

ANNUAL CLOSE DOWN

Update November 2010

An employee's applicable industrial instrument (or in the case of an award/agreement free employee the Fair Work Act 2009) will determine whether an employer has the right to send an employee on an annual close down.



In some cases where the employer is able to send employees on an annual close down, there may also be a requirement to provide employees a period of notice of the intention to close the business for a period of annual leave.

Check the Modern Award

The annual leave clause in modern awards sets the conditions for an employer to implement an annual close down, and generally requires the following:

- the employer to provide the required amount of notice of their intention to close down
- employees who have accrued sufficient leave to cover the period of the close down are paid that leave in accordance with the appropriate award wage rate
- employees who have not accrued sufficient paid annual leave to cover part or all of the close down are allowed to take unpaid leave for the remainder of the close down
- any leave taken by employees as a result of a close down is counted as service with the employer
- the employer may only close down the business, or part of it, for one or two periods in a year

While the above requirements generally apply, it is essential to check the applicable award to determine the specific conditions that need to be complied with. For example, in the construction industry, the following awards all require notice of 2 months to be provided:

- Building and Construction General On-site Award 2010
- Plumbing and Fire Sprinklers Award 2010
- Electrical, Electronic and Communications Contracting Award 2010
- Joinery and Building Trades Award 2010

while the Clerks - Private Sector Award 2010 only requires 4 weeks' notice to be provided.

Where an award does not have a close down provision, employees cannot be directed in respect of an annual close down. In this situation, the employer should have an annual close down policy in place but should also seek the agreement of affected employees.

Award/Agreement Free Employees

For award/agreement free employees, the Fair Work Act 2009 provides that an employer may require employees to take a period of paid annual leave as long as the request is reasonable which can include the employer's business being closed down for period. The Fair Work Act 2009 also allows for other matters to be agreed between the employer and the employee including that paid leave may be taken in advance of accrual where the close down period exceeds the employee's annual leave accrual, and that a specified period of reasonable notice is given before taking the leave.

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0428 929696