

WE KNOW HUMAN RESOURCES

PUBLIC HOLIDAYS

QUICK GUIDE

This Quick Guide provides summarised information about the entitlements associated with the observance of Public Holidays.

PUBLIC HOLIDAYS

The Holidays Act 2003 provides for 11 public holidays. These are:

1. Christmas Day
2. Boxing Day
3. New Year's Day
4. the second day of January
5. Waitangi Day
6. Good Friday
7. Easter Monday
8. Anzac Day
9. the birthday of the reigning Sovereign
10. Labour Day
11. the day of the anniversary of the province (or the day locally observed as that day)

PAYMENT FOR AN EMPLOYEE NOT WORKING ON A PUBLIC HOLIDAY

If a public holiday falls on a day that would *otherwise be a working day* (see definition below) for an employee, but the employee does not work, then the employee must be paid their *relevant daily pay* (or *average daily pay* if applicable) (see definitions below).

If a public holiday falls on a day that would not *otherwise be a working day* for the employee, and the employee does not work on that day, then, unless the relevant employment agreement provides otherwise, the employee does not need to be paid anything for that day.

PAYMENT FOR AN EMPLOYEE WORKING ON A PUBLIC HOLIDAY

An employee who works on any part of a public holiday must be paid for hours actually worked at a minimum rate of time-and-a-half.

If an employee is paid *penal rates* then he/she must be paid for time worked on a public holiday **at the greater of their:**

- *relevant daily pay* (see definition below), minus the penal rate otherwise payable, plus half that amount again, **or**
- *relevant daily pay*, including the penal rate, for time worked.

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(The term 'penal rates' means an identifiable additional amount payable for working on a public holiday or on a particular day of the week. It does not include a payment for a sixth or seventh day of work).

Any employee who works on a public holiday must be paid as above whether or not he or she would otherwise have worked on that day (for example, students and others employed just to work on the public holiday).

ENTITLEMENT TO AN ALTERNATIVE HOLIDAY

If a public holiday falls on a day that would *otherwise be a working day* (see definition below) for the employee, and the employee works on any part of the day, the employee is entitled to an alternative holiday.

Employees who only work on public holidays are not entitled to an alternative holiday.

An alternative holiday must be:

- taken on a day agreed between the employer and employee*
- A day that the employee would otherwise have worked
- A whole day off work regardless of the number of hours actually worked on the public holiday
- taken on a day which is not another public holiday
- paid for at the employee's *relevant daily pay or average daily pay* (if applicable) (see definitions below) in respect of the day taken as the alternative holiday (i.e. not the relevant daily pay for the public holiday).

* Where agreement is not possible, the employer may determine on a reasonable basis when the alternative holiday is to be taken. In doing so, the employer must give not less than 14 days' notice. If the alternative holiday remains untaken after 12 months the employer and employee may agree to exchange the entitlement for money.

EMPLOYEES REQUIRED TO BE ON-CALL ON A PUBLIC HOLIDAY

In addition to any other entitlement an employee may have, an employee who is required to be on-call during all or part of a public holiday which would otherwise be a working day for that employee may be entitled to alternative holiday.

If the employee actually works on the public holiday an alternative holiday must be allowed.

If the employee is not called out or required to respond, the employee will also be entitled to an alternative holiday if the nature of the restriction imposed by the on-call requirements on the employee's freedom of action is such that, for all practicable purposes, the employee has not had a whole holiday. If in doubt about whether this will apply we recommend that you obtain guidance from the Chamber.

DETERMINING WHAT WOULD 'OTHERWISE BE A WORKING DAY'

In determining whether a given day would *otherwise be a working day* for an employee the basic rule is, '*If the day was not a public holiday would the employee have worked?*'. If this is not clear, the employer and employee must take account of the following factors with a view to reaching agreement:

- The employment agreement
- The employee's Work patterns/rosters and other similar systems.

Any other relevant factors including:

- Whether the employee works only when work is available
- The employer's rosters or similar systems

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- The employer and employee's reasonable expectations that the employee would work on the day.

And –

- Whether, but for the day being a public holiday, the employee would have worked on that day.

If an employee would otherwise work any amount of time on a public holiday, the day must be treated as a day which would 'otherwise be a working day' for that employee.

WHAT ARE 'RELEVANT DAILY PAY' AND 'AVERAGE DAILY PAY'?

This is the amount of pay the employee would have received if he or she had worked on the day concerned. It includes:

- The payment of commission
- Productivity or incentive-based payments the employee would otherwise have received
- Overtime payments the employee would otherwise have received
- The cash value of any board or lodgings provided by the employer.

If it is **not possible or practicable** to determine the employee's relevant daily pay or the employee's daily pay varies within the pay period when the holiday falls, then the employee's **average daily pay (ADP)** may be used instead.

ADP is calculated as follows -

- Take the employee's gross earnings for the 52 weeks preceding the end of the pay period immediately prior to the holiday
- Divide these earnings by the number of whole or part days during which the employee earned those earnings including any days when the employee was on a paid holiday or leave but excluding days not actually worked.

TRANSFERRING A PUBLIC HOLIDAY BY AGREEMENT

Any of the 11 public holidays may be transferred by agreement to another calendar day or a period of 24 hours provided. Agreement must be in writing and identify the holiday and the day (or period of 24 hours) to which it is being transferred. The latter must be a day which would otherwise be a working day for the employee and may not be another public holiday or part of a public holiday. Such agreements must not be made *for the purpose* of avoiding entitlements under the Act although the transfer may have that effect.

An agreement to transfer a public holiday must not reduce the total number of paid public holidays an employee is otherwise entitled to in any year.

Once transferred, the requirements of the Act insofar as payment for working on a public holiday and the provision of an alternative holiday will only apply to the day to which the holiday has been transferred.

TRANSFERRING PART OF A PUBLIC HOLIDAY

Where work is to commence on one day and finish on the following day, and one or both of those days are public holidays, an employer and employee may agree, in writing, whether in an employment agreement or otherwise, that part of one or both days will not be treated as a public holiday but instead one or two periods (as the case shall be) of 24 hours shall be treated as the public holiday(s) if –

- The period is to start or finish during the holiday(s); and
- It includes the period during which the employee is to work

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provided that the purpose of the transfer is not to avoid the employees' entitlements which would otherwise arise through working on a public holiday, although the transfer may have that affect.

Where an agreement to transfer part of a public holiday applies, the employees entitlements to penal rates and alternative holidays apply only if the employee works during the part of the 24-hour period(s) to which that part of the public holiday(s) has been transferred.

TRANSFER OF CHRISTMAS DAY, BOXING DAY, NEW YEAR'S DAY, 2ND JANUARY,.

If any of the public holidays listed above:

- (a) falls on a Saturday and the day would otherwise be a working day for the employee, the public holiday must be treated as falling on that day
- (b) falls on a Saturday and the day would not otherwise be a working day for the employee, the public holiday must be treated as falling on the following Monday
- (c) falls on a Sunday and the day would otherwise be a working day for the employee, the public holiday must be treated as falling on that day
- (d) falls on a Sunday and the day would not otherwise be a working day for the employee, the public holiday must be treated as falling on the following Tuesday.

Note this does not entitle an employee to more than 4 public holidays during this period.

TRANSFER OF WAITANGI DAY AND ANZAC DAY

Where these public holidays fall on either a Saturday or Sunday –

The public holiday must be treated as falling on that day when the day would otherwise be a working day for the employee. When the day would *not* otherwise be a working day for the employee, the public holiday must be treated as falling on the following Monday.