

Fair Work | Fact Sheet



Public Holidays

The information in this sheet explains the National Employment Standard (NES) in the Fair Work Act 2009 (Cth), which entitles employees to be absent on public holidays and to be paid. The public holiday NES will come into operation on 1 January 2010 and will apply to all employees of national system and Victorian employers.

Under the Workplace Relations Act (WR Act) employees were entitled to be absent, but were not expressly entitled to be paid. Under the WR Act, an employee would only have been entitled to payment for a public holiday if a relevant industrial instrument, a policy or contract of employment provided for it.

Under the NES, employers will still be able to require an employee to work on a public holiday if such a requirement is reasonable. This is not different from the position under the WR Act.

Entitlement to be absent and paid on a public holiday

The NES entitles employees to be absent from work and be paid his or her base rate on prescribed public holidays, provided that the employee would ordinarily have been required to work on that day. The payment must be based on the number of ordinary hours that an employee would otherwise have been required to work on that day.

Reasonable requests to work on a public holiday

An employer may require an employee to work on a public holiday if this is reasonable. Conversely, an employee may refuse to work on a public holiday if such refusal is reasonable.

In determining whether a request or refusal is reasonable, the following factors must be taken in to account:

- the nature of the employer's workplace or enterprise (including its operational requirements), and the nature of the work performed by the employee;
- the employee's personal circumstances, including family responsibilities;
- whether the employee could reasonably expect that the employer might request work on the public holiday;



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- whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, work on the public holiday;
- the type of employment of the employee (for example, whether full - time, part - time, casual or shiftwork);
- the amount of notice in advance of the public holiday given by the employer when making the request;
- in relation to the refusal of a request – the amount of notice in advance of the public holiday given by the employee when refusing the request; and
- any other relevant matter.

Meaning of public holiday

The following days are public holidays according to this NES:

- January (New Year's Day);
- 26 January (Australia Day);
- Good Friday;
- Easter Monday;
- 25 April (Anzac Day);
- the Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
- 25 December (Christmas Day); and
- 26 December (Boxing Day).

Other public holidays may also be declared under the laws of a State or Territory for the purpose of this NES.

State laws and modern awards may provide for one of the above days to be substituted for another day or part day. In the case of such a provision in a modern award, the substitution may only occur by agreement between the employer and employee.

Further, employers may agree with award and agreement free employees to substitute a day or a part day for one of the above public holidays.



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