage prescribed by this subclause instead of the 17.5% loading.</p>	<p>be paid an additional 17.5% annual leave loading.</p> <p>Shiftworkers will be paid the higher of an annual leave loading of 17.5% or the relevant shift loadings.</p>
<p>Food, Beverage and Tobacco Manufacturing Award 2010</p>	<p>34.4 Payment for period of annual leave</p> <p>(a) Instead of the base rate of pay as referred to in s.90(1) of the Act, an employee under this award, before going on annual leave, must be paid the wages they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.</p> <p>(b) Subject to clause 34.4(c), the wages to be paid must be worked out on the basis of what the employee would have been paid under this award for working ordinary hours during the period of annual leave, including allowances, loadings and penalties paid for all purposes of the award, first aid</p>	<p>Day workers will be paid the higher of an annual leave loading of 17.5% or the relevant weekend penalty rates.</p> <p>Shiftworkers will be paid the higher of an annual leave loading of 17.5% or the shift loading including relevant weekend penalty rates.</p>

Annual Leave Loading Provisions in Selected Modern Awards

	<p>allowance and any other wages payable under the employee’s contract of employment including any overaward payment.</p> <p>(c) The employee is not entitled to payments in respect of overtime, special rates or any other payment which might have been payable to the employee as a reimbursement for expenses incurred.</p> <p>34.5 Annual leave loading</p> <p>(a) Subject to clause 34.5(b), during a period of annual leave an employee must also be paid a loading calculated on the wages prescribed in clause 34.4. The loading must be as follows:</p> <p>(i) Day work</p> <p>An employee who would have worked on day work only had they not been on leave must be paid a loading equal to 17.5% of the wages prescribed in clause 34.4 or the relevant weekend penalty rates, whichever is the greater but not both.</p> <p>(ii) Shiftwork</p> <p>An employee who would have worked on shiftwork had they not been on leave must be paid a loading equal to 17.5% of the wages prescribed in clause 34.4 or the shift loading including relevant weekend penalty rates, whichever is the greater but not both.</p> <p>(b) An employee entitled to the payment of an annual leave bonus in accordance with clause 34.6 is not entitled to the payment of an annual leave loading in accordance with clause 34.5(a).</p> <p>(c) Clause 34.5(b) ceases to operate on 31 December 2014.</p>	
<p>General Retail Industry Award 2010</p>	<p>32.3 Annual leave loading</p> <p>(a) During a period of annual leave an employee will receive a loading calculated on the rate of wage prescribed in clause 17—Minimum weekly wages of this award. Annual leave loading is payable on leave accrued.</p> <p>(b) The loading will be as follows:</p> <p>(i) Day work</p>	<p>Day workers will be paid the higher of an annual leave loading of 17.5% or the relevant weekend penalty rates.</p> <p>Shiftworkers will be paid the higher of an annual leave loading of 17.5% or the shift loading including relevant weekend penalty rates.</p>

Annual Leave Loading Provisions in Selected Modern Awards

	<p>Employees who would have worked on day work only had they not been on leave—17.5% or the relevant weekend penalty rates, whichever is the greater but not both.</p> <p>(ii) Shiftwork</p> <p>Employees who would have worked on shiftwork had they not been on leave—a loading of 17.5% or the shift loading (including relevant weekend penalty rates) whichever is the greater but not both.</p>	
Health Professionals and Support Services Award 2010	<p>31.2 Annual leave loading</p> <p>(a) In addition to their ordinary pay, an employee, other than a shiftworker, will be paid an annual leave loading of 17.5% of their ordinary rate of pay.</p> <p>(b) Shiftworkers, in addition to their ordinary pay, will be paid the higher of:</p> <p>(i) an annual leave loading of 17.5% of their ordinary rate of pay; or</p> <p>(ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.</p>	<p>An employee other than a shiftworker will be paid an additional 17.5% annual leave loading.</p> <p>Shiftworkers will be paid the higher of an annual leave loading of 17.5% or the relevant weekend and shift penalties.</p>
Horticulture Award 2010	<p>25.5 Payment for period of annual leave</p> <p>Instead of the base rate of pay as referred to in s.90(1) of the Act, an employee under this award, before going on annual leave, must be paid the wages they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.</p> <p>25.6 Annual leave loading</p> <p>During a period of annual leave an employee must also be paid an annual leave loading equal to 17.5% of the wages prescribed in clause 25.5.</p>	<p>Employees must be paid the additional 17.5% annual leave loading.</p>
Hospitality Industry (General) Award 2010	<p>34.2 Payment for annual leave</p> <p>The NES prescribes the basis for payment for annual leave, including payment for untaken leave upon the termination of employment.</p> <p>In addition to the payment provided for in the NES, an employer is required to pay an additional leave loading of 17.5% of that payment.</p>	<p>Employees must be paid the additional 17.5% annual leave loading.</p>

