IMPORTANT UPDATE: CHANGES TO ANNUAL LEAVE

The Fair Work Commission has announced important changes to the rules about taking paid annual leave. The changes relate to cashing out of annual leave, taking annual leave in advance and managing 'excessive' annual leave balances.

1. **Cashing out of annual leave**

Some employees can now **'cash out'** up to 2 weeks of annual leave in any 12 month period. To do this, employees must have a signed written agreement with their employer and must have at least 4 weeks of annual leave left after the cash out takes effect.

The agreement to cash out annual leave must include the following:

1) the amount of leave to be cashed out;
2) the payment that will be made to the employee; and
3) the date on which the payment will be made.

The agreement must be signed by you and the employee, as well as the employee's parent or guardian if he or she is under 18 years of age. This agreement constitutes an employee record. You must therefore keep a copy of this agreement for a period of at least 7 years.

2. **Taking annual leave in advance**

Most employees can now take a period of annual leave in advance; providing that the employer agrees to this in writing.

The agreement to take annual leave in advance must state the amount of leave that will be taken and the date that the leave is to commence.

The agreement must be signed by you and the employee, as well as the employee's parent or guardian if he or she is under 18 years of age. Again, this agreement constitutes an employee record and therefore must be kept on file for a period of at least 7 years.

If the employee has not accrued an entitlement to the period of annual leave that was taken in advance on termination, the employer may deduct an amount equal to that amount paid to the employee in respect of the period of annual leave that was taken in advance but not accrued on termination.

3. **Managing 'excessive' annual leave balances**

An 'excessive' annual leave balance is where an employee has accumulated at least 8 weeks of paid annual leave.

If an employee has an excessive annual leave balance, you and the employee should first try to genuinely reach an agreement on how to reduce the employee's leave balance. If an agreement cannot be reached, you may direct the employee to take a period of annual leave.

A direction to take a period of annual leave must be given in writing. The direction cannot be given less than 8 weeks (and not more than 12 months) before the period of annual leave is due to commence. The direction cannot require the employee to take a period of paid annual leave of less than one week and cannot result in the employee being left with less than 6 weeks of accrued paid annual leave.

An employee who has had an excessive annual leave balance for more than 6 months can now give his or her employer written notice that they will be taking a period of annual leave. However, an employee who has been given a written direction by their employer to take a period of paid annual leave cannot make such a request.

Who do they apply to?

The changes outlined above apply to most employees who are covered by a modern Award, including the **Children Services Award 2010.**

Please note however, these changes **do not apply** to those employees covered by the **Education Services (Teachers) Award 2010**. The Fair Work Commission is currently reviewing submissions in respect of annual leave entitlements under this Award and are yet to announce a decision.

When do they come into effect?

Most of the changes concerning paid annual leave are now in effect, having commenced from the first full pay period on or after **29th July 2016**.

However, changes allowing those employees who have had an excessive annual leave balance for more than 6 months to tell their employer that they will be taking a period of annual leave will take effect from **29th July 2017**.

For more information regarding annual leave entitlements please contact the Australian Childcare Alliance (Victoria) Employment Relations Team on 1300 854 690.

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