

PUBLIC HOLIDAYS

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**PUBLIC HOLIDAYS**

**introduction**

All employees get 11 **paid** public holidays. Public holidays are separate from and additional to annual holidays.

**All Employees Are Covered -**

All employees, including casuals, are covered. The key question is whether the employee would have been expected to work on that day if it had not been a public holiday.

**No Waiting Period -**

There is no waiting period – employees get public holidays from the day they start.

**THE ELEVEN PUBLIC HOLIDAYS**

These are –

* Christmas Day
* Boxing Day
* New Year’s Day
* 2nd January
* Good Friday
* Easter Monday
* Anzac Day
* Labour Day
* Queens Birthday
* Waitangi Day
* Anniversary Day (of the province the employee lives in)

All employees get a paid day off if one of these holidays falls on a day that would otherwise have been a working day for them. In other words, if they would have worked, had it not been a public holiday.

Employees who ***only*** work on public holidays are excluded.

**WHAT IS “otherwise A WORKING DAY”?**

It is best if your employment agreements spell out what an employee’s working days are, to make clear what this means. While it is usually obvious, e.g. Monday to Friday and not weekends, but alternating shifts and rosters can make it difficult. In such cases, you and the employee should take into account the following, and then decide what to write into the employment agreement –

* What the employment agreement says
* Whether the employee would have worked if it had not been a public holiday or an alternative holiday, or if they had not been sick or on bereavement leave
* The employee’s usual work patterns
* Any other relevant factors, including –
* Whether the employee works for you only when work is available (i.e. casual)
* Your work rosters or similar systems
* Your and the employee’s reasonable expectations about the day in question

If the employment agreement does not specify working days, a Labour Inspector or the Employment Relations Authority will look at the factors above, in deciding the issue.

**Public holidays during a close-down period -**

Employees remain entitled to public holidays that fall during a closedown period, just like they do in respect of public holidays while they are on annual holiday, provided that that day would otherwise have been a working day for them.

**MOVING HOLIDAYS (mondayising)**

If any of Christmas, Boxing Day, New Year’s Day, 2 January, ANZAC day and Waitangi Day fall on a weekend, then those employees who do ***not*** normally work on that weekend, get the following Monday or Tuesday off as a paid public holiday.

Those employees who normally work on that weekend are not affected – the Saturday or Sunday is a public holiday for them. They do not get another public holiday on the following Monday or Tuesday.

An employee cannot be entitled to more than 4 public holidays over Christmas and New Year, regardless of their work or shift pattern.

**transferRing**

**Transferring a whole public holiday -**

Public holidays can be transferred to another working day (the new public holiday) to meet the needs of the business or the individual needs of an employee. An employee cannot demand that a public holiday be transferred. If agreed, the agreement should be in writing and cannot reduce the number of public holidays that the employee is entitled to by law, or be an attempt to avoid paying the employee time and a half for working on a public holiday or providing them with an alternative holiday (although this may be the effect of the transfer).

The new public holiday must be on a specific calendar day or 24-hour period and otherwise be a working day for the employee. The employee is then entitled to a paid day off on that day. The employee should be paid their relevant daily pay or average daily pay for the day.

If the employee works on the new public holiday, they are paid time and a half for the hours worked and receive an alternative holiday. The employee must have agreed in writing to work on the new public holiday.

Where the employee would have been working on the new public holiday but becomes sick, the payment for the day is as if they had a paid, unworked public holiday.

If the new public holiday falls within the employee’s annual holidays, that day must be treated as a public holiday and not as part of the employee’s annual holidays.

**Transferring part of a public holiday -**

Shifts that start and end on different days, one of which is a public holiday, can be transferred by agreement between the parties, so that the public holiday covers one whole shift. Transfer is only possible if certain requirements are met, such as that the employee is due to work a shift in the period to which the public holiday is transferred. The purpose of the transfer cannot be to avoid paying the employee time and a half for working on a public holiday or providing them with an alternative holiday (although this may be the effect of the transfer).

**Example: Transferring part of a public holiday -**An employee is to work from 10pm on 24 April to 6am on ANZAC Day and from 10pm on ANZAC Day to 6am on 26 April.
The parties can agree to treat 10 pm to midnight on ANZAC Day as not part of a public holiday in exchange for treating a period of 24 hours that finishes on ANZAC Day as a public holiday. Just when the 24-hour period starts before or finishes after a work period is a matter for the parties to agree on. For instance, they could agree that it runs from midday on 24 April to midday on ANZAC Day.

You could have a workplace policy not to allow the transfer of public holidays. This could cover the transfer of part or the whole of a public holiday, and can relate to the whole of a business or some parts of the business.

**WORKING ON PUBLIC HOLIDAYS**

Employees can be **required** to work on a public holiday ***only*** if it would otherwise have been a working day for them, and if the employment agreement confirms this. Otherwise, the employee can refuse to work on a public holiday.

Employment agreements must state that employees are entitled to be paid as provided for in the Holidays act, for working on a public holiday.

**PAY**

**If employee does not work -**

If the public holiday falls on what would otherwise be a working day for them, employees get the day off and are paid at their **relevant daily pay or average daily pay.**

If the holiday falls on a day that would not otherwise be a working day, they are not entitled to pay for that holiday.

**If any employee** works on a public holiday, must be paid at least time and a half for the time they actually worked, at the higher of the following–

* The portion of the relevant daily pay or average daily pay *(less any penal rates)* that relates to the time actually worked on the day, *plus* half that amount again; or
* The portion of the relevant daily pay *(including penal rates)* that relates to the time actually worked on the day.

