

# Shutting down over Christmas and New Year?

30 October 2019

Many businesses shut down or run on skeleton staff over the holiday period. How employees are paid over this period depends on:

- the award or agreement they're covered by
- whether they're working or on leave.

## Directing an employee to take annual leave

An employee can be directed to take annual leave during a shut down if their award or registered agreement ([www.fairwork.gov.au/Dictionary.aspx?TermID=2034](http://www.fairwork.gov.au/Dictionary.aspx?TermID=2034)) allows it.

Most awards have rules about how and when an employer can direct an employee to take leave. For example, an employer may need to give the employee a set amount of notice (eg. 4 weeks) that they will need to take annual leave.

Find out if your award allows an employer to direct an employee to take annual leave over Christmas and New Year on our Direction to take annual leave during a shut down page (<https://www.fairwork.gov.au/leave/annual-leave/directing-an-employee-to-take-annual-leave/direction-to-take-annual-leave-during-a-shut-down>).

If an employee isn't covered by an award or an agreement, their employer can direct them to take annual leave if the direction is reasonable.

Read more on our Award and agreement free wages and conditions page ([www.fairwork.gov.au/awards-and-agreements/award-and-agreement-free-wages-and-conditions](http://www.fairwork.gov.au/awards-and-agreements/award-and-agreement-free-wages-and-conditions)).

## What if an employee doesn't have enough annual leave?

If the award or agreement provides for it, an employer can direct an employee to take annual leave in advance of accrual, or unpaid leave, for some or all of the time.

Check what your award says on our Direction to take annual leave during a shut down page (<https://www.fairwork.gov.au/leave/annual-leave/directing-an-employee-to-take-annual-leave/direction-to-take-annual-leave-during-a-shut-down>).

## What if an award or agreement doesn't have rules about shut downs?

If your award or agreement doesn't have rules about annual leave during shut downs, an employer can't direct an employee to take leave.

However, an employer and employee can agree that the employee takes annual leave (including in advance of accrual) or unpaid leave for the shut down time. The employee can't be forced to take unpaid leave, so if an agreement can't be reached with their employer, they need to be paid their ordinary pay for the time.

Find out more about taking annual leave in advance ([www.fairwork.gov.au/leave/annual-leave/taking-annual-leave](http://www.fairwork.gov.au/leave/annual-leave/taking-annual-leave)).

## What happens if a public holiday falls during an employee's annual leave?

If a public holiday falls during an employee's annual leave, they need to be paid for the public holiday - not annual leave. This means that an employee should be paid their base pay rate for the day and it shouldn't be taken off their annual leave balance.

See Not working on public holidays (<https://www.fairwork.gov.au/leave/public-holidays/not-working-on-public-holidays>) for more information.

## Working during a shut down

If employees continue to work when a business shuts down they should be paid as normal. If any of the days are public holidays, these days are treated as public holidays. This means the employee should be given the day off without loss of pay or they should be paid public holiday rates as per their award or agreement.

See Working on public holidays ([www.fairwork.gov.au/leave/public-holidays/working-on-public-holidays](http://www.fairwork.gov.au/leave/public-holidays/working-on-public-holidays)) for more information.

## What to do next

- Check whether your award has rules about leave and shut down on the [Direction to take annual leave during a shutdown page](http://www.fairwork.gov.au/leave/annual-leave/directing-an-employee-to-take-annual-leave/direction-to-take-annual-leave-during-a-shut-down) ([www.fairwork.gov.au/leave/annual-leave/directing-an-employee-to-take-annual-leave/direction-to-take-annual-leave-during-a-shut-down](http://www.fairwork.gov.au/leave/annual-leave/directing-an-employee-to-take-annual-leave/direction-to-take-annual-leave-during-a-shut-down))
- (<http://paycheck.fwo.gov.au/leavecalculator.aspx>) Make sure you know what [public holidays](http://www.fairwork.gov.au/leave/public-holidays) ([www.fairwork.gov.au/leave/public-holidays](http://www.fairwork.gov.au/leave/public-holidays)) are coming up
- Find out what happens if a public holiday falls during leave on [Not working on public holidays](http://www.fairwork.gov.au/leave/public-holidays/not-working-on-public-holidays) ([www.fairwork.gov.au/leave/public-holidays/not-working-on-public-holidays](http://www.fairwork.gov.au/leave/public-holidays/not-working-on-public-holidays))

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Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: **13 13 94**

### Need language help?

Contact the Translating and Interpreting Service (TIS) on **13 14 50**

## Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: **13 36 77**. Ask for the Fair Work Infoline **13 13 94**

Speak & Listen: **1300 555 727**. Ask for the Fair Work Infoline **13 13 94**

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