



# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards—Annual leave**

(AM2014/47)

### **SECURITY SERVICES INDUSTRY AWARD 2010**

[MA000016]

Security services

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT KOVACIC  
COMMISSIONER HAMPTON

MELBOURNE, XX JULY 2016

*4 yearly review of modern awards - annual leave common issue.*

A. Further to the Full Bench decisions issued by the Fair Work Commission on 24 June 2016 and 8 July 2016<sup>1</sup>, the above award is varied as follows:

1. By renumbering clauses 24.5 to 24.9 as 24.6 to 24.10 respectively.
2. By inserting a new clause 24.5 as follows:

#### **24.5 Electronic funds transfer (EFT) payment of annual leave**

Despite anything else in this clause, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

3. By deleting the renumbered clause 24.6—Leave allowed before due date and inserting the following:

#### **24.6 Annual leave in advance**

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.

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<sup>1</sup> [\[2016\] FWCFB 3953](#) and [\[2016\] FWCFB 4392](#); see also [\[2015\] FWCFB 3406](#), [\[2015\] FWCFB 5771](#) and [\[2016\] FWCFB 3177](#)

- (b) An agreement must:
  - (i) state the amount of leave to be taken in advance and the date on which the leave is to commence; and
  - (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

Note: An example of the type of agreement required by clause 24.6 is set out at Schedule F. There is no requirement to use the form of agreement set out at Schedule F.

- (c) The employer must keep a copy of any agreement under clause 24.6 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 24.6, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

4. By inserting clause 24.11 as follows:

**24.11 Cashing out of annual leave**

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 24.11.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 24.11.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 24.11 must state:
  - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
  - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 24.11 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.

- (g) An agreement must not result in the employee’s remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 24.11 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 24.11.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 24.11.

Note 3: An example of the type of agreement required by clause 24.11 is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G.

5. By inserting Schedule F—Agreement to Take Annual Leave in Advance as follows:

**Schedule F—Agreement To Take Annual Leave In Advance**

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

**The employer and employee agree that the employee will take a period of paid annual leave before the employee has accrued an entitlement to the leave:**

The amount of leave to be taken in advance is: \_\_\_\_ hours/days

The leave in advance will commence on: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_

*[If the employee is under 18 years of age - include:]*

**I agree that:**

**if, on termination of the employee’s employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken under this agreement, then the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.**

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_

6. By inserting Schedule G—Agreement to Cash Out Annual Leave as follows:

**Schedule G—Agreement To Cash Out Annual Leave**

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

**The employer and employee agree to the employee cashing out a particular amount of the employee’s accrued paid annual leave:**

The amount of leave to be cashed out is: \_\_\_ hours/days

The payment to be made to the employee for the leave is: \$\_\_\_\_\_ subject to deduction of income tax/after deduction of income tax (strike out where not applicable)

The payment will be made to the employee on: \_\_\_/\_\_\_/20\_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_

Name of employer  
representative: \_\_\_\_\_

Signature of employer  
representative: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_

*Include if the employee is under 18 years of age:*

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_

7. By updating the Table of contents and cross-references accordingly.

B. This determination comes into operation from XX July 2016. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after XX July 2016.

PRESIDENT

**NOTE: A conference was held in respect of the excessive leave provision in this award. See paragraph [123] of [2016] FWCFB 3177.**