

CASHING OUT ANNUAL LEAVE – GUIDANCE NOTE

1. General principle:

Employees are encouraged to achieve a work-life balance through a number of measures including the use of annual leave for rest and recreation. Research exists that suggests employees who do not use their annual leave may experience higher levels of work-related stress, job dissatisfaction and fatigue, as well as lower levels of performance and productivity. Supporting employees to utilise annual leave is evidenced to lead to better health and wellbeing and work outcomes.

While there is a preference for annual leave to be taken based on the above benefits, it is acknowledged that employees may have a right to apply for annual leave to be cashed out in accordance with the *Industrial Relations Act 2016* (IR Act).

In the event that an employee applies to cash out a portion of their annual leave, decision makers need to properly balance a number of relevant factors with the employee preferences in terms of cashing out annual leave.

To assist, this Guidance Note is designed to:

- (a) provide a framework to assist public sector decision makers when determining applications by employees to cash out annual leave; and
- (b) provide public sector entities with matters for consideration when implementing their own policies and procedures in relation to the cashing out of annual leave.

2. Legislative background:

Section 37 of the IR Act states:

- (1) *Annual leave may not be cashed out except under this section.*
- (2) *An employer and an employee may agree to the employee cashing out a particular amount of the employee's annual leave.*
- (3) *The employer and employee must not agree to the employee cashing out an amount of annual leave if the cashing out would result in the employee's accrued annual leave entitlement being less than 4 weeks.* * see note on page 3
- (4) *Each cashing out of a particular amount of annual leave must be by a separate agreement in writing.*
- (5) *The employer must pay the employee at least the full amount that would have been payable to the employee had the employee taken the annual leave that has been forgone.*

3. Application:

This Guidance Note applies to “public service employees”, as defined in section 9 of the *Public Service Act 2008*, to whom modern awards or agreements apply.

Part A – Considerations for decision makers

- 4. When considering an application from an employee to cash out a portion of their annual leave, factors to be considered by public service decision makers may include, but are not limited to:
 - (a) If the cashing out of annual leave is conducive to the employee's health and wellbeing, and a commitment to work/life balance;
 - (b) If legislative requirements have been met under section 37 of the IR Act;
 - (c) The history of leave and TOIL taken by the employee over a relevant period of time;

- (d) The reason that the employee has accrued sufficient annual leave to be eligible to cash out a portion of their leave;
 - (e) If leave management / workload management plans are in place;
 - (f) The nature of the employee's role;
 - (g) Alignment with any other relevant agency policies. For example, fatigue management, management of excess leave or workplace health and wellbeing;
 - (h) The proportion that the annual leave which would remain after cashing out bears to the employee's yearly accrual rate of annual leave. For example, in the case of a shift worker who accrues more than four weeks of annual leave per year, consideration may be given to the impact on rostering and their health and safety, etc., if only four weeks annual leave would remain;
 - (i) Implications for managing rosters and forecasted relief arrangements;
 - (j) Consistency with other decisions being made within the entity in relation to the cashing out of annual leave;
 - (k) The appropriateness of approving an application while an employee is on a higher duties or secondment arrangement (if applicable);
 - (l) The impact on the employee of refusing the application; and
 - (m) The payment amount.
5. In considering the payment amount, section 37 of the IR Act requires that the amount payable to the employee when cashing out annual leave should not be less than the amount that would have been paid had the employee taken the equivalent period of annual leave. Public sector entities therefore need to consider what would be paid to an employee if they were to access annual leave and treat the cashed out portion of annual leave consistently. For example, if an allowance is required to be paid or would customarily be paid whilst an employee is on annual leave, it should generally be paid on cashed out annual leave. However, in some circumstances detailed consideration will need to be given to the precise wording of the instrument. For example, if the allowance is expressed as a per annum allowance "which will be paid as a fortnightly allowance" it should only be paid up to the maximum per annum amount and therefore would not be paid on a period of cashed out annual leave (even though it would be paid when taking annual leave).
6. It is important to note that an employee cannot be forced to cash out their annual leave; there must be genuine agreement between the employee and the employer for leave to be cashed out.
7. The provisions of the IR Act that permit an employer to direct an employee to take annual leave are not impacted by the ability of an employee to apply to cash out their leave.

