



Leave without pay

Leave without pay and annual holidays

Is the employee taking a continuous period of leave without pay that;

- is longer than 1 week; AND
- doesn't include unpaid sick leave, unpaid bereavement leave or unpaid domestic violence leave?

NO

YES

The employee's anniversary date for annual holidays is not affected.
The divisor for calculating average weekly earnings (AWE) does not reduce.

As the employer, do you want the period of leave without pay to have an effect on the employee's anniversary date for annual holidays?

The employee will have to wait longer before they become entitled to annual holidays. It may also mean that the employee will be paid for annual holidays at a lower rate.

Their AWE figure may reduce, but because the employee is paid the greater of AWE or ordinary weekly pay, a lower figure for AWE may not change the amount the employee gets paid for their annual holidays.

YES

NO

- **This is the default option.** This is what must happen if you don't offer the alternative option to the employee or they don't accept.
- The employee's anniversary date for annual holidays entitlement must be moved out by the length of the (continuous) period of leave without pay in excess of one week that they are taking eg. if they take a continuous period of two weeks leave without pay, their anniversary date moves out by one week. This means they will have to wait longer before they become entitled to annual holidays.

- You must agree with the employee that their anniversary date for annual holidays won't change. If you do this, you must also reduce the divisor for calculating AWE by the number of whole or part weeks of leave without pay taken in excess of one week (in the period of leave without pay).
- Many employees will be happy to agree after discussion, as this means they will keep their anniversary date and so become entitled to annual leave at the usual time. Reducing the divisor for calculating AWE means that the dollar value of AWE will be higher than if 52 was used as the divisor.

This information is guidance only, is not legally binding, and should not be substituted for legal advice or for the wording of the Holidays Act 2003. MBIE does not accept any responsibility or liability for error of fact, omission, interpretation or opinion that may be present, nor for the consequences of any decisions based on this information.