

Locking down Easter

Paying for public holidays over Easter may be the last thing on your mind right now. With so many variations on current employment arrangements, what are the key things to remember to get it right? How does the employer wage subsidy scheme get factored in?

Who's working where and when?

Currently only those working in essential businesses may work on-site. Most employees in non-essential businesses are working remotely, less hours, or not at all. With many working differently and with varied work patterns, how have entitlements to recognise and pay for public holidays changed?

The short answer is – not at all. The same test under the Holidays Act applies even in lockdown: Every employee is entitled to be paid for a Public Holiday if it falls on a day that would otherwise be working day - but for it being a public holiday. The tricky part comes when applying this test to wide-ranging employment arrangements during lockdown.

Take for example, upcoming Good Friday and Easter Monday, then ANZAC Day (“mondayised” if someone doesn’t work weekends):

- For those working regular hours, Monday to Friday (perhaps a supervisor in a supermarket), clearly Good Friday and Easter Monday, and a mondayised ANZAC Day would all be normal working days. This employee is entitled to a paid day off. If they work, they get time and a half plus an alternative holiday.
- If someone is working a permanently different work roster (perhaps a 4 day week - Monday to Thursday), then they would no longer be entitled to be paid for Good Friday (it is no longer a normal working day).
- Even without lockdown, it has always been a hard task for employers with staff working varied hours without regular patterns of work, to assess what would be a normal working day for staff. Ask: What would a reasonable person consider a normal working day, having regard to relevant factors like someone’s employment agreement, work patterns and the reasonable expectations about whether someone would work on the day in question?
- If someone is working different hours only temporarily due to lockdown, they could claim they should be paid for a public holiday even if they would not work it during lockdown. This could be the case if it falls within prior patterns of work and what the employment agreement says. An employer could quite reasonably say - no one reasonably expected them to work that day during lockdown! If you find yourself in this situation – consult to try to reach agreement.
- Finally, if people are only being paid, but not working – the net result will be the same (a paid day off – see below).

Calculating correctly...

If an employee would otherwise work a day, but for it being a public holiday, they are entitled to a paid day off. This is calculated at their relevant daily pay (RDP) or average daily pay (ADP).

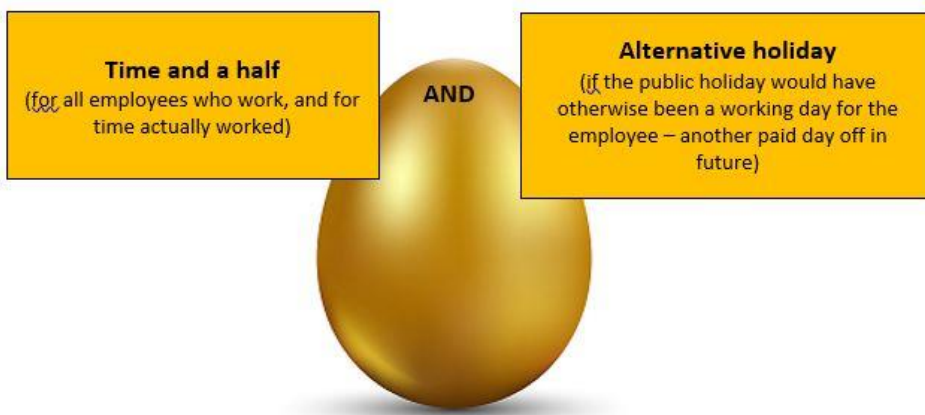
RDP means the amount an employee would have been paid but for it being a Public Holiday. This amount could be at the rate of any agreed reduced rate caused by the lockdown. For example, many businesses have negotiated with staff to pay only 80% of the wages or salary of the employee. RDP would therefore reflect that reduced rate.



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If an employee's daily pay varies within a pay period, or is not possible or practicable to determine RDP, an employer may pay ADP. ADP means an average of the employee's gross earnings for the 52 calendar weeks prior, divided by the number of whole/part days actually worked or paid during that period. During the lockdown, ADP may in some cases be a better reflection of an employee's entitlements.

If an employee works a Public Holiday, be sure to follow the golden rule:



You can also agree with an employee to transfer the whole or part of a Public Holiday to a different day. However, there are a set of criteria that need to be followed when doing this, including having sufficient certainty around when the public holiday is being transferred to.

The current Covid-19 lockdown situation does not change these basic principles and employment law rules still need to be followed during this time. However, because this a novel situation it may mean that you are having to deal with how you would normally process Public Holidays in a different way.

Every situation is different, and we would recommend obtaining advice from one of our employment law team on your particular situation so you can deal with these matters the right way for your business.



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