

It is not unusual for businesses to shut down their operations from time to time. For instance, many businesses in Australia will cease trading for one to two weeks over the end-of-year festive season. The renovation of a business's premises may also call for the need for a business to shut down for a period.

It is commonplace for employers to require their employees to take annual leave during shutdown periods. Until recently, in circumstances where an employee did not have sufficient annual leave accrued – for instance, because they were a newer employee or had already utilised their accrued leave – the employer could require the employee to take leave without pay during the shutdown period.

That position changed for many employers on 1 May 2023, when changes to 78 modern awards came into effect. A full list of the affected modern awards can be found below, but they include the Building and Construction General On-site Award 2020, the Clerks – Private Sector Award 2020, the Banking, Finance and Insurance Award 2020 and the Professional Employees Award 2020.

Employees covered by the amended awards are now entitled to decline a request to take unpaid annual leave over a shutdown period if they do not have enough annual leave accrued. Where an employee does not have sufficient annual leave for the shutdown period, they can agree with their employer to either:

- Take annual leave in advance
- Used accrued time off (such as accrued rostered days off (RDOs))
- If practicable, continue to work over the shutdown period

If an employer intends to shut down for a particular period, written notice must be given to the affected employees. Unless a shorter period of time has been agreed between the employer and its employees, the notice must be given at least 28 days before the temporary shutdown period begins. If an employee begins work after the notice period, the employee should be provided with notice of the shutdown as soon as reasonably practicable, for example, in their contract of employment.

Planning a shutdown? Here is what you need to do.

In order to remain compliant with the new shutdown rules, employers should do the following:

- Plan for shutdown periods in advance, even if using tentative dates, noting when written notice will need to be provided.
- Ensure that the HR department, or other individuals who approve leave, consider whether an individual applying to take annual leave will have enough accrued leave remaining for any proposed shutdown period.

- If an employee wants to take a period of annual leave throughout the year and doing so will mean they will not have enough leave remaining for the proposed shutdown period, before approving the leave, the employer should obtain the employee's agreement that they will take unpaid leave during the upcoming shutdown period.
- Consider which roles employees could continue to perform during a shutdown period and whether there are any health and safety concerns if the work were performed without the usual level of supervision or support.
- Update contractual documents, employee handbooks and leave policies/forms as necessary. This may include seeking the agreement of employees within the employment contract to provide a lesser period of notice for shutdown periods and to take unpaid leave in circumstances where they do not have enough accrued annual leave to cover shutdown periods.

Modern awards affected by the new shutdown rules include:

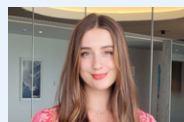
- Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award
- Aircraft Cabin Crew Award
- Airline Operations – Ground Staff Award
- Alpine Resorts Award
- Aluminium Industry Award
- Ambulance and Patient Transport Industry Award
- Animal Care and Veterinary Services Award
- Aquaculture Industry Award
- Asphalt Industry Award
- Banking, Finance and Insurance Award
- Broadcasting and Recorded Entertainment Award
- Building and Construction General On-site Award
- Business Equipment Award
- Car Parking Award
- Cemetery Industry Award
- Cement, Lime and Quarrying Award
- Cleaning Services Award
- Clerks – Private Sector Award

- Coal Export Terminals Award
- Commercial Sales Award
- Concrete Products Award
- Contract Call Centres Award
- Educational Services (Post-Secondary Education) Award
- Electrical Power Industry Award
- Electrical, Electronic and Communications Contracting Award
- Fitness Industry Award
- Food, Beverage and Tobacco Manufacturing Award
- Gardening and Landscaping Services Award
- Gas Industry Award
- General Retail Industry Award
- Graphic Arts, Printing and Publishing Award
- Hair and Beauty Industry Award
- Health Professionals and Support Services Award
- Higher Education Industry – General Staff – Award
- Horse and Greyhound Training Award
- Hospitality Industry (General) Award
- Hydrocarbons Industry (Upstream) Award
- Joinery and Building Trades Award
- Journalists Published Media Award
- Legal Services Award
- Local Government Industry Award
- Manufacturing and Associated Industries and Occupations Award
- Meat Industry Award
- Mining Industry Award
- Mobile Crane Hiring Award
- Miscellaneous Award
- Nursery Award
- Nurses Award
- Oil Refining and Manufacturing Award
- Pest Control Industry Award
- Pharmaceutical Industry Award
- Plumbing and Fire Sprinklers Award
- Poultry Processing Award
- Premixed Concrete Award
- Professional Employees Award
- Racing Clubs Events Award
- Racing Industry Ground Maintenance Award
- Real Estate Industry Award
- Registered and Licensed Clubs Award
- Restaurant Industry Award
- Road Transport (Long Distance Operations) Award
- Road Transport and Distribution Award
- Salt Industry Award
- Seafood Processing Award
- Security Services Industry Award
- Silviculture Award
- Storage Services and Wholesale Award
- Sugar Industry Award
- Supported Employment Services Award
- Surveying Award
- Telecommunications Services Award
- Textile, Clothing, Footwear and Associated Industries Award
- Timber Industry Award
- Vehicle Repair, Services and Retail Award
- Water Industry Award
- Wine Industry Award
- Wool Storage, Sampling and Testing Award

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