

Navigating holiday pay this Christmas

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I am a big believer in the saying 'don't wish your life away', but this year, more than most, people are looking ahead to the Christmas break. And fair enough, the country has earned it.

The holidays themselves will be welcome, but their treatment under the Holidays Act continues to be source of cost and confusion, with many employers still in the midst of large scale remediation processes, and legislative reform still some time away. To assist ahead of these holidays, we summarise some of the relevant rules.

This year the Christmas/New Year public holidays are on a Friday and Saturday. For the 'regular Monday to Friday employee', the observance of the Saturday holiday is moved to the Monday. For employees who 'would otherwise work' the Saturday (for example, they work to a roster and are rostered on that day) the public holiday will be observed on the Saturday.

Employers and employees can change these arrangements by agreeing to transfer the public holiday to another day, following the specific requirements in the Holidays Act. They can also agree to shift the holiday/s to a different 24-hour period where employees work past midnight on the start or end of a public holiday (or both).

On the public holiday (ie that day that it is observed for the employee), the starting point is that the employee is entitled to a paid day off on the public holiday if they otherwise would have worked that day. It is paid at their relevant daily pay (RDP) or (if applicable) average daily pay (ADP), with formulas provided in the legislation. A recent Employment Court case confirms that if both RDP and ADP are available, the employer can choose which to apply. Employers should also look carefully at whether overtime or commission payments factor into those calculations, including those payable over a longer timeframe (eg weekly/monthly).

Employees can agree to work or can be required by their employment agreement to work on a public holiday - being the day on which the holiday is observed (ie the Fridays and following Mondays for the regular Monday to Friday employees). They must be paid at time and a half as a minimum for the time worked, and this must be stated in the employment agreement. Some agreements provide for more.

If the day would normally have been a working day, employees also receive an alternative holiday to be taken at another time on pay. Employees who are on-call but not called in are also entitled to an alternative holiday if they don't enjoy a whole day off due to the level of restriction of being on-call.

Many employees take some annual holidays over the holiday season. Often this is by agreement. Some employers apply a customary 'closedown' requiring employees to cease work for a period with or without pay (technical requirements apply). In our experience, many employers use other informal arrangements, encouraging - rather than requiring - employees to use annual holidays over this period. This can be a good way of managing leave balances and ensuring that employees are properly rested and refreshed, without triggering the complicated closedown arrangements under the legislation. Alternatively, failing agreement, employers can require employees to take annual holidays by providing at least 14 days' notice.

Employees taking annual holidays remain entitled to any public holiday during that period if it would otherwise have been a working day for them.

Bereavement or family violence leave applies (instead of annual holidays) if that situation arises before or during planned annual holidays. Sick leave applies if the illness or injury arises before planned annual holidays. If the illness or injury arises during the annual holidays, employers can choose whether to treat it as annual holidays or sick leave.

Some employees resign ahead of the holiday season. In that situation, if the employee is entitled to paid annual holidays, that balance is nominally added to their last day of work. Employees are entitled to be paid for any public holiday falling in the period they otherwise would have worked, in addition to being paid out their annual holiday entitlement.

To assist with compliance MBIE provides useful guidance on the Holidays Act in both short form summaries and a long form booklet at www.employment.govt.nz. Happy Christmas all, go well.

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