

Workplace and insurance briefing

Australia Day: Employees and public holiday rights

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Sophie Kermeen, Solicitor

Employers of businesses who trade on the Australia Day public holiday need to be aware of the rights both they and employees hold if employees either:

1. refuse to work; or
2. ask to swap their public holiday entitlement to a different day.

If an employee refuses to work on Australia Day an employer does not have an explicit right to direct them to work, however under s114 of the *Fair Work Act* they can ask an employee to work if the request is reasonable, bearing in mind an employee can refuse to work if they give a satisfactory reason.

Determining whether requests and refusals are reasonable are based on the nature of the work and workplace, personal circumstances, expectations of being asked to work and overtime entitlements that

reflect that expectation, type of employment (eg full time), and notice given by both parties.

Employees are also required to communicate and explain their reasons to refuse to work otherwise they may not be considered reasonable despite them being valid. A refusal to work on a public holiday in itself is not reasonable grounds for dismissal.

Whether an employee can request to substitute a public holiday for another day will depend if their employment falls under a modern Award, and if that Award contains a clause that allows the flexibility if both the employer and employee agree. If a modern Award does not contain such a clause it is simply not allowed.

If employees are Award and agreement free, they may substitute a public holiday if the employer agrees.

“ Employers can request employees to work on public holidays, and employees may refuse on reasonable grounds which must be sufficiently communicated. Substitution of public holidays is permitted by certain modern Awards or by agreement for Award free employees. ”

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If you require any further information, please contact a member of O'Loughlins' Workplace and Insurance Team:



Josh Abbott
Partner
Josh.Abbott@oloughlins.com.au



Sophie Kermeen
Solicitor
Sophie.Kermeen@oloughlins.com.au