



# INFORMATION SHEET

## Workplace Services

Current at: 18 June 2019  
HIA ref no: ZFSIRR1284

### Annual Leave Loading and Superannuation

Members should be aware that there has been a change to the approach taken by the ATO to the treatment of annual leave loading for the purposes of calculation of superannuation. The change means that employers may need to provide written evidence of the purpose of annual leave loading to justify their calculation of Ordinary Time Earnings not including annual leave loading payments.

#### What is annual leave loading?

Most Modern Awards include provisions for the payment of annual leave loading. This is generally an additional payment of 17.5% provided to an employee on top of their base rate of pay during periods of annual leave.

#### Payment of superannuation on annual leave loading

To date, employers have not made superannuation contributions in respect of annual leave loading entitlements. This was because historically the justification for annual leave loading was that it compensated employees on annual leave for a lost opportunity to work overtime and thereby not treated as Ordinary Time Earnings (OTE).

#### Change to the treatment of annual leave loading

The ATO have revised their position. Annual leave loading payments will now be treated as OTE and therefore subject to superannuation guarantee contributions.

#### Why?

The ATO believes that there must be evidence that the purpose of the annual leave loading being paid to employees is “*referable to a notional loss of opportunity to work overtime*”.

#### What should I do?

The ATO has offered two ways for employers to satisfy them that annual leave loading is compensation for the lost opportunity to work overtime. Only one of those is suitable where the Building, Joinery and Timber Awards apply.

A policy document: The ATO will accept a documented policy that clarifies the reason for annual leave loading. The policy must “*reflects the mutual understanding of both*” employee and employer regarding the reason for the payment of annual leave loading.

The ATO website indicates that the policy needs to include a paragraph like this:

*For the avoidance of any doubt, the entitlement to annual leave loading under clause X of [the award] is provided to compensate staff for a lost opportunity to work overtime.*

For example, the relevant clause in the *Building and Construction General Onsite Award 2010* is 38.2 and in the *Joinery and Building Trades Award 2010* it is 32.3.

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DISCLAIMER - The above is intended to provide general information in summary form. The contents do not constitute specific advice and should not be relied upon as such. Formal specific advice should be sought by members with respect to particular matters before taking action.

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## Next Steps?

1. Review your payroll process and determine how you treat annual leave loading.
  - If annual leave loading is already treated as part of OTE or you have an Individual Flexibility Agreement in place that accounts for annual leave loading then no further action is required.
2. Check the provisions of the relevant Modern Award and answer the following questions:
  - a. Does the award that applies to your employee include an entitlement to annual leave loading?
  - b. Is the award silent on the reason for the annual leave loading?
  - c. Does the award provide for the payment of overtime?
  - d. There is no explicit link between overtime and annual leave loading in the award?
3. If you answered 'yes' to all of the questions at 2 above you should consider creating a policy or amending an existing policy that relates to annual leave.

If any of your employees work shift work, the above information may not apply and annual leave loading maybe considered to be paid to compensate for the lost opportunity to earn shift allowances.

Click [here](#) for further information from the ATO.

**This information applies to the *Building and Construction General Onsite Award 2010*, the *Joinery and Building Trades Award 2010* and the *Timber Industry Award 2010* only.**

*Should you require further information on this topic then please call a HIA Workplace Adviser on 1300 650 620.*