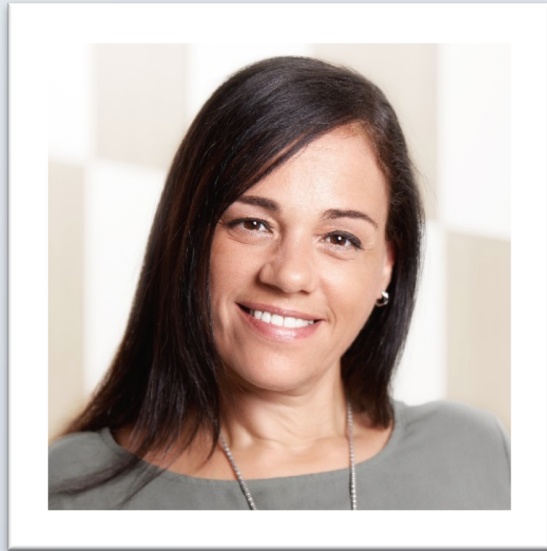


Trending Topics in Payroll

Presented by



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What is going on with sick/personal leave

Mondelez v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union known as the Australian Manufacturing Workers Union (AMWU) [2019] FCAFC 138 (21 August 2019)

Background:

- Mondelez Australia Pty Ltd are party to the Mondelez Australia Pty Ltd, Claremont Operations (Confectioners & Stores) Enterprise Bargaining Agreement 2017
- Ordinary hours per week = 36
- **7.2 hours per day @ 5 days per week**
or
- **12 hours per day @ 3 days per week**



Enterprise Agreement clause for sick/personal leave

24 Personal/Carer's Leave

24.1 Employees (**other than employees on 12 hour shifts**)

Personal/Carer's Leave including sick leave consists of **80 hours of paid personal leave per annum**. This will be available to the employee on their anniversary date. Unused leave is cumulative (with no cap). Accrued leave can be used for carer's leave.

24.2 Employees **working on 12 hour shifts**

On the introduction of the new payroll system in 2011 the entitlement to Personal/Carer's Leave (including sick leave) for **employees working on 12 hour shifts will be 96 hours of paid personal leave per annum**. This will be available to the employee on their anniversary date and any unused leave is cumulative (with no cap). Accrued leave can be used for carer's leave. A pro rata adjustment will occur for the period between the introduction of this arrangement and the employee's next anniversary date.

And here is where the battle begins

Shiftworkers claimed they are entitled to 10 days per year under the NES so 10 days @ 12 hours per day totals **120 hours**

Mondelez argued that 10 days = 76 hours per year so the entitlement of **96 hours** per year was sufficient



The legislation is to blame

Workplace Relations Act 1996 and Workplace Relations Amendment (Work Choices) Act 2005

(2) An employee is entitled to accrue an amount of paid personal/carer's leave, for each completed 4 week period of continuous service with an employer, **of $\frac{1}{26}$ of the number of nominal hours worked by the employee for the employer during that 4 week period.**

Example: An employee whose nominal hours worked for an employer each week over a 12 month period are 38 hours would be entitled to accrue **76 hours paid personal/carer's leave (which would amount to 10 days of paid personal/carer's leave for that employee)** over the period.

i.e leave accrues based on an employees ordinary hours of work and 10 days equates to 76 hours (however entitlement is not expressed in days)

The legislation is to **blame**

Fair Work Act 2009

Entitlement to paid personal/carer's leave

Amount of leave

(1) For each year of service with his or her employer, an employee **is entitled to 10 days of paid personal/carer's leave.**

Accrual of leave

(2) An employee's entitlement to paid personal/carer's leave **accrues progressively during a year of service according to the employee's ordinary hours of work**, and accumulates from year to year.

The folk with the funny wigs



Two of the three judges concluded that 10 days means exactly that – 10 days. **A “day” has its ordinary meaning of a “calendar day”, or a 24 hour period, and that it allows every employee to be absent from work without loss of pay on 10 calendar days per year.**

The other judge did not agree.

Mondelez is planning on appealing the decision and in the meantime, the Morrison government will appeal to the High Court to overturn a landmark legal decision by the Full Federal Court which grants shift workers more sick leave – 17/09/2019

Administrative nightmare for payroll professionals (and software developers!) because at the moment, the Federal Court decision is the law

- **How to accrue** – eg part-time employees working different hours on different days. Accrual rate is 1 day for every 5.2 weeks of work
- **Are backpays and reconciliations required** – employees who have had to take LWOP due to insufficient sick leave entitlements in the past may now be liable for backpays
- **Payment for cashed out sick leave** – how much to pay



Annualised Salaries

Fair Work 4 yearly review of modern awards

New model clauses for Annualised Salaries

Effective from 1 March 2020

3 categories of Awards for which the model clauses will apply

3 categories of Awards

Category One

Includes Modern Awards which cover employees who work relatively stable hours

This category will **NOT require an employee's agreement to the introduction of an annualised salary arrangement**

- Banking, Finance and Insurance Award
- Clerks - Private Sector Award
- Contract Call Centres Award
- Hydrocarbons Industry (Upstream)
- Legal Services Award
- Mining Industry Award
- Oil Refining and Manufacturing Award (clerical employees only)
- Salt Industry Award
- Telecommunications Services Award
- Water Industry Award
- Wool Storage, Sampling and Testing Award

3 categories of Awards cont.....

Category Two

Includes Modern Awards which cover employees who work highly variable hours and/or significant ordinary hours of work which attract a penalty rate

This category **WILL require an employee's agreement to the introduction of an annualised salary arrangement**

- Broadcasting and Recorded Entertainment Award
- Local Government Industry Award
- Manufacturing and Associated Industries and Occupations Award
- Oil Refining and Manufacturing Award (non-clerical employees)
- Pharmacy Industry Award
- Rail Industry Award
- Horticulture Award
- Pastoral Award
- Health Professionals Award (supervisory and managerial staff only)

3 categories of Awards cont.....

