



MARCH 2023

Award Changes - Shut Downs and Leave

As part of the Fair Work Commission's (FWC) 4-yearly review of modern awards, 78 modern awards will have existing shut down / close down clauses replaced with a new model term (which can be found [here](#) in paragraph 82) that comes into effect **1 May 2023**.

Previously, employers could direct employees to take leave without pay or leave in advance (ie to permit employees to go into negative annual leave balances) if an employee has insufficient annual leave to be able to cover a shut down period. Shut down periods usually occurred over Christmas and New Year periods or during annual maintenance close downs.

The FWC model clause now prescribes that where an employer intends to temporarily shut down or close down, all or part of its operation:

- employers must give affected employees a minimum of 28 days' written notice (Notice) prior to any temporary shut down period (or a shorter period if agreed between the employer and the majority of employees);
- in circumstances where an employee has been engaged after the Notice has been issued, the employee must be informed in writing of the temporary shut down period, as soon as reasonably practicable after the employee is engaged;
- providing the direction is reasonable, employers may direct employees in writing to take a period of paid annual leave during a shut down, **if** the employee has sufficiently accrued annual leave entitlements;
- where an employee does **not** have sufficient annual leave to cover the whole shut down period, **by written agreement with the employee**, the employee may take leave without pay or annual leave in advance during the temporary shut down; and

- employees can no longer be required to take leave without pay in circumstances where the employee has insufficient annual leave accrued, or be directed to take leave in advance to cover the period of shut down.

Effectively, despite the new model clause providing that where an employee has insufficient annual leave to cover the entire shut down period, employers and employees may **agree** to an employee taking unpaid leave, many employers **will now lose the right to direct the employee to take unpaid leave**.

It is worth noting that whilst employers and employees may agree to the employee taking annual leave in advance of the entitlement accruing, Acting FWC President Hatcher and Deputy President Asbury, made it clear that employees cannot force employers covered by affected awards to provide annual leave in advance.

What employers should start to consider

For employers with employees covered by the affected awards, we recommend:

- planning for shut downs now (especially Christmas leave periods), to try and ensure that all staff have sufficiently accrued annual leave so as to avoid unnecessarily having to pay employee's their normal remuneration for the period of shut down.
- carefully reviewing the new model clause to assess what obligations will now apply and/or what has changed eg under the *Timber Industry Award 2020 (Cth)* [MA000071] the clause remains very similar with the exception of the allowance to direct employees to take unpaid leave.
- employers applying greater scrutiny with employee annual leave requests to ensure employees have sufficient annual leave balances to cover any planned shut down(s).

Disclaimer

The information contained in this update is intended as a guide only. Professional advice should be sought before applying any of the information to circumstances. While every reasonable care has been taken in the preparation of this update, Law Ensure (ACN 168 990 261) does not accept liability for any errors it may contain.

- employers considering amending existing, or introducing new, leave policies, that state that in circumstances where shut downs occur:
 - employees will be reasonably directed to take a period of annual leave pursuant to the terms of the relevant modern award.
 - following a written request by the employee, the employer may grant the employee annual leave in advance.
 - and an annual leave request for a different period of time in the year has been denied as the employee has insufficient annual leave accrued to cover the period of a shut down, leave may be approved, however, only on the basis that the employee agrees to take unpaid leave during the planned shut down.
- employers introduce new clauses within employment agreements, that state that the parties agree that unpaid leave will be taken in circumstances where there is insufficient annual leave accrued to cover the period of any shut down.

If you require any further information or assistance in relation to the new model award clause or the introduction and adoption of relevant employment agreement clauses, contact us today.

