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industrial relations : human resources : employment matters : training

CIRCULAR: GEN/112/NAT/112/20
DATE: 13 August 2020
SUBJECT: Personal / Carer's Leave – 10 days under the NES
ATTENTION: Chief Executive Officer

Today the High Court has handed down an eagerly anticipated decision concerning the interpretation of the phrase '10 days' – being the entitlement to personal / carer's leave under the National Employment Standards.

Our January 2020 Edition of the Advisor summarised the Full Federal Court's decision, which, in short, held that:

- 10 days is based on the working hours of a particular person – therefore a 12-hour shiftworker would be entitled to 10 days based on 12 working hours – equating to 120 hours of personal leave; and
- 10 days applied equally to full time employee and part time employees.

The above decision represented a significant shift in how the entitlement had traditionally been interpreted and applied and our various discussions with our clients confirmed this.

Pleasingly the High Court has restored the original position and held that:

The expression '10 days' in s96(1) of the Fair Work Act 2009 (Cth) means an amount of paid personal/carer's leave accruing for every year of service equivalent to an employee's ordinary hours of work in a week over a two-week (fortnightly) period, or 1/26 of the employee's ordinary hours of work in a year. A 'day' for the purposes of s 96(1) refers to a 'notional day', consisting of one-tenth of the equivalent of an employee's ordinary hours of work in a two-week (fortnightly) period.

Therefore, the High Court has overturned both of the above points in the Full Federal Court decision.

A summary of the Judgment can be viewed here:

<https://cdn.hcourt.gov.au/assets/publications/judgment-summaries/2020/hca-29-2020-08-13.pdf>

The full Judgment is available here:

<http://eresources.hcourt.gov.au/downloadPdf/2020/HCA/29>

If you have any questions or if you require further information, please contact the SIAG National Advisory Service on 03 9644 1400 or 1300 (SIAG HR) / 1300 742 447. The information provided in this email is generic advice. For advice in respect of your specific situation please contact us.

Brian Cook
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