



DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—plain language re-drafting—shutdown provisions

(AM2016/15)

NURSERY AWARD 2020

[MA000033]

Nursery industry

JUSTICE HATCHER, PRESIDENT

DEPUTY PRESIDENT ASBURY

COMMISSIONER HUNT

SYDNEY, 3 MARCH 2023

*4 yearly review of modern awards – plain language re-drafting – shutdown provisions –
Nursery Award 2020 – variation to clause 22.11.*

A. Further to the decision issued by the majority of the Full Bench on 22 December 2022 [\[\[2022\] FWCFB 246\]](#), the above award is varied as follows:

1. By deleting clause 22.11 and inserting the following:

22.11 Direction to take annual leave during shutdown or for seasonal requirements

- (a) Clause 22.11 applies if an employer:
 - (i) intends to shut down all or part of its operation for a particular period or when the business cannot open due to restrictions on opening hours due to State or Federal legislation, or because of particular seasonal requirements at certain times of the year (**temporary shutdown or seasonal period**); and
 - (ii) wishes to require affected employees to take paid annual leave during that period.
- (b) The employer must give the affected employees 28 days' written notice of a temporary shutdown or seasonal period, or any shorter period agreed between the employer and the majority of relevant employees.

- (c) The employer must give written notice of a temporary shutdown or seasonal period to any employee who is engaged after the notice is given under clause 22.11(b) and who will be affected by that period, as soon as reasonably practicable after the employee is engaged.
- (d) The employer may direct the employee to take a period of paid annual leave to which the employee has accrued an entitlement during a temporary shutdown or seasonal period.
- (e) A direction by the employer under clause 22.11(d):
 - (i) must be in writing; and
 - (ii) must be reasonable.
- (f) The employee must take paid annual leave in accordance with a direction under clause 22.11(d).
- (g) In respect of any part of a temporary shutdown or seasonal period which is not the subject of a direction under clause 22.11(d), an employer and an employee may agree, in writing, for the employee to take leave without pay during that part of the temporary shutdown or seasonal period.
- (h) An employee may take annual leave in advance during a temporary shutdown or seasonal period in accordance with an agreement under clause 22.9.
- (i) In determining the amount of paid annual leave to which an employee has accrued an entitlement, any period of paid annual leave taken in advance by the employee, in accordance with an agreement under clause 22.9, to which an entitlement has not been accrued, is to be taken into account.
- (j) Clauses 22.6 to 22.8 do not apply to a period of annual leave that an employee is required to take during a temporary shutdown or seasonal period in accordance with clause 22.11.

2. By updating the cross-references accordingly.

B. This determination comes into operation on 1 May 2023. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect in relation to a particular employee until the start of the employee's first full pay period that starts on or after 1 May 2023.



PRESIDENT

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