Impacted modern awards:

1. *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020* (Cth) [MA000115] (clause 22.3)
2. *Aircraft Cabin Crew Award 2020* (Cth) [MA000047] (clause 19.4)
3. *Airline Operations—Ground Staff Award 2020* (Cth) [MA000048] (clause 22.6)
4. *Alpine Resorts Award 2020* (Cth) [MA000092] (clause 25.3)
5. *Aluminium Industry Award 2020* (Cth) [MA000060] (clause 22.4)
6. *Ambulance and Patient Transport Industry Award 2020* (Cth) [MA000098] (clause 22.7)
7. *Animal Care and Veterinary Services Award 2020* (Cth) [MA000118] (clause 22.5)
8. *Aquaculture Industry Award 2020* (Cth) [MA000114] (clause 22.9)
9. *Asphalt Industry Award 2020* (Cth) [MA000054] (clause 21.8)
10. *Banking, Finance and Insurance Award 2020* (Cth) [MA000019] (clause 22.5)
11. *Black Coal Mining Industry Award 2020* (Cth) [MA000001] (clause 24.9)
12. *Broadcasting and Recorded Entertainment Award 2020* (Cth) [MA000091] (clause 18.6)
13. *Building and Construction General On-site Award 2020* (Cth) [MA000020] (clause 31.3)
14. *Business Equipment Award 2020* (Cth) [MA000021] (clause 23.5)
15. *Car Parking Award 2020* (Cth) [MA000095] (clause 24.6)
16. *Cemetery Industry Award 2020* (Cth) [MA000070] (clause 19.3)
17. *Cement, Lime and Quarrying Award 2020* (Cth) [MA000055] (clause 22.8)
18. *Cleaning Services Award 2020* (Cth) [MA000022] (clause 21.4)
19. *Clerks—Private Sector Award 2020* (Cth) [MA000002] (clause 32.5)
20. *Coal Export Terminals Award 2020* (Cth) [MA000045] (clause 20.7)
21. *Commercial Sales Award 2020* (Cth) [MA000083] (clause 20.6)
22. *Concrete Products Award 2020* (Cth) [MA000056] (clause 22.6)
23. *Contract Call Centres Award 2020* (Cth) [MA000023] (clause 22.10)
24. *Educational Services (Post-Secondary Education) Award 2020* (Cth) [MA000075] (clause 22.5)
25. *Electrical, Electronic and Communications Contracting Award 2020* (Cth) [MA000025] (clause 21.5)
26. *Electrical Power Industry Award 2020* (Cth) [MA000088] (clause 21.8)
27. *Fitness Industry Award 2020* (Cth) [MA000094] (clause 21.3)
28. *Food, Beverage and Tobacco Manufacturing Award 2020* (Cth) [MA000073] (clause 25.11)
29. *Gardening and Landscaping Services Award 2020* (Cth) [MA000101] (clause 20.9)
30. *Gas Industry Award 2020* [MA000061] (Cth) (clause 20.7)
31. *General Retail Industry Award 2020* (Cth) [MA000004] (clause 28.4)
32. *Graphic Arts, Printing and Publishing Award 2020* (Cth) [MA000026] (clause 31.12)
33. *Hair and Beauty Industry Award 2020* (Cth) [MA000005] (clause 24.3)
34. *Health Professionals and Support Services Award 2020* (Cth) [MA000027] (clause 26.5)
35. *Higher Education Industry—General Staff—Award 2020* (Cth) [MA000007] (clause 24.4)
36. *Horse and Greyhound Training Award 2020* (Cth) [MA000008] (clause 18.6)
37. *Hospitality Industry (General) Award 2020* (Cth) [MA000009] (clause 30.4)