**Penal rate -**

A penal rate is an identifiable additional amount that is payable to compensate the employee for working on a particular day or type of day. Examples include -

* a Saturday payment
* a Sunday payment
* a public holiday payment

Allowances, such as wet weather money, are not penal rates, nor are overtime rates or special rates for working a sixth or seventh day in a week.

The employment agreement could also specify a penal rate to be used.

If the public holiday falls on what would otherwise have been a working day for the employee, they *also* get an alternative holiday. As the alternative day is to replace the public holiday that they didn’t have, it is a whole day off on pay, regardless of how long the employee worked on the public holiday. This covers shift workers and persons on call, too.

Persons employed to work or be on call only on public holidays are not entitled to an alternative holiday.

The terms relevant daily pay and average daily pay rates are explained below the table that follows.

**Summary of public holiday payments**

|  |
| --- |
| **What to pay** |
|  | **Otherwise working day** | **NOT otherwise working day** |
| **NOT ON CALL** |  |  |
| Employee doesn’t work | Normal day’s pay**#** | Nil |
| Employee works | Time and half for hours worked plus alternative holiday | Time and half for hours worked |
|  |  |  |
| **ON CALL** | Normal day’s pay**#**Plus on call allowance as agreed in writingPlus as applicable below  | On call allowance as agreed in writingPlus as applicable below |
| On call and **restricted**And **called out** | Alternative holiday Plus Time and half for hours worked  | Time and half for hours worked |
| On call and restrictedNot called out | Alternative holiday | On call allowance as agreed in writing |
| On call and **not restricted**And **called out** | Time and a half for hours worked plus alternative holiday | Time and half for hours worked |
| On call and not restrictedNot called out | On call allowance as agreed in writing | On call allowance as agreed in writing |

**#** Normal day’s pay means not less than the employee’s relevant daily pay or average daily pay, as explained below.

**Relevant daily pay -**

Relevant daily pay is the amount the employee would otherwise have earned on the day if they had worked, and includes:

* productivity or incentive payments, including commission or piece rates, if those payments would have been received had the employee worked
* overtime payments if those payments would have been received had the employee worked
* the cash value of board and lodgings provided.

However, it ***excludes*** payment of any employer contribution to a superannuation scheme for the benefit of the employee.

An employment agreement can specify a special rate of relevant daily pay as long as the rate is at least what is specified above.

**Average daily pay -**

Average daily pay is used ***only*** where it is not possible or practicable to determine relevant daily pay, or if the employee’s daily pay varies within the pay period when the holiday or leave falls.

Average daily pay is a daily average of the employee’s gross earnings over the past 52 calendar weeks before the end of the pay period immediately before the calculation is made. That is, the employee’s gross earnings divided by the number of whole or part days the employee either worked or was on paid leave or holiday during that period.

If an employer and employee cannot agree on the amount of the employee’s ordinary weekly pay, relevant daily pay or average daily pay, a Labour Inspector may determine the amount.

**SHIFT WORKERS**

Shift workers get the same. For example -

* An employee starts at 10pm on Christmas Day and stops work at 6am on Boxing Day. The employee is entitled to eight hours’ pay of at least time and a half and two alternative holidays (one each for Christmas and Boxing Day).
* An employee works from 10pm on Christmas Eve until 6am on Christmas morning. The employee works the same shift beginning on Christmas night, finishing on the morning of Boxing Day. The employee is entitled to two hours’ pay at ordinary time and six hours’ pay of at least time and a half for the first shift, and to eight hours’ pay of at least time and a half for the second shift, and to two alternative holidays (one each for Christmas Day and Boxing Day).
* An employee working an eight-hour shift starting on ANZAC Day at 10pm is entitled to two hours’ pay of at least time and a half, six hours’ pay at the normal hourly rate, plus a full day’s alternative holiday.

**EMPLOYEES ON CALL**

Bear in mind that employees are paid a relevant or average day’s pay anyway, if a public holiday falls on what would otherwise have been a working day for them.

Your employment agreements should spell out your on call arrangements with each employee. This includes the allowance that is paid for being on call.

If an employee is required to restrict activities to the extent that they have not enjoyed a full holiday, they receive an alternative holiday, even if they are not called out. If they are called out, they also get time and a half for the hours worked.

If an employee is not restricted, e.g. if they can refuse a callout, and they are called and accept the callout, they are paid time and a half plus an alternative holiday if it was otherwise a working day, or time and a half if it was not otherwise a working day.

**PAY FOR ALTERNATIVE HOLIDAYS**

An alternative holiday can be taken at any time mutually agreed or failing that, as directed by the employer on two weeks’ notice, and is paid for at the relevant daily pay or average daily pay.

12 months after it became due, the parties can agree that the alternative holiday be paid out at an agreed rate. If the alternative holiday is still due on termination, it is paid out at the rate of pay for the employee’s last day of work, i.e. relevant daily pay or average daily pay.

**SICK ON PUBLIC HOLIDAY**

Employees who are sick on a public holiday, on which they were required or agreed to work, do not get time and a half and an alternate day off. They simply get their relevant daily pay.

**in addition to annual holidays**

If a public holiday falls inside an employee’s annual holidays, that day is not counted as annual holidays. Provided that it falls on what would otherwise be a working day for the employee, they get it as a paid public holiday, and it is in addition to their holidays.

**during notice period**

If a public holiday falls during an employee’s notice period, and on what would otherwise be a working day, payment for it is added to their final pay.

When an employee leaves without having taken all their alternative holidays, they are paid out for it, with their final pay, at the relevant daily pay or average daily pay applicable to the last day of work.