Annual Leave Loading Provisions in Selected Modern Awards

<p>Manufacturing and Associated Industries and Occupations Award 2010</p>	<p>41.4 Payment for period of annual leave</p> <p>(a) Instead of the base rate of pay as referred to in s.90(1) of the Act, an employee under this award, before going on annual leave, must be paid the wages they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.</p> <p>(b) Subject to clause 41.4(c), the wages to be paid must be worked out on the basis of what the employee would have been paid under this award for working ordinary hours during the period of annual leave, including allowances, loadings and penalties paid for all purposes of the award, first aid allowance and any other wages payable under the employee’s contract of employment including any overaward payment.</p> <p>(c) The employee is not entitled to payments in respect of overtime, special rates or any other payment which might have been payable to the employee as a reimbursement for expenses incurred.</p> <p>41.5 Annual leave loading</p> <p>(a) During a period of annual leave an employee must also be paid a loading calculated on the wages prescribed in clause 41.4.</p> <p>(b) The loading must be as follows:</p> <p>(i) Day work</p> <p>An employee who would have worked on day work only had they not been on leave must be paid a loading equal to 17.5% of the wages prescribed in clause 41.4 or the relevant weekend penalty rates, whichever is the greater but not both.</p> <p>(ii) Shiftwork</p> <p>An employee who would have worked on shiftwork had they not been on leave must be paid a loading equal to 17.5% of the wages prescribed in clause 41.4 or the shift loading including relevant weekend penalty rates, whichever is the greater but not both.</p>	<p>Day workers will be paid the higher of an annual leave loading of 17.5% or the relevant weekend penalty rates.</p> <p>Shiftworkers will be paid the higher of an annual leave loading of 17.5% or the shift loading including relevant weekend penalty rates.</p>
<p>Nurses Award 2010</p>	<p>31.4 Annual leave loading</p> <p>(a) In addition to their ordinary pay, an employee, other than a shiftworker,</p>	<p>An employee other than a shiftworker will be paid an additional 17.5% annual leave</p>

