

Legal update on employment law - December 2016

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2016 has been another year of change, with the introduction of the Health and Safety at Work Act 2015 and new minimum employment standards. Issues such as privacy, pay equity and Holidays Act compliance have also been very much in lights.

In our last update for the year, we highlight some recent health and safety guidance and remind you of the minimum employment standards that will take effect on 1 April 2017. We have also included some guidance on managing the holidays - especially with Christmas falling on a Sunday.

Health and safety guidance

WorkSafe has recently released a fact sheet to assist employers manage and prevent violence, or threats of violence, in customer service environments. The fact sheet applies equally to public and private sector organisations and outlines a process to help PCBUs assess risk, implement control measures, monitor performance of the control measures, and take action on lessons learnt.

You can find the fact sheet [here](#).

WorkSafe has also recently released new guidelines on the safe design, use and maintenance of scaffolding.

You can find the guidelines [here](#).

Holidays Act questions

Some common questions we get at this time of year are "How do the Christmas and New Year holidays work when they fall on a weekend?" and "What happens if I become sick, or suffer a bereavement, while on holiday?". The following recaps the answers under the Holidays Act. Note that your employment agreements or policies may also have a bearing.

Public holidays

This year, Christmas and New Year's Day fall on a Sunday, and the Holidays Act determines whether they are to be observed on the Sunday or the following Tuesday:

- If the Sunday would otherwise have been a working day for the employee, the holiday is observed on the Sunday
- If the Sunday would not otherwise have been a working day for the employee, the holiday is observed on the following Tuesday
- Boxing Day and 2 January fall on a Monday, and are observed on that day.

For employees who work variable days, it is for the parties to agree what would otherwise have been a working day, with guidance from the Act (section 12).

Sick or bereavement leave while on holiday

For an employee who is eligible for sick leave or bereavement leave:

- If the employee becomes sick or injured while on annual holidays, the employee may take the relevant period as sick leave instead of annual holidays if the employer agrees
- If an employee has already booked annual holidays, and becomes sick or injured before starting those, the employer must allow the employee to take sick leave for the relevant period instead of annual holidays, to the extent they overlap
- If the employee suffers a bereavement while on annual holidays, the employer must allow the employee to take the relevant period as bereavement leave instead of annual holidays. The same applies if the bereavement occurs before and overlaps with the holidays
- Public holidays don't count as sick leave or bereavement leave.

Employment standards

Changes to several minimum employment standards came into effect on 4 April this year. Some of these have taken employers by surprise - the hours of work, availability and record-keeping requirements in particular. These requirements are not directed solely at 'zero-hours agreements', even though they received the most media attention. If you have not done so already, we recommend you review your agreements for compliance.

The times at which the changes take effect vary, depending on the particular change and when the agreement was entered into.

All of the changes apply to employment agreements entered into on or after 4 April this year.

For individual employment agreements in place before 4 April 2016, some minimum standards do not take effect until 1 April 2017:

- The agreed hours of work provisions (employees and employers must agree on an employee's hours of work in the employment agreement - section 67C)
- The availability provisions (availability provisions are unenforceable unless certain requirements are met - sections 67D, E and F)
- The cancellation of shifts provisions (an employer cannot cancel a shift without reasonable notice and compensations - section 67G)
- The secondary employment provisions (restrictions on an employee's secondary employment are prohibited unless genuine reasons are set out in the employment agreement - section 67H).

Note that only these requirements have a delayed effect. The other changes apply from 4 April 2016 regardless of when the employment agreement was entered into, such as the new parental leave entitlements and record keeping requirements.

All the best

On behalf of Buddle Findlay, we would like to thank you all for your support and feedback throughout the year. Please let us know if you have any suggestions for topics you would like covered, or if we can assist in any other way. Merry Christmas, and have a happy and safe holiday.

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