

# PUBLIC HOLIDAYS OVER THE CHRISTMAS/NEW YEAR PERIOD

As we near the end of the year, it is important to be aware of the upcoming public holidays and how they may impact your business and employees

## PUBLIC HOLIDAY ENTITLEMENTS

### Entitlement to be absent

The National Employment Standards provide all employees with the right to not work on a public holiday. While an employer can reasonably request that an employee work on a declared public holiday, the employee can refuse on reasonable grounds, such as family commitments or responsibilities.

However, if an employer operates a seven-day retail operation and an employee is normally required to operate across a seven-day roster period, it may not be considered reasonable for an employee to refuse to work a public holiday.

### Payment for absence

For all full and part-time employees who normally work on a day that a public holiday falls, the employee should be paid for the ordinary hours they would have worked on that day at the base rate of pay (ie. excludes incentive-based payments and bonuses, loadings, monetary allowances, overtime or penalty rates, or any other separately identifiable amounts).

If an employee does not normally work on a day that a public holiday falls, they are not entitled to any payment or other benefit under the National Employment Standards or most modern awards, including the *Vehicle Manufacturing, Repair, Service and Retail Award 2010* (VMRSR Award) and *Clerks – Private Sector Award 2010* (Clerks Award). For specific details on other modern awards that may apply to your business, please contact Employer Assist.

### Payment for working on a public holiday

Where an employee works on a public holiday, they may be entitled to penalty rates under their modern award.

For instance:

#### VMRSR Award

- Permanent employees are paid at the rate of time and a half in addition to their ordinary rate (150 percent + 100 percent = 250 percent). Note that overtime on a public holiday is paid at a rate of double time and a half (250 percent).
- Casual employees are paid time and three quarters of their base rate (not casual rate) in addition to their base rate (175 percent + 100 percent = 275 percent).

#### Clerks Award

- Permanent employees are paid at double time and a half (250 percent).
- Casual employees are paid at double time and a half of their base rate plus their casual loading (250 percent + 25 percent = 275 percent).

Different public holiday rates or conditions may apply to different types of employees under the above awards or in other awards. Please contact Employer Assist for confirmation of the public holiday rate that applies to your employee.

### Substitute day

An employer and an employee may agree to substitute a public holiday for another day. If a public holiday is substituted, then the substitute day is regarded as the public holiday and penalty rates are only paid on the substitute day.



### Rostered day off

In the case of an employee under the VMRSR Award who's ordinary hours of work are arranged in such a manner as to entitle the employee to a rostered day off (for more information on rostered days off, see the VMRSR Award), the weekday to be taken off will not coincide with a public holiday. Provided that, in the event that a public holiday is prescribed after a roster is arranged the employer will allow the employee to take an alternative weekday off instead of the public holiday.

### Checking Your Conditions

The information provided in this publication is necessarily general. Different rates may apply to different types of employees or businesses may have different arrangements for their public holidays depending on the provisions in their modern award, enterprise agreements, contracts of employment and workplace policies. Before this holiday season, it is important to check what conditions and penalty rates apply to your employees.

The following days have been declared Public Holidays for this year's Christmas/New Year period:								
Date	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
Tuesday 24 December			*	X (from 7pm to midnight)				X (from 7pm to midnight)
Wednesday 25 December	X	X	X	X	X	X	X	X
Thursday 26 December	X	X	X	X	X	X	X	X
Tuesday 31 December				X (from 7pm to midnight)				X (from 7pm to midnight)
Wednesday 1 January	X	X	X	X	X	X	X	X
Monday 27 January	X	X	X	X	X	X	X	X

\* The Qld Government has introduced a Bill into Parliament on 19 September 2019 to make Christmas Eve a public holiday from 6pm until midnight. The Bill has been referred to the education, employment and small business committee for consideration.

### AAAA Member Benefits

Employer Assist provides all AAAA members with advice regarding all aspects of your workplace and employment law. We can assist you in understanding your employment obligations in relation to public holidays and all other matters relating to the Fair Work Act 2009 (Cth) and Modern Awards.

Please contact Employer Assist on 1300 735 306 or [aaaa@employerassist.com.au](mailto:aaaa@employerassist.com.au) if you require any assistance.