Annual Leave Loading Provisions in Selected Modern Awards

	<p>will be paid an annual leave loading of 17.5% of their ordinary pay on a maximum of 152 hours/four weeks annual leave per annum.</p> <p>(b) Shiftworkers, in addition to their ordinary pay, will be paid the higher of:</p> <p>(i) an annual leave loading of 17.5% of ordinary pay; or</p> <p>(ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.</p>	<p>loading.</p> <p>Shiftworkers will be paid the higher of an annual leave loading of 17.5% or the relevant weekend and shift penalties.</p>
Restaurant Industry Award 2010	<p>35.2 Payment for annual leave</p> <p>(a) The NES prescribes the basis for payment for annual leave, including payment for untaken leave upon the termination of employment.</p> <p>(b) In addition to the payment provided for in the NES, an employer is required to pay an additional leave loading of 17.5% of that payment.</p>	<p>Employees must be paid the additional 17.5% annual leave loading.</p>
Road Transport and Distribution Award 2010	<p>29.2 During a period of annual leave an employee will receive a loading calculated on the minimum wage rate in clause 15 of this award. Annual leave loading payment is payable on leave accrued and taken but it is not payable on leave paid out on termination.</p> <p>The loading is as follows:</p> <p>(a) Day work</p> <p>Employees who would have worked on day work only had they not been on leave—17.5% or the relevant weekend penalty rates, whichever is the greater but not both.</p> <p>(b) Shiftwork</p> <p>Employees who would have worked on shiftwork had they not been on leave—a loading of 17.5% or the shift loading (including relevant weekend penalty rates) whichever is the greater but not both.</p>	<p>Day workers will be paid the higher of an annual leave loading of 17.5% or the relevant weekend penalty rates.</p> <p>Shiftworkers will be paid the higher of an annual leave loading of 17.5% or the shift loading including relevant weekend penalty rates.</p>
Social, Community, Home Care and Disability Services Industry Award 2010	<p>30.3 Annual leave loading</p> <p>(a) In addition to their ordinary pay, an employee, other than a shiftworker, will be paid an annual leave loading of 17.5% of their ordinary rate of pay.</p> <p>(b) Shiftworkers, in addition to their ordinary pay, will be paid the higher of:</p>	<p>An employee other than a shiftworker will be paid an additional 17.5% annual leave loading.</p> <p>Shiftworkers will be paid the higher of an annual leave loading of 17.5% or the relevant weekend and shift penalties.</p>

Annual Leave Loading Provisions in Selected Modern Awards

	<p>(i) an annual leave loading of 17.5% of their ordinary rate of pay; or</p> <p>(ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.</p>	
<p>Timber Industry Award 2010</p>	<p>33.5 Loading on annual leave</p> <p>(a) During a period of annual leave an employee will receive a loading calculated on the rate of pay prescribed by clause 17—Minimum wages, in the following manner:</p> <p>(i) Day workers</p> <p>An employee who would have worked on day work only had the employee not been on leave will receive a loading of 17.5%, or in the case of a worker in the Pulp and Paper Stream, a loading of 20%.</p> <p>(ii) Shiftworkers</p> <p>An employee who would have worked on shiftwork had the employee not been on leave and who would not have been entitled to a shift premium, or whose shift premium payable in accordance with clause 28—Shiftwork arrangements would have been less than 17.5%, or 20% in the case of an employee in the Pulp and Paper Stream, specified in this clause will receive a loading of 17.5%, or 20% in the case of an employee in the Pulp and Paper Stream, instead of the said shift premium. If the shift premium the employee would have received would have been in excess of 17.5%, or 20% in the case of an employee in the Pulp and Paper Stream, then the employee will receive whichever is the greater.</p>	<p>Day workers will be paid an additional 17.5% annual leave loading.</p> <p>A day worker in the Pulp and Paper Stream will be paid an additional 20% annual leave loading.</p> <p>Shiftworkers will be paid the higher of an annual leave loading of 17.5% or the relevant shift premium.</p> <p>Shiftworkers in the Pulp and Paper Stream will be paid the higher if an annual leave loading of 20% or the relevant shift premium.</p>
<p>Vehicle Manufacturing, Repair, Services and Retail Award 2010</p>	<p>29.7 Payment for period of leave</p> <p>(a) Instead of the base rate of pay as referred to in s.90(1) of the Act, an employee under this award, before going on annual leave, must be paid the wages they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period. During a period of annual leave an employee will also receive a loading as follows:</p> <p>(i) Day workers</p>	<p>Day workers will be paid an additional 17.5% annual leave loading.</p> <p>Shiftworkers will be paid the higher of an annual loading of 17.5% or the shift loading.</p>

Annual Leave Loading Provisions in Selected Modern Awards

	<p>Employees who would have worked on day work only had they not been on leave—17.5% loading.</p> <p>(ii) Shiftworkers</p> <p>Employees who would have worked on shiftwork had they not been on leave—17.5% loading or the shift loading, whichever is the greater but not both.</p>	
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