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.