



Express law fast track information for clients

30 March 2009

Public holidays for federal system employees

Following our *Express Law* dated 23 March 2009 on the subject of the Anzac Day public holiday, the issue of the basis of entitlements to public holidays for federal system employees has been raised more generally.

This *Express Law* issue explains the interaction of the public holiday entitlements under the *Workplace Relations Act 1996* (the WR Act) with State and Territory laws and industrial instruments, and notes how this will change under the [Fair Work Bill 2009](#) (which recently passed through the Commonwealth Parliament but has yet to receive the Royal Assent).

Workplace Relations Act confers an entitlement to public holidays

Sections 611 and 612 of the WR Act provide a minimum entitlement for all federal system employees to a day off on a 'public holiday'. A number of particular public holidays are expressly included:

- 1 January (New Year's Day)
- 26 January (Australia Day)
- Good Friday
- Easter Monday
- 25 April (Anzac Day)
- 25 December (Christmas Day)
- 26 December (Boxing Day) (ss 611(a) and 612(1)).

In addition, employees are entitled to a day off on a day that, 'under (or in accordance with a procedure under) a law of a State or Territory, is substituted for' one of these days (WR Act, ss 611(aa) and 612(1)). So, if a State law substitutes another day for Australia Day, federal system employees are entitled to a public holiday on 26 January (Australia Day) and on the substituted day. This is the case even if the State law provides that 26 January is not a public holiday, and therefore the State law does not operate to remove the entitlement to the public holiday on 26 January for federal system employees.

Such employees are also entitled to a public holiday on 'any other day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region' (WR Act, ss 611(b) and 612(1)). A union picnic day and a day prescribed by regulation are

excluded. So, in the ACT, federal system employees are entitled to Family and Community Day on the first Tuesday in November.

Therefore, the WR Act operates on the basis of the public holidays that are declared under State and Territory law in addition to the named public holidays in the WR Act itself.

The WR Act does not provide for any entitlement to penalty rates for working on a public holiday, but the wages guarantee requires that employees be paid at least the basic periodic rate of pay (WR Act, s 182).

Entitlement to a public holiday under an industrial instrument

In addition to entitlements to public holidays under the WR Act, an employee's industrial instrument (e.g. their collective agreement) may provide for other holidays which are treated as public holidays under that agreement; for example, the additional day after Boxing Day observed by APS agencies. The 'additional day holiday' is not a public holiday under the WR Act.

An industrial instrument (e.g. a collective agreement) may also purport to provide a substitute day for a public holiday. If an instrument does this, it cannot override the minimum entitlements under the WR Act (s 612(4)). Thus the substitute day would be in addition to the WR Act public holiday. So an employee would be entitled to a day off on the public holiday (because of the WR Act), and on the substituted day (because of the industrial instrument, e.g. the collective agreement).

An employee will have an entitlement to penalty rates for working on a public holiday or other holiday if the instrument so provides.

Anzac Day 2009

The WR Act gives all federal system employees an entitlement to a day off on 25 April 2009 (Anzac Day). The WR Act also gives all federal system employees in WA and the ACT an entitlement to a day off on 27 April 2009 because this day has been declared a public holiday in WA and the ACT.

Although in the ACT 27 April has been substituted as the public holiday for Anzac Day, the WR Act gives federal system employees an entitlement to both days.

If employees are required to work on a public holiday, their entitlement to penalty rates will be determined by their industrial instrument (e.g. their collective agreement).

Employees in other States and Territories may also be entitled to a day off on 27 April depending on the terms of their industrial instrument.

Will this change under the Fair Work Bill?

The Fair Work Bill, when it commences operation, will remove the entitlement to a day off on the named public holiday and the substituted day. So, under the Fair Work Bill, if a State substitutes a day for Australia Day, employees in that State will be entitled to the day off on the substituted day, but not on 26 January.

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