



More changes to employee entitlements in wake of COVID-19

Yesterday the Fair Work Commission (**FWC**) proposed a variation to the majority of modern awards to provide an entitlement to unpaid 'pandemic leave' and the flexibility to take annual leave at half pay. These variations would operate until 30 June 2020.

Unpaid pandemic leave

Unpaid pandemic leave would be available for all employees covered by an award regardless of whether they work full-time, part-time or casually. An employee would be able to elect to take up to two weeks unpaid leave if:

- required to self-isolate by government or medical authorities or acting on medical advice, or
- the employee is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic, and
- the employee is required to work at premises operated by an employer.

Unpaid pandemic leave would not affect any other paid or unpaid leave entitlements and would count as service for the purposes of other entitlements under the relevant award.

Annual leave at half pay

The FWC proposes to allow employers and employees to agree to take up to twice as much annual leave at half the rate of pay. Any agreement to take twice as much leave at half pay would need to be recorded in writing and retained as an employee record. The employer would only deduct annual leave that is paid in full. For example, if an employee takes two weeks annual leave at half pay, one week of leave would be deducted from the annual leave accrual. Employees would remain entitled to take annual leave in advance provided the employer and employee had a written agreement to this effect.

The Full Bench of the FWC has provided some commentary to the effect that the proposed variations will be considered to be a 'workplace right' under the Fair Work Act and therefore a prohibited reason for taking adverse action against an employee. In other words an employer could not take adverse action against an employee because they have a right to take unpaid

pandemic leave or a right to take annual leave at half pay, regardless of whether the employee decides to exercise the workplace right or not.

The variations will be phased-in across modern awards in a number of sectors. Phase I notably excludes construction awards, maritime sector awards and mining and resource sector awards.

Submissions supporting or opposing the variations must be lodged by 4pm on Monday 6 April 2020. In the event submissions are received opposing the variations a hearing will be held on 2pm Wednesday 8 April 2020 by telephone.

If you need legal advice about these or any other workplace law topics, please feel free to contact us on the details below.



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