



Members Update

Dear member,

Welcome to the September 2019 member's update.

Following the recent changes to the interpretation of personal leave, we thought we would stick with the theme of leave for this month and cover a few topics we receive common questions on our Help Desk about. This month we are looking at the rules surrounding the cashing out of all leave entitlements and if taking Long Service Leave at half pay is permitted in each state.

CASHING OUT LONG SERVICE LEAVE

The following table summarises whether the cashing out of long service leave is permitted in each state or territory:

State	Can Leave be cashed out?
ACT	No
NSW	No
NT	No
QLD	Only if permitted by an Industrial Agreement or by approval of the Commission on compassionate or financial hardship grounds
SA	Yes - if agreed in writing
TAS	Yes - if agreed in writing
VIC	No *exception may apply if pre-modern or agreement allows
WA	Yes - if agreed in writing *exception applies under Local Government Long Service Leave Regulations 1977

CASHING OUT ANNUAL LEAVE

Cashing out of annual leave is permitted for award/agreement free employees and those under an award or agreement which allows the practice. In July 2016, most Modern Awards were amended to incorporate terms for cashing out annual leave. The terms relating to cashing out of annual leave are contained in the relevant Modern Award, however, the following rules apply to all employees who are permitted to cash out annual leave:

- an employee needs to have at least 4 weeks annual leave leftover
- a written agreement needs to be made each time annual leave is cashed out
- an employer can't force or pressure an employee to cash out annual leave
- the payment for cashed out annual leave has to be the same as what the employee would have been paid if they took the leave.

An employee who cashes out their annual leave must receive what they would have been entitled to had they taken the leave (e.g. leave loading would still be applicable).

CASHING OUT SICK AND CARERS LEAVE

Following the new ruling on personal and carers leave, we anticipate it will be quite difficult to determine the value of a day for an employee with a varying work pattern. For those members joining us at the upcoming conference, Maria will be discussing this topic during her seminar, at the annual Conference.

Most awards don't allow sick and carer's leave to be cashed out. Employees covered by a registered agreement can cash out sick leave if the agreement allows it. Only 2 awards allow employees to cash out sick and carer's leave. These are:

- Timber Award
- Stevedoring Award

Sick and carer's leave if allowed by an award or registered agreement, can only be cashed out if all the following conditions are met:

- a separate agreement is made in writing each time leave is cashed out
- the employee has a balance of at least 15 days of untaken paid sick and carer's leave after cashing out
- the employee is paid at least the full amount they would have been paid if they actually took the leave.

Some further points to consider if an employee is allowed to cash out leave per the above conditions:

- Superannuation should be paid on the value of the cashed-out leave
- Leave does not accrue on a period of cashed out leave
- The payment is taxed under Schedule 5, similar to a bonus

<https://www.ato.gov.au/Rates/Schedule-5---Tax-table-for-back-payments-commissions-bonuses-and-similar-payments/>



LONG SERVICE LEAVE AT HALF PAY

With the exception of Victoria, no state or territory long service leave legislations permit employees to take extended long service leave at the equivalent half-pay.

The Long Service Leave Act 2018 (VIC) provides that an employee may request their employer grant them to take an amount of long service leave twice as long as the period to which the employee is entitled, and be paid at half the employee's ordinary pay.

The accrual of leave while absent would be at the employee's regular ordinary hours for the period of long service leave. This is because taking paid leave at half pay does not change the employee's contracted hours only the rate at which the leave is to be paid.



Due to our conference being held in on Friday 20th September, our next webinar will be held in October at a time and date to be advised.

Hope to see you at the conference!

[Book tickets here](#)