

Section 88

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*Award/agreement free employees who qualify for the shiftworker entitlement*

- (3) An award/agreement free employee qualifies for the shiftworker annual leave entitlement if:
  - (a) the employee:
    - (i) is employed in an enterprise in which shifts are continuously rostered 24 hours a day for 7 days a week; and
    - (ii) is regularly rostered to work those shifts; and
    - (iii) regularly works on Sundays and public holidays; or
  - (b) the employee is in a class of employees prescribed by the regulations as shiftworkers for the purposes of the National Employment Standards.
- (4) However, an employee referred to in subsection (3) does not qualify for the shiftworker annual leave entitlement if the employee is in a class of employees prescribed by the regulations as not being qualified for that entitlement.
- (5) Without limiting the way in which a class may be described for the purposes of paragraph (3)(b) or subsection (4), the class may be described by reference to one or more of the following:
  - (a) a particular industry or part of an industry;
  - (b) a particular kind of work;
  - (c) a particular type of employment.

**88 Taking paid annual leave**

- (1) Paid annual leave may be taken for a period agreed between an employee and his or her employer.
- (2) The employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

**89 Employee not taken to be on paid annual leave at certain times**

*Public holidays*

- (1) If the period during which an employee takes paid annual leave includes a day or part-day that is a public holiday in the place

where the employee is based for work purposes, the employee is taken not to be on paid annual leave on that public holiday.

*Other periods of leave*

- (2) If the period during which an employee takes paid annual leave includes a period of any other leave (other than unpaid parental leave) under this Part, or a period of absence from employment under Division 8 (which deals with community service leave), the employee is taken not to be on paid annual leave for the period of that other leave or absence.

## **90 Payment for annual leave**

- (1) If, in accordance with this Division, an employee takes a period of paid annual leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.
- (2) If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee had the employee taken that period of leave.

## **91 Transfer of employment situations that affect entitlement to payment for period of untaken paid annual leave**

*Transfer of employment situation in which employer may decide not to recognise employee's service with first employer*

- (1) Subsection 22(5) does not apply (for the purpose of this Division) to a transfer of employment between non-associated entities in relation to an employee, if the second employer decides not to recognise the employee's service with the first employer (for the purpose of this Division).

*Employee is not entitled to payment for untaken annual leave if service with first employer counts as service with second employer*

- (2) If subsection 22(5) applies (for the purpose of this Division) to a transfer of employment in relation to an employee, the employee is not entitled to be paid an amount under subsection 90(2) for a period of untaken paid annual leave.