Category Three

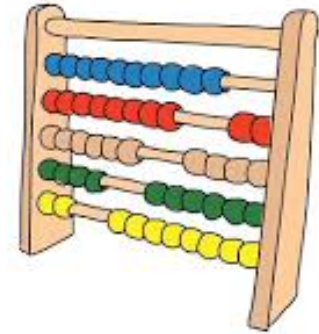
Includes Modern Awards which currently provide that the annualised salary be an amount not less than a specified percentage above the minimum weekly wage set out in the modern award.

This category **WILL require an employee's agreement to the introduction of an annualised salary arrangement**

The clause will only apply in respect to non-managerial staff

- Marine Towing Award
- Restaurant Industry Award
- Hospitality Industry (General) Award

Method of calculating annualised salary



Categories one and two

- Must be calculated by reference to specified assumptions regarding:
 - Overtime, and/or
 - Penalty Rateswhich the employee may be required to work
- Must specify the 'outer limits' of ordinary hours and overtime hours that are satisfied by the annualised wage

Category three

- Awards will prescribe that the annualised wage must be a minimum percentage in addition to the minimum weekly wage
- Will also specify the 'outer limits' of ordinary and overtime hours that will be satisfied by the annualised wage.

Five new obligations



1. Record annualised wage agreement/arrangement.
This may include:
 - The provisions of the award which are satisfied by the annualised wage
 - The method by which the annualised wages has been calculated
 - Specifying each separate component of the annualised wage and any overtime or penalty assumptions
2. Record in the annualised wage agreement/arrangement the 'outer limits' on the number of overtime hours or other penalty rates which are satisfied by the annualised wage
3. Pay an employee for any hours worked in excess of those 'outer limits' in accordance with the provisions of the applicable modern award, in the relevant pay cycle

Five new obligations, cont.....

4. Keep records of the start, finish and break times for each employee and have each employee sign, or acknowledge as accurate, the record of hours in each pay or roster cycle



5. Calculate the amount that would have been payable to the employee under the award and compare against the annualised wage arrangement.

This must occur:

- each 12 months from the commencement of the arrangement, and
- on termination of employment

If a shortfall is identified, the employer must rectify the shortfall within 14 days.

What to do to prepare



- Consider whether any of the new model clauses affect any of your employees on annualised salaries
- Obtain legal advice regarding your current contracts of employment to determine what changes need to be made, if any, to meet the requirements of the new model clauses
- Ensure you have systems in place to record start, finish and break times for employees so that you can:
 - pay employees who work in excess of the ‘outer limits’ for overtime
 - reconcile each 12 months against what should have been paid and what was paid

Further reading – AM2016/13

Ensuring your termination payments are compliant

When to pay an employee's final pay

Outstanding salaries and wages and unused leave entitlements* (check Long Service Legislation – eg VIC LSL requires the employee to be paid on their final day)

Manufacturing/Horticulture Award – on the last day of employment or the next working day

Hospitality Award/Clerical - within 7 days of their employment ending

Building and Construction - on the last day of employment or within 2 working days

Rail Industry - immediately upon an employee leaving or being dismissed.

Payment in lieu of notice - dismissal

Termination of employment due to dismissal:

Example

- Employer provides 4 weeks notice
- Employee works 2 weeks of their notice period
- Employer advises employee they are free to go

Employer must make a payment of **2 weeks** at the employees full rate of pay



BUT.....

Payment in lieu of notice - resignation

Termination of employment due to resignation:

Example

- Employee provides 4 weeks notice
- Employee works 2 weeks of their notice period
- Employer advises employee they are free to go



Employer must make a payment of **4 weeks** at the employees full rate of pay

So if the employer asks the employee to finish up **ONCE THEY HAVE ALREADY WORKED PART OF THEIR NOTICE PERIOD**, the employer is liable for a payment to the value of the **FULL NOTICE PERIOD**

Redundancy payments

Many Awards provide for the following (or something similar)

Paragraph [\(b\)](#) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under s.120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

A court order may also require the employer to make additional redundancy payments

Redundancy payments – made in parts across financial years

Example – employee received a Genuine Redundancy Payment in April 2019 of \$35000. Following legal action, the courts instructed employer to pay an additional \$5000 in September 2019.

Genuine Redundancy Payment	\$ 35,000.00	
Tax free portion based on 3 years completed years of service (based on 2018-19FY)	\$ 25,999.00	=10399 + 5200*3
ETP code R	\$ 9,001.00	

Additional payment of \$5000 to be made

Tax free portion based on 3 years completed years of service (based on 2019-20FY)	\$ 26,598.00	=10638 + 5320*3
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"New" tax free portion is \$599 (~~\$26598~~-\$25999)

This means that \$599 of the additional \$5000 is also tax free (Lump Sum D)
 Remaining \$4401 is an ETP **code S**

Long Service Leave

recent case law



Schipp & Anor v The Star Entertainment Qld Limited (2019)

- Employee terminated by the employer due to prolonged illness
- Employee had 9 years 11 months and 3 days service
- Employee argued that he was entitled to pro-rata LSL
- Original ruling and on-appeal – both judges disagreed with the employee
- In summary – he would have been entitled to the pro-rata LSL if he resigned due to illness. But not on termination by the employer due to illness.
- QLD Industrial Relations Minister appealed the decision but it was rejected. May look to amend the legislation.....**so watch this space!!**

Questions?

