

Reminder

New Annual Leave Shutdown Provisions commence from 1 May 2023

As members may recall from a previous [Bulletin](#), on 22 December 2022 a Full Bench of the Fair Work Commission (FWC) handed down a [Decision](#) on annual leave shutdown provisions, as part of its 4 yearly review of modern awards. As a result of the FWC Decision, the annual leave shutdown provisions in 78 modern awards were amended, including the *Vehicle Repair, Services and Retail Award 2020* (Vehicle Award) – with effect from 1 May 2023.

The biggest practical change for employers under the Vehicle Award is that from this date, an employee who does not have sufficient paid annual leave accrued to cover the entire period of a shutdown will no longer automatically be deemed on leave without pay for the remainder of the shutdown period.

Action Steps for Employers:

Members are therefore encouraged to:

- ensure employees **have/will have accrued sufficient paid annual leave to cover the entirety of a planned shutdown period** – and take this into consideration when deciding whether to approve employee annual leave requests for other times of the year; or
- ensure an employee has **agreed, in writing, to take leave without pay for the balance** of the shutdown period that they have not accrued sufficient paid annual leave. Such written agreement may be recorded, for example, through an exchange of emails or text messages.

Accordingly, if an employee wished to take a period of paid annual leave during the year that would result in the employee having insufficient paid annual leave to cover the planned shutdown period – the employer could reasonably refuse to approve the request; or alternatively, make approval of the employee's annual leave request conditional upon the employee agreeing, in writing, to take leave without pay for the balance of the shutdown period. To assist members, **VACC has updated the *Employee Handbook* to reflect this approach.**

Members may also wish to consider updating their employment contracts to provide clarity for new employees that it will be a condition of their employment that they agree to take a period of leave without pay in the event that they have insufficient paid annual leave accrued to cover the entirety of a shutdown period.

Members seeking further information and assistance, including in regard to drafting of employment contracts, are encouraged to contact VACC's Workplace Relations team on 03 9829 1123 or ir@vacc.com.au

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