

From: Trent.Sebbens@ashurst.com [<mailto:Trent.Sebbens@ashurst.com>]
Sent: Friday, 12 May 2017 5:23 PM
To: AMOD; Sydney Registry
Cc: Adrian.Morris@ashurst.com; Elysse.Lloyd@ashurst.com; Brent.Ferguson@aigroup.com.au; aguy@professionalsaustralia.org.au; athomas@cfmeu.com.au; michael.nguyen@amwu.org.au
Subject: AM2014/47 - 4 yearly review of modern awards - Annual leave - Shutdown clause [BD-CM.30002560.02-3000-0722]

Dear Registrar

AM2014/47 - 4 yearly review of modern awards - Annual leave

We confirm we act for the Coal Mining Industry Employer Group (**CMIEG**) in respect of the Black Coal Mining Industry Award 2010.

We refer to the hearing before the Full Bench on 5 May 2017. Arising from the hearing, on behalf of the CMIEG, we **attach** a proposed amended shutdown clause dealing with certain of the points raised by the Full Bench at the hearing.

We have corresponded with the AiGroup, CFMEU, APESMA and AMWU to provide this proposed revised clause. The representatives for each of those organisation are also copied to this email.

Yours faithfully

Trent Sebbens

Partner

trent.sebbens@ashurst.com

Ashurst

D: +61 2 9258 6313 | M: +61 447 643 090

Adrian Morris

Senior Consultant

adrian.morris@ashurst.com

Ashurst

D: +61 2 9258 6025 | M: +61 418 243 422

Ashurst Australia, 5 Martin Place, Sydney, NSW 2000 Australia

T: +61 2 9258 6000 | F: +61 2 9258 6999 | DX 388 Sydney

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FAIR WORK COMMISSION

Four yearly review of modern awards – Annual leave

AM2014/47

PROPOSED REVISED SHUTDOWN CLAUSE

25.10 Shutdown

(a) Clause 25.10 applies if an employer intends to shutdown all or part of its operation for a particular period (temporary shutdown period); and wishes to require affected employees to take leave during that period.

(b) The employer must give the affected employees ~~one month's~~ 28 days' written notice of a temporary shutdown period or such shorter period as agreed between the employer and the employees affected.

(c) The employer must give immediate written notice of a temporary shutdown period to any employee who is engaged after the notice is given under paragraph (b) and who will be affected by that period.

(d) The following applies to any affected employee during a temporary shutdown period:

(i) if the employee has accrued an entitlement to paid annual leave the employee may elect to take some or all of the leave during the temporary shutdown period and may also elect to take unpaid leave to cover any part of the temporary shutdown period (or a combination of both of paid and unpaid annual leave);

(ii) if the employee does not elect to take paid or unpaid ~~paid~~ annual leave ~~or unpaid leave~~ under clause 25.10(d)(i) to cover the wholesome or all of the temporary shutdown period, then the employer may direct the employee to take a period of accrued paid annual leave or, if the employee does not have sufficient accrued paid annual leave to cover the remaining period, then failing that unpaid annual leave in advance to cover the whole or part of the temporary shutdown period (or a combination of both accrued paid annual leave and annual leave in advance);

~~**(iii)** if the employee has not accrued an entitlement to any paid annual leave, the employer may direct the employee to take leave without pay to cover the whole of the temporary shutdown period.~~

(e) A direction by the employer under clause 25.10(d)(ii):

(i) must be in writing; and

(ii) must be reasonable.

(f) The employee must take paid annual leave or ~~unpaid annual leave~~ in advance in accordance with a direction under clause 25.10(d)(ii).

(g) 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 25.9, to which an entitlement has not been accrued is to be taken into account.

(h) When an employer shuts down all or part of its operation under this provision, clauses 25.4 to 25.6 do not apply to employees directly affected by the shutdown and this clause will apply.'