

How is a pro-rata payment calculated?

The payment is calculated by multiplying the number of weeks employed by the employee's ordinary gross weekly wage (not including overtime) plus the average of any commissions earned and then dividing that amount by 12.

What happens to annual leave entitlements when a business is sold or taken over?

Contact the OIR for advice.

Can a lump sum payment be made instead of an employee taking annual leave?

No. The Act prohibits any payment being made in place of an employee taking annual leave, regardless of any agreement to the contrary between an employer and employee.

The only exception to this is when employment ends.

What happens if a public holiday occurs during annual leave?

An extra day's leave must be given to the employee if the public holiday is a day for which the employee would normally be entitled to be paid.

What are the employer's responsibilities?

The employer must:

- keep full records of their employees' annual leave for a period of six years
- give employees at least one month's notice when requiring them to take leave
- pay employees all their annual leave entitlements before they commence their leave.

For more information:

- Office of Industrial Relations
Ph: 131 628 (local call charge in NSW)
TTY: 1800 555 677
www.industrialrelations.nsw.gov.au
- your employer association or union
- Young People at Work – information for young workers
www.youngpeopleatwork.nsw.gov.au

Free online services at
www.industrialrelations.nsw.gov.au

- *NSW Awards Online* – provides easy access to award information including pay rates and leave entitlements
- *Pay Rate Updates* – subscribe online and receive email alerts on changes to NSW pay rates and award conditions that affect your workplace
- *Check Your Pay* – helps you calculate wages
- *Leave calculators* – helps you calculate annual leave and long service leave
- *Online sample pay slips* – help employers create their own employee pay slips
- *Your Workplace Online* – quarterly online newsletter to keep you up-to-date with workplace issues.

Short courses and workshops

State-wide short courses and workshops are offered on a range of industrial relations and human resource topics to help business owners and managers. Free short courses and workshops include employer rights and responsibilities under industrial relations legislation, the impact of federal industrial relations changes and specific industry employment issues. Other topics include recruiting and retaining staff, developing workplace policies and managing staff performance.



A guide to annual leave entitlements

State industrial relations laws cover most NSW unincorporated businesses (eg sole traders and partnerships) as well as some incorporated businesses operating in NSW (eg some charities and not-for-profit organisations). Incorporated businesses that employ young workers under 18 years of age also have to meet some requirements under NSW child employment laws.

The information below outlines the requirements for employers under the NSW Industrial Relations system.

How much annual leave are employees entitled to?

Under the *Annual Holidays Act 1944* (the Act), full-time and part-time employees in New South Wales are entitled to a minimum of four week's paid leave per year for each 12-month period of employment.

Who is not covered by this Act?

Employees not covered by this Act are those who are:

- covered by a federal award or agreement which provides an annual leave entitlement
- covered by a NSW award, agreement or contract of employment which provides more favourable annual leave entitlements than those in the Act
- federal and state public servants who have their own specific statutory leave entitlements.

When does annual leave become available?

An employee's annual leave becomes available on their one year anniversary of commencing work for an organisation.

When can annual leave be taken?

The employer must give the employee annual leave no later than 6 months from the date it becomes due. If the employee and employer agree, annual leave may be taken in advance of the employee's one-year working anniversary.

Can leave be postponed?

Employers must approve leave within six months of it falling due, and it must be taken by the employee. The written consent of the Industrial Registrar must be obtained to postpone an employee's annual leave beyond that six-month period.

How can annual leave be taken?

An employer can require an employee to take annual leave in one consecutive period or in two periods – one period of not less than one week and the other period of not less than three weeks. Leave may also be taken in two, three or four separate periods, if agreed to by both the employer and employee.

What happens when a business temporarily closes?

An employer may temporarily close their business as part of a scheduled 'annual close down'. This often occurs over the Christmas period. An employer can only give one close down notice per calendar year.

Employers must give their staff one month's notice prior to the close down commencing. If an employee does not have sufficient leave entitlements to cover the close down period, the balance of that period must be taken as leave without pay.

The Act allows for pro-rata payments for employees who have worked less than 12 months.

What should employees be paid when taking annual leave?

Employees taking annual leave should be paid their gross wage (not including overtime), plus any shift allowances and weekend penalties for the ordinary hours that they would have worked if they were not on annual leave.

Commissions or incentive payments must be averaged out over the previous twelve months and added into the annual leave pay.

Bonuses paid to employees who are otherwise paid in excess of \$144,000 per annum are not included.

When should annual leave entitlements be paid?

Full annual leave entitlements must be paid prior to the employee taking their holidays.

How does annual leave work with casual employees?

Most casual employees are paid an additional amount on top of their hourly rate in place of taking annual leave. This additional payment is 1/12th of their hourly rate. Some awards may vary the calculation of this payment.

What annual leave entitlements need to be paid when a person leaves their employment?

On termination of employment, an employee who has been employed for more than one year must be paid any annual leave entitlement not taken. They must also be paid a pro-rata payment for the period from their last anniversary date to the last day of their employment.

If they have been employed for a period of less than one year, a pro-rata payment calculated from the commencement date of employment must be paid.