

CHRISTMAS HOLIDAYS 2010

Update December 2010



With Christmas Day, Boxing Day and New Years Day all falling on a weekend for the 2010/11 holiday period, it is important that you identify which days are recognised as public holidays as this will determine your employee's entitlement to payment for the day and also the appropriate penalty rate to be paid if work is performed on that day.

Determining Public Holidays

Observance of a public holiday may be determined from a number of different sources, including the Fair Work Act 2009, the applicable award or enterprise agreement and the declaration or prescription of a public holiday under the relevant state or territory public holidays legislation.

The Fair Work Act defines the days specified as a public holiday for the purposes of the National Employment Standards as 25 December (Christmas Day), 26 December (Boxing Day) and 1 January (New Year's Day). It further states that any other day declared or prescribed by a law of a state or territory to be observed throughout the state or territory is also a public holiday, including a day that is substituted for a day named in the Act. Therefore, an employee is entitled to a day off with pay where the declared or substituted public holiday falls on a day on which the employee has ordinary hours of work.

Check the Award

The Fair Work Act does not prescribe the penalty rates applicable to public holidays, this is determined from the relevant award, enterprise agreement or individual contract of employment.

The award or agreement may also identify the day on which the penalty rate will apply. In some cases this may not be for work performed on the date declared or prescribed by the relevant state or territory government for the public holiday, as the award may transfer these holidays when falling on a weekend to the following Monday or Tuesday. For example, in some cases where the employee works on Saturday 25 December, they will be paid the appropriate penalty rate for Saturday; whereas work performed on the following Monday will attract the public holiday penalty rate under the award. As this is not a standard provision in modern awards, it is essential that the applicable award is checked to determine the day to be observed as a public holiday for applying the appropriate public holiday penalty rates. For example, the following significant awards do not have a provision for the transfer of public holidays which fall on weekends:

- Building and Construction General On-site Award 2010
- Electrical, Electronic and Communications Contracting Award 2010
- Joinery and Building Trades Award 2010
- Plumbing and Fire Sprinklers Award 2010
- Clerks - Private Sector Award 2010

To determine any changes to declared or prescribed public holidays check the relevant state or territory legislation. For example, with regards to Queensland, recent amendments to the Holidays Act 1983 which previously allowed public holidays that fell on weekends to be substituted for other days, now provides for the observance or appointment of additional public holidays. This means that previously employees working on the actual date of Christmas Day and New Year's Day would have received no additional entitlements for work on those days as they were not public holidays, where now all employees are allowed a break from work at Christmas and New Year, or an entitlement to penalty rates on each of the set public holidays in accordance with their award or agreement where they are required to work.

The public holidays to be observed for the upcoming holiday period are as follows:

- Christmas Day: Saturday 25 December 2010 and Tuesday 28 December 2010
- Boxing Day: Monday 27 December 2010
- New Year's Day: Saturday 1 January 2010 and Monday 3 January 2010

Contact us for further assistance with meeting your human resource, industrial relations and OHS obligations

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