38. *Hydrocarbons Industry (Upstream) Award 2020* (Cth) [[MA000062](#)] (clause 25.7)
39. *Joinery and Building Trades Award 2020* (Cth) [[MA000029](#)] (clause 27.9)
40. *Journalists Published Media Award 2020* (Cth) [[MA000067](#)] (clause 20.8)
41. *Legal Services Award 2020* (Cth) [[MA000116](#)] (clause 22.7)
42. *Local Government Industry Award 2020* (Cth) [[MA000112](#)] (clause 23.5)
43. *Manufacturing and Associated Industries and Occupations Award 2020* (Cth) [[MA000010](#)] (clause 34.7)
44. *Meat Industry Award 2020* (Cth) [[MA000059](#)] (clause 25.8)
45. *Mining Industry Award 2020* (Cth) [[MA000011](#)] (clause 22.7)
46. *Miscellaneous Award 2020* (Cth) [[MA000104](#)] (clause 21.4)
47. *Mobile Crane Hiring Award 2020* (Cth) [[MA000032](#)] (clause 24.6)
48. *Nursery Award 2020* (Cth) [[MA000033](#)] (clause 22.12)
49. *Nurses Award 2020* (Cth) [[MA000034](#)] (clause 22.7)
50. *Oil Refining and Manufacturing Award 2020* (Cth) [[MA000072](#)] (clause 24.6)
51. *Pest Control Industry Award 2020* (Cth) [[MA000097](#)] (clause 23.9)
52. *Pharmaceutical Industry Award 2020* (Cth) [[MA000069](#)] (clause 21.5)
53. *Plumbing and Fire Sprinklers Award 2020* (Cth) [[MA000036](#)] (clause 24.4)
54. *Poultry Processing Award 2020* (Cth) [[MA000074](#)] (clause 21.5)
55. *Premixed Concrete Award 2020* (Cth) [[MA000057](#)] (clause 22.8)
56. *Professional Employees Award 2020* [[MA000065](#)] (Cth) (clause 18.4)
57. *Racing Clubs Events Award 2020* (Cth) [[MA000013](#)] (clause 23.5)
58. *Racing Industry Ground Maintenance Award 2020* (Cth) [[MA000014](#)] (clause 21.5)
59. *Real Estate Industry Award 2020* (Cth) [[MA000106](#)] (clause 20.5(a))
60. *Registered and Licensed Clubs Award 2020* (Cth) [[MA000058](#)] (clause 25.4)
61. *Restaurant Industry Award 2020* (Cth) [[MA000119](#)] (clause 25.4)
62. *Road Transport and Distribution Award 2020* (Cth) [[MA000038](#)] (clause 24.9)
63. *Road Transport (Long Distance Operations) Award 2020* (Cth) [[MA000039](#)] (clause 20.4)
64. *Salt Industry Award 2020* (Cth) [[MA000107](#)] (clause 23.10)
65. *Seafood Processing Award 2020* (Cth) [[MA000068](#)] (clause 21.11)
66. *Security Services Industry Award 2020* (Cth) [[MA000016](#)] (clause 21.4)
67. *Silviculture Award 2020* (Cth) [[MA000040](#)] (clause 22.5)
68. *Storage Services and Wholesale Award 2020* (Cth) [[MA000084](#)] (clause 24.5)
69. *Sugar Industry Award 2020* (Cth) [[MA000087](#)] (clause 31.5)
70. *Supported Employment Services Award 2020* (Cth) [[MA000103](#)] (clause 32.3)
71. *Surveying Award 2020* (Cth) [[MA000066](#)] (clause 22.7)
72. *Telecommunications Services Award 2020* [[MA000041](#)] (Cth) (clause 22.9)
73. *Textile, Clothing, Footwear and Associated Industries Award 2020* (Cth) [[MA000017](#)] (clause 32.6)
74. *Timber Industry Award 2020* (Cth) [[MA000071](#)] (clause 28.10)
75. *Vehicle Repair, Services and Retail Award 2020* (Cth) [[MA000089](#)] (clause 29.6)
76. *Water Industry Award 2020* (Cth) [[MA000113](#)] (clause 22.4)
77. *Wine Industry Award 2020* (Cth) [[MA000090](#)] (clause 24.9)
78. *Wool Storage, Sampling and Testing Award 2020* (Cth) [[MA000044](#)] (clause 23.5)