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Are allowances part of ordinary pay for annual leave purposes?

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By Paul Munro on 20 September 2012

The National Employment Standards (NES) and modern awards are the critical sources of entitlements in relation to annual leave pay, so employers should start there when deciding whether to include **allowances** in annual leave pay.



This question was recently sent to *WorkplaceInfo*.

Q The majority of our employees are covered by two modern awards —

the Manufacturing and Associated Industries and Occupations Award 2010 and the Clerks — Private Sector Award 2010.

A couple of employees have questioned the pay they received when taking annual leave.

The company pays annual leave in line with the definition of ordinary pay under the National Employment Standards (ie the employee's base rate of pay).

The employees involved are our designated first-aid officers and receive a first-aid **allowance** as per the relevant modern award.

The definition under the NES does not include 'allowances' and, consequently, the company does not pay the first-aid allowance when an employee takes annual leave.

Have we misinterpreted the definition under the NES in this circumstance?

A A term of a modern award may provide a more beneficial entitlement than the employee's 'base rate of pay' provided by the NES (see s86 ff) with respect to the ordinary pay payable to an employee who takes annual leave.

Manufacturing award

In this case, cl 41.4 of the *Manufacturing and Associated Industries and Occupations Award 2010* provides that instead of the base rate of pay payable under the NES, an employee must be paid their ordinary rate of pay, which is defined in the Award as including **allowance**, loadings and penalties paid for all purposes of the award, first-aid **allowance** and other wages payable under the employee's contract of employment, including any over-award payment.

This means any employee employed in the establishment whose duties are covered by the Manufacturing modern award receive their first-aid **allowance** for any period of annual leave.

Compare Clerks award

The *Clerks — Private Sector Award 2010*, however, refers to the NES with respect to most matters pertaining to annual leave.

This means ordinary pay is as defined by the NES (ie at the employee's base rate of pay (which excludes payment of **allowance**s)), meaning the employer is not required to pay first-aid **allowance** on annual leave for any employee employed in the establishment whose duties are covered under the Clerks modern award.

Employers' choice

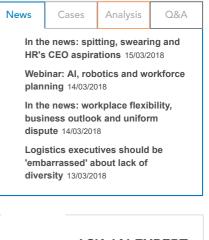
The employer could choose to pay the first-aid **allowance** to clerical employees as part of a company annual leave policy, to maintain similar benefits to all award-covered staff.

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