

Federal Court decision: accrual of personal/carer's leave

21 August 2020

On 13 August 2020, the High Court handed down a decision about the method of accruing and taking paid personal/carer's leave under the National Employment Standards. The High Court has found that the entitlement to 10 days of personal/carer's leave is calculated based on an employee's hours of work, not days. 10 days of personal leave can be calculated as 1/26 of an employee's ordinary hours of work in a year.

The High Court's decision overturns a decision made by the Full Federal Court in August 2019. The news article below explains the outcome of the Full Federal Court decision from 2019 and is no longer current.

Learn more about the High Court decision at [High Court decision: accrual of personal/carer's leave \(www.fairwork.gov.au/about-news-and-media-releases/website-news/high-court-decision-accrual-of-personal-carers-leave\)](http://www.fairwork.gov.au/about-news-and-media-releases/website-news/high-court-decision-accrual-of-personal-carers-leave) .

Published 23 August 2019

Read on for more information.

Appeal

The Australian Government and the company involved in the case, Mondelez Australia Pty Ltd, applied to the High Court of Australia to appeal this decision. The High Court granted these applications on 13 December 2019 and an appeal was heard in the High Court on 7 July 2020. We'll update our information when the High Court has handed down its decision. In the meantime, the decision made on 21 August 2019 is the current state of the law and applies to affected employers and employees.

What does the Mondelez decision mean?

In the Mondelez decision, the majority of the Full Federal Court determined:

- Full-time and part-time employees are entitled to 10 working days of paid personal/carer's leave for each year of employment.
- The leave protects those employees' income when they are entitled to be absent from work due to illness or injury (or providing care or support to a family or household member who is ill, injured or suffering from an unexpected emergency).
- The leave must be calculated in working days, not hours. A working day is the portion of a 24 hour period that an employee would otherwise be working.
- An employee's entitlement is expressly based upon time working for the employer and is expressly calculated in days.
- For every day of personal/carer's leave taken, an employer deducts a day from the employee's accrued leave balance. If an employee takes a part-day of leave, then an equivalent part-day is deducted from the employee's accrued leave balance.

More information

Read more about accumulating and taking paid sick and carer's (personal/carer's) leave on our [Paid sick & carer's leave \(www.fairwork.gov.au/leave/sick-and-carers-leave/paid-sick-and-carers-leave\)](http://www.fairwork.gov.au/leave/sick-and-carers-leave/paid-sick-and-carers-leave) page.

We will continue to update information on our website with any significant changes.

See the High Court's [results of applications](https://www.hcourt.gov.au/assets/registry/special-leave-results/2019/13-12-19_Determin.pdf) [to grant leave to Mondelez and the Australian Government to appeal Mondelez Australia Pty Ltd v AMWU \[2019\] FCAFC 138](https://www.hcourt.gov.au/assets/registry/special-leave-results/2019/13-12-19_Determin.pdf) [to grant leave to Mondelez and the Australian Government to appeal Mondelez Australia Pty Ltd v AMWU \[2019\] FCAFC 138](https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2019/2019fcafc0138) .

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.