

> Industrial Relations Fact Sheet: 007 Public Holidays

This fact sheet is relevant to employers in Queensland including those covered by WorkChoices.

What are public holidays?

Each year certain dates are gazetted to be observed as public holidays. Generally, employees covered by an industrial instrument are not required to work on a public holiday, and any work performed on the public holiday usually incurs a penalty rate. The most common public holidays are as follows:

- New Years Day
- Australia day
- Good Friday
- Easter Saturday
- Easter Monday
- Labour Day
- Anzac Day
- Queen's Birthday
- Christmas Day
- Boxing Day
- RNA Show Day (Agricultural Show Days)

The specific dates for the public holidays are set by an order released in October each year, which amends the *Holidays Act 1983*. Public holiday entitlements for employees are contained within the *Industrial Relations Act 1999* (or *Workplace Relations Act 1996* under WorkChoices), Awards or Workplace Agreements. The following fact sheet is a general guide only, and you should consult the industrial instrument applicable to your workplace before relying on the information contained herein.

Who is entitled to a public holiday?

Full-time employees are entitled to a day off without loss of pay for each public holiday. The payment for this day is based on the number of ordinary hours the employee would have worked that day at the employee's ordinary rate. Some employees do not work a standard Monday to Friday week, and as such may regularly miss out on certain public holidays. The State and Federal Industrial Relations Commissions released a Statement of Policy with regards to this issue. The policy states that employees should not be disadvantaged in relation to public holidays by virtue of working a non-standard week, and as such should receive as compensation in lieu of any public holidays missed, either:

- A day credited to their annual leave; or
- A day off without loss of pay; or
- Payment for one day.

Part-time employees are also entitled to a day off without loss of pay for each public holiday that falls on a day that they would have ordinarily worked. A part-time employee will only

receive payment for the number of ordinary hours usually worked on that day, paid at the ordinary rate. Most awards require part-time employees to have a set number of hours, worked on set days each week. However, some part-time employees do not work set hours over set days, making it difficult to determine the correct public holiday entitlements. Provided that there is nothing mentioned in the employment contract, the employer has several options:

- Come to an agreement with the employee as to the entitlement;
- Look for a pattern from the preceding months;
- Determine a fair and equitable method for allocating entitlements;
- Make no payment for the public holiday.

Casual employees, independent contractors and school based trainees have no entitlement to a paid day off on a public holiday.

Working on a public holiday

An employer can direct an employee to work on a public holiday, however an employee can refuse this direction if they have reasonable grounds for doing so. To determine if the refusal is reasonable, regard must be had to:

- The nature of the work performed;
- The type of employment;
- The nature of the workplace;
- The employee's reason for refusal;
- The amount of notice to work given by the employer;
- The amount of notice for refusal to work given by the employee;
- Whether the employee has acknowledged a requirement to work on a public holiday;
- Whether work is required due to an emergency;
- Whether the employee receives additional remuneration for the work;
- Whether an applicable instrument regulates work on a public holiday;
- Any other relevant factors.

If an award based employee works on a public holiday, they will generally receive double time and one half for all hours worked. This applies for full-time, part-time and casual employees. Non-award employees do not have an automatic entitlement to penalty rates on a public holiday, unless it is stipulated in their contract, agreement or company policy. Employees under a Workplace Agreement will generally receive the standard penalty rate unless the Agreement specifies otherwise.

Some awards provide additional loadings for working on the Christmas and Good Friday public holidays, however this is not the general rule.

Allowances payable on a public holiday (e.g. meal allowance, tool allowance) are still paid at the ordinary rate and are not affected by any penalties or loadings.

Most awards will require a minimum engagement of four hours on a public holiday. Even if the employee is not required to work for the entire period, they must receive payment for at least four hours. This rule applies to full-time, part-time and casual employees. For example, if a full-time employee normally works an eight hour day, and is only required to attend for three

hours, they would receive at least four hours at the public holiday penalty rate, and the remaining four hours not worked at the ordinary time rate.

