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Casual Loading Offset

New Fair Work Regulation

From 18th December 2018, employees incorrectly classified as a casual maybe be entitled to an offset payment against NES entitlements, of the annual leave the casual should have received.

As stated by Fair Work, the new regulation applies where all the following criteria are met:

- An employee is employed by their employer on a casual basis
- The employee is paid a casual loading that is clearly identifiable as being an amount paid to compensate the person in lieu of entitlements that casual employees are not entitled to under the NES, such as personal or annual leave
- Despite being classified as a casual, the employee was in fact a full-time or part-time employee for some or all their employment for the purposes of NES
- The employee has made a claim to be paid for one or more of the NES entitlements (that casual employees do not have) that they didn't receive for all or some of the time that they were incorrectly classified as a casual

The new regulation applies to employment periods that occurred before, or that occurred on or after, 18th December 2018.

Background of the New Fair Work Regulation

The casual loading offset is a result of a case between Workpac v Skene, where Skene was incorrectly classified as a casual yet worked regular and systematic hours with a 12 month roster set in advance. The court ruled that the employee was a permanent employee and ordered backpay of the annual leave.

ATO Lodgement Dates

These dates are from the ATO website and do not take into account possible extensions. You remain responsible for ensuring that the necessary information is with us in time.

BAS/IAS Monthly Lodgements

Final dates for lodgements and payments:

January Activity Statement:
21 February 2019

February Activity Statement
21 March 2019

BAS Quarterly Lodgements

Final dates for lodgements and payments:

**3rd Quarter 2019 Financial Year:
March Quarter 2019 (incl. PAYGI)**
28 April, 2019

**4th Quarter 2019 Financial Year:
June Quarter 2019 (incl. PAYGI)**
28 July, 2019

When a due date falls on a Saturday, Sunday or Public Holiday*, you can lodge or pay on the next business day.

*A day that is a public holiday for the whole of any state or territory in Australia.

Due date for super guarantee contributions:

3rd Quarter 2019 Financial Year:
January to March 2019 – contributions must be **in the fund** by 28 April, 2019

4th Quarter 2019 Financial Year:
April to June 2019 – contributions must be **in the fund** by 28 July, 2019

The super guarantee charge is not a tax deduction if not paid by these dates.

Refer to the ATO for details regarding any SGC charges applicable if not paid by due date.

What you Need to do

Unless the casual employee has **made a claim to the Fair Work Commission**, there is no requirement to calculate a casual loading offset against NES entitlements due to the casual.

However, you can ensure the following are implemented:

1. Employee payslips show the casual loading separately to ensure the employee is aware they are a casual and paid the casual loading.
2. Ensure the casual employee is aware the casual loading compensates their relevant NES entitlements. The wording in the casual's contract should be tailored to meet the wording of the new Fair Work regulation.



Annual leave during workers compensation

Source: FWO – Annual leave & sick leave during workers compensation

Annual leave & sick leave during workers compensation

Workers compensation laws are different for:

- each state and territory
- Commonwealth employees.



Does annual leave accumulate during workers compensation?

NSW, Qld, Tas, Vic and WA

Yes. Annual leave accumulates during workers compensation.

SA

Usually, annual leave accumulates during workers compensation.

The rules are different for employees if they're totally incapacitated on workers compensation for 52 weeks or more.

Annual leave for these employees is treated as having been taken and paid for by the workers compensation payments. However, employees that get annual leave loading under an award or agreement, still get paid the loading for the period of annual leave that is treated as having been taken and already paid.

ACT and NT

No. Annual leave doesn't accumulate during workers compensation.

Commonwealth employees

Annual leave can accumulate for 45 weeks only.

Does sick leave accumulate during workers compensation?

Qld and SA

Yes. Sick leave accumulates during workers compensation.

ACT, NSW, NT, Tas, Vic and WA

No. Sick leave doesn't accumulate during workers compensation.



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Commonwealth employees

Sick leave can accumulate for 45 weeks only.

Can annual leave be taken during workers compensation?

NSW, Qld, Tas, Vic and WA

Yes. Annual leave can be taken during workers compensation.

In most states, employees get paid for both the annual leave and workers compensation.

In Tasmania, employees won't get paid for workers compensation at the same time they're being paid for annual leave.

SA

In South Australia, annual leave can be taken or paid out.

Employees who have been on workers compensation with total incapacity for 52 weeks or more can't take annual leave. This is because their accumulated annual leave is treated as having been taken and paid for by the workers compensation payments.

ACT and NT

No. Annual leave can't be taken during workers compensation.

Commonwealth employees

No. There are some exceptions for members of the defence forces.

Can sick leave be taken during workers compensation?

NSW and Qld

Yes.

In New South Wales if sick pay is higher, payment is the difference between the sick pay and workers compensation.

ACT, NT, SA, Tas, Vic and WA

No. Sick leave can't be taken during workers compensation.

Commonwealth employees

No. There are some exceptions for members of the defence forces.

Employees returning to work

Some employees on workers compensation return to work on reduced hours and/or alternative duties while recovering from an illness or injury.

Employees returning to work will accumulate annual leave and sick leave for the hours that they actually work. They can also take annual leave and sick leave for those hours.

This applies to employees in all states and territories.

Some employees who return to work on reduced hours also accumulate annual leave and/or sick leave for their workers compensation hours. Please see information about accumulating annual leave and sick leave above.

Disclaimer: All or any advice contained in this newsletter is of a general nature only and may not apply to your individual business circumstances. For specific advice relating to your specific situation, please contact your accountant or contact me for further discussion.

Benchmark Business Works

Tel: 9497 4110

Email: admin@benchmarkbusinessworks.com.au

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