



Christmas/New Year Shutdown: New Obligations

By John Girardi

It's very common for businesses to have a shutdown period between Christmas and New Year, and some shutdown for slightly longer than that.

Usually, the shutdown is welcomed by all employees, and they will use their annual leave during this period. If an employee does not have an adequate annual leave balance, the employer might allow them to take annual leave in advance (i.e. their annual leave will go into negative), or the employer might take leave without pay.

This shutdown period and the way it has worked for your business in the past has probably operated smoothly. But due to changes to 78 Modern Awards, which took effect on 1 May 2023, employers need to give more thought to how these shutdowns will work. These changes affect businesses with employees covered by the Vehicle Repair, Services and Retail Award 2020 (which includes most tyre fitting businesses, and mechanical workshops).

Employers need to provide written notice about the temporary shutdown

Employers are now required to provide employees with a minimum of 28 days' notice that they will be having a shutdown over the Christmas and New Year period.

For example, if your business is going to temporarily shut down on Friday, 22 December 2023, you would need to give notice to employees early in the week beginning on Monday, 20 November 2023'.

This notice must be in writing. You can do this by putting up a staff notice (e.g. in the tea room), by notifying employees on their payslips, or by sending them an email. A sample notice is set out below. This can be modified as required by businesses.

An employer can provide less than 28 days' notice, if agreed to by the majority of employees.

Direction to Take Annual Leave

Employers can require employees to take paid annual leave during this temporary shutdown. This is a positive change. Before this, there were stricter rules around when an employer could direct employees to take annual leave. For example, under the Vehicle Repair, Services and Retail Award 2020, you could only direct an employee to take annual leave if they had large annual leave

balances (in excess of 6 weeks) and you had to provide them with 8 weeks' notice.

What if an employee does not have an adequate annual leave balance to cover the closedown?

An employee who doesn't have enough paid annual leave to cover the whole period of the closedown can reach an agreement with their employer for the days not covered, such as annual leave in advance, or leave without pay.

What about public holidays?

Permanent employees need to be paid for any public holidays during the shutdown period that fall on days they would normally have worked (and aren't required to use annual leave on those days).

The problem with this change that you need to be aware of

A problem with this change that can occur for a business owner is where an employee does not have an adequate annual leave balance to cover the shutdown period. Where this occurs, and the employee agrees to take annual leave in advance (i.e. for their annual leave balance to go into negative), or to take leave without pay, there is no problem.

I find most employees are reasonable, and you should be able to reach an agreement for those employees to take annual leave in advance, or leave without pay. But the employer may be in a bind if this agreement cannot be reached.

However, if the employee does not have a sufficient leave balance and does not agree to take unpaid leave or leave in advance, the employer can experience a problem. The Award now requires that the employer either:

1. allow the employee to work if this is in line with the needs of the business; or
2. must pay the employee for the time for which annual leave cannot be taken.

What employers should be doing

Employers should be aware of this change, and be conscious when approving leave throughout the year, that each employee will have an adequate annual leave balance to cover the annual Christmas/New Year Shutdown.

The changes significantly impact the

management of employees' leave during shutdown periods, and thinking ahead and planning for these shutdowns is important.

Sample Notice of requirement to take annual leave for purpose of temporary shutdown

Temporary Shutdown Period:
[dates]

Requirement to Take Accrued Annual Leave

As we have done in previous years/This year, [name of business] will be shutting down during the Christmas/New Year period, from [dates inclusive].

Employees will be required to use their accrued annual leave during this shutdown. They will not be required to use annual leave for days that they are entitled to be paid as a public holiday.

What do employees need to do?:

If you intend to take annual leave prior to this temporary shutdown period, please keep in mind that you will need to retain at least [no. of days] of accrued annual leave for the temporary shutdown period.

It is your responsibility to ensure you have the required amount of accrued annual leave to cover this shutdown period.

If you believe you will not have enough annual leave to cover all or part of the shutdown period, please discuss this with your manager.

Signed:

Dated: [insert date]

About John Girardi

John Girardi is a human resources consultant who runs Girardi Human Resources. He works with a number of employers in the automotive industry to provide outsourced human resource support, including providing Fair Work advice, drafting employment contracts, performance management, management training, and recruitment.



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