Overtime on a public holiday

For employees under an industrial instrument, time worked outside the ordinary spread of hours on a public holiday is usually paid at double (2x) the applicable overtime penalty. That is, if an employee would normally receive time and one half (1.5T) for the first three hours of overtime, on a public holiday the same employee would receive triple time (2 x 1.5T) for the first three hours of overtime. If the overtime rate would normally be double time (2T), the overtime rate on a public holiday would be quadruple time (2 x 2T).

Substitution

The Industrial Relations Act 1999 and most awards allow an employer (including those under WorkChoices) and employee to agree to substitute a public holiday for another working day. In this situation, the actual public holiday would be worked and paid at ordinary rates, and the substituted day would be treated as the public holiday. If an employee is subsequently required to work on the substituted public holiday, they receive the penalty rates as though it was the actual public holiday. Most awards will provide for a substitution arrangement, and may stipulate further requirements such as the taking of the substituted public holiday within a specified timeframe, or allowing substitution by majority agreement.

Public holidays and other leave

Annual leave is exclusive of public holidays. This means that an employee cannot take annual leave on a public holiday. If an employee applies for five days of annual leave, and one of those days is a public holiday, then only four days will be debited from their annual leave accrual. Furthermore, for employers not covered by WorkChoices, annual leave entitlements are 'deemed to be taken' on termination. From the date of termination and employer needs to project forward the annual leave entitlement (distinct from the pro-rata accrual), and any public holidays that fall within the projected timeframe must also be paid to the employee.

Similarly, if an accumulated 'rostered day off' (RDO) falls on a public holiday, the employee is paid for the public holiday, and will be able to take the RDO at another time. If an employee is absent from work due to illness or injury before and/or after a public holiday, there is no general rule with regards to withholding payment for the public holiday. Some awards and agreements do allow employers to withhold the public holiday payment, so you should consult the applicable industrial instrument before taking action. This is not generally the case under WorkChoices however, if an employee is absent from work due to illness or injury and they were rostered to work the public holiday, they must be paid the ordinary time rate for that public holiday, without deduction from personal/carer's leave accruals.

Gazetted Public Holidays

Below are the gazetted public holiday dates as approved for 2008 and 2009 and as proposed for 2010. Where the gazetted public holiday does not fall on the actual 'holiday' itself, you only recognize the gazetted date as the public holiday. For example, in 2006, New Years Day actually fell on Sunday 1st January, however the gazetted public holiday date was Monday 2nd January. Work performed on the Sunday would generally be paid at normal Sunday rates, whilst the Monday work would be paid at the public holiday loading.

Gazetted Public Holidays 2008-2010

	Approved 2008	Approved 2009	Proposed 2010
New Years Day	Tuesday 1 January	Thursday 1 January	Friday 1 January
Australia Day	Monday 28 January	Monday 26 January	Tuesday 26 January
Good Friday	Friday 21 March	Friday 10 April	Friday 2 April
Easter Saturday	Saturday 22 March	Saturday 11 April	Saturday 3 April
Easter Monday	Monday 24 March	Monday 13 April	Monday 5 April
Anzac Day	Friday 25 April	Saturday 25 April	Monday 26 April
Labour Day	Monday 5 May	Monday 4 May	Monday 3 May
Queen's Birthday	Monday 9 June	Monday 8 June	Monday 14 June
RNA Show (Ekka)*	Wednesday 13 August	Wednesday 12 August	Wednesday 11 August
Christmas Day	Thursday 25 December	Friday 25 December	Monday 27 December *
Boxing Day	Friday 26 December	Monday 28 December	Tuesday 28 December *

* A substitute public holiday is yet to be advised

For further information contact the Chamber of Commerce and Industry Queensland's (CCIQ) Employer Advice Line on 1300 135 822.

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