

ACTUS WORKPLACE LAWYERS

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The effect of annual leave and personal/carer's leave on trigger points for overtime

On 12 April 2023, Deputy President Gostencnik of the Fair Work Commission (FWC) handed down a [decision](#) rejecting an application by a payroll company to vary the *Clerks - Private Sector Award 2020*, to resolve alleged ambiguity and uncertainty. The issue at hand was whether days of personal/carer's leave and annual leave taken in a particular week affect the 'trigger point' for overtime in that week.

A somewhat similar issue is being dealt with in a case relating to Officeworks which is before Justice Raper of the Federal Court of Australia. The case relates to the interpretation of provisions in the company's enterprise agreement.

In the FWC case, the main issue in contention was whether periods of personal/carer's leave and annual leave are to be treated as hours worked for the purposes of overtime calculations under the Clerks Award. The Award states that, amongst other circumstances, *"(a)n employer must pay an employee at the overtime rate for any hours worked at the direction of the employer....in excess of the ordinary weekly hours"*.

Gostencnik DP decided that personal/carer's leave and annual leave taken do not affect the trigger points which determine when overtime penalties are payable. An employee is entitled to overtime penalties for time worked outside the ordinary hours that have been fixed for the employee, and for time worked outside the other overtime triggering points in the Award (e.g. time worked beyond 10 hours per day).

The Federal Court case relate to a claim by the Shop, Distributive and Allied Employees Association (SDA) that Officeworks has breached its enterprise agreement in relation to rostering arrangements and overtime payments. One of the relevant issues is the point at which overtime penalties are triggered when an employee takes annual leave or personal carer's leave during the roster cycle. The case is listed for hearing before Raper J on 26 and 27 October 2023.

Actus Workplace Lawyers is available to provide detailed assistance to employers with hours of work, overtime and other award or enterprise agreement issues. Please contact Stephen Smith, Principal of Actus Workplace Lawyers on 0418 461 183 or Email: stephen.smith@actuslawyers.com.au.