Part B – Public sector entity considerations

8. Considerations for public sector entities when implementing their own policies and procedures in relation to the cashing out of annual leave may include, but are not limited to:
- (a) Addressing the unique occupational characteristics of their workforce; for example, rostering, projected leave plans/leave rosters, impact on averaged block payments and budgeted FTE levels tied to relief arrangements;
 - (b) Providing guidance in terms of timing, frequency and minimum amounts to be cashed out that the agency considers reasonable. Such matters are likely to be informed by payroll capacity/costs;
 - (c) Developing forms that appropriately reflect legislative and policy provisions;
 - (d) Considering record keeping requirements (including a record of the final decision);
 - (e) Reviewing HR Delegations and Financial Delegations;
 - (f) Implications for budgets and reporting (considering that if two weeks of leave are cashed out, it will appear as if an employee has been paid for 54 weeks in one year);

- (g) Measures to ensure appropriate advice is provided to finance units to facilitate reimbursement from the Central Leave Scheme (if applicable) and for financial reporting purposes;
- (h) That it is a requirement for the employee to be paid the same amount as they would have received if they had taken the leave instead of having it cashed out (consider allowances and loadings that are payable during periods of annual leave);
- (i) Encouraging employees to seek their own independent financial advice prior to entering into an agreement to cash out annual leave, particularly for employees of a defined benefit superannuation fund; and
- (j) Compliance with superannuation requirements, particularly considering that cashed out leave does form part of an employee's ordinary time earnings (OTE), but it does not form part of "superannuable salary" under the *Superannuation (State Public Sector) Deed 1990*.

Part C - Further research

- 9.** Further information and research about the benefits of taking annual leave can be found in the below resources:

The Australia Institute. Hard to get a break? Hours, leave and barriers to re-entering the Australian Workforce. Institute Paper No.13. TAI; Canberra (AUST: 2013).

Cairncross G, Waller I. Not taking annual leave: what could it cost Australia? Journal of Economic and Social Policy 2004; 9(1):1-18.

Safe Work Australia. The Australian workplace barometer: report on psychosocial safety climate and worker health in Australia. December 2012.

Berman EM, West JP. The effective manager...Takes a break. Review of Public Personnel Administration 2007; 4:380-400.

Skinner N, Chapman J. Work-life balance and family friendly policies. Evidence Base 2013; 4:1-17.

Skinner N, Pocock B. Paid annual leave in Australia: Who gets it, who takes it and implications for work-life interference. Journal of Industrial Relations 2013; 55:681-698.

Australian Psychological Society. Stress and wellbeing in Australia survey 2014. APS; Melbourne (AUST): 2014. Available from: <http://www.psychology.org.au/Assets/Files/2014-APS-NPW-Survey-WEB-reduced.pdf>

Schnitzlein, DD. Extent and effects of employees in Germany forgoing vacation time. DIW Economic Bulletin 2012; 2:25-32.

Hymel PA, Loeppke RR, Baase CM et al. Workplace health protection and promotion: a new pathway for a healthier and safer workforce. Journal of Occupation and Environmental Medicine 2011; 53(6):695-702.

Beeton S. Holidays as Health: exploring the no leave, no life campaign via the Theory of Planned Behaviour. Tourism Review International 2011; 15:313-323.

* Note: The requirement to retain an accrued annual leave balance of entitlement of at least 4 weeks is applied on a pro-rata basis for a part-time employee. For example, a part-time employee who works 2 days per week will be required to retain 8 days in their accrued annual leave balance (4 weeks of 2 days per week = 8 days).