

## Not working on public holidays

Employees have a right to be away from work on a public holiday. Find out further information on employee entitlements during public holidays.

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### Base pay rates

Employees (except casual employees) who normally work on the day a public holiday falls will be paid their base pay rate for the ordinary hours they would have worked if they had not been away because of the public holiday.

The base pay rate doesn't include:

- any incentive-based payments
- bonuses
- loadings
- monetary allowances
- overtime or
- penalty rates.

An employee's roster can't be changed to deliberately avoid this payment.

#### **Example: Ordinary hours and overtime hours falling on a public holiday**

Claire is a full-time employee who usually works overtime on top of her ordinary hours on a Wednesday. She gets an overtime payment for these overtime hours under her award.

Wednesday 1 January is New Year's Day, which is a public holiday, so Claire has the day off. Even though Claire doesn't go to work, she still gets her base pay rate for the ordinary hours she would have normally worked. She is not entitled to payment for the overtime hours.

An employee doesn't get paid for a public holiday if they don't normally work on the day that the public holiday falls.

#### **Example: No ordinary hours on a public holiday**

Ying is a part-time employee. He works Monday to Wednesday each week. This year, Boxing Day falls on a Friday.

As Ying's rostered hours don't include Fridays, he doesn't get paid for the Boxing Day public holiday.

All employees have a right to be absent from work on a day or part day that is a public holiday.

An award, enterprise agreement or other [registered agreement \(www.fairwork.gov.au/Dictionary.aspx?TermID=2034\)](http://www.fairwork.gov.au/Dictionary.aspx?TermID=2034) can set out other rules and entitlements when not working on a public holiday.

Find out the rules about not working on a public holiday in your award by selecting from the list below.

Based on what you've told us, it looks like you're covered by the Clerks - Private Sector Award [MA000002].

The Clerks Award doesn't have any special rules about not working on a public holiday.

For public holiday entitlements in this award, go to [Clerks - Private Sector Award \[MA000002\] clause 37](http://award-viewer.fwo.gov.au/award/show/MA000002) <sup>↗</sup> (<http://award-viewer.fwo.gov.au/award/show/MA000002>) .

To find out more about who this award applies to, go to the [Clerks Award summary \(www.fairwork.gov.au/awards-and-agreements/awards/award-summary/ma000002-summary\)](http://www.fairwork.gov.au/awards-and-agreements/awards/award-summary/ma000002-summary) .

## Public holidays during leave

If a public holiday falls when an employee is on leave, their entitlement to the public holiday depends on whether they are taking paid leave or unpaid leave.

### Paid leave and public holidays

If a public holiday falls during a period of paid leave (for example, annual leave or sick leave), the employee has to be paid for the public holiday. This includes any hours that fall on a part-day public holiday.

However, if the employee is taking annual leave at the same time as unpaid parental leave, they won't be paid for the public holiday.

The public holiday will not be counted as annual leave or sick leave. This means that the public holiday hours will not be taken away from the employee's amount of built-up paid leave.

#### Example: Public holidays during a period of annual leave

Marissa is a full-time employee who organises to take paid annual leave for 10 days. This period includes Anzac Day, which is a public holiday and falls on a Monday.

As Monday is a day Marissa is regularly rostered to work, she has to be paid for the Anzac Day public holiday. The public holiday won't be taken from her annual leave amount. This means that only 9 days are deducted from Marissa's annual leave balance.

If an employee takes sick leave either side of a public holiday, they should still be paid for the public holiday if it is on a day that they would normally work. Normal sick leave rules apply for the time taken as sick leave and an employer can ask the employee for evidence that shows the reason they took the leave.

If an employee is rostered to work on a public holiday on a day they don't normally work, and calls in sick, they don't get paid for that day.

If an employee is taking long service leave on a public holiday, whether an employee gets paid for the public holiday is set out in the state or territory long service leave legislation.

### Unpaid leave and public holidays

An employee isn't paid for any public holiday that falls during a time when the employee is on unpaid leave.

Source reference: [Fair Work Act 2009 s.114 -116](http://www.comlaw.gov.au/Series/C2009A00028) <sup>27</sup> (<http://www.comlaw.gov.au/Series/C2009A00028>)

## Tools and resources

- [Public holidays \(www.fairwork.gov.au/Leave/Public-holidays/List-of-public-holidays/default\)](http://www.fairwork.gov.au/Leave/Public-holidays/List-of-public-holidays/default)
- [Long service leave \(www.fairwork.gov.au/Leave/Long-service-leave/default\)](http://www.fairwork.gov.au/Leave/Long-service-leave/default)
- [Notice and medical certificates \(www.fairwork.gov.au/leave/sick-and-carers-leave/paid-sick-and-carers-leave/notice-and-medical-certificates\)](http://www.fairwork.gov.au/leave/sick-and-carers-leave/paid-sick-and-carers-leave/notice-and-medical-certificates)

## Related information

- [Working on public holidays \(www.fairwork.gov.au/Leave/Public-holidays/working-on-public-holidays\)](http://www.fairwork.gov.au/Leave/Public-holidays/working-on-public-holidays)
- [Hours of work, breaks and rosters \(www.fairwork.gov.au/Employee-entitlements/hours-of-work-breaks-and-rosters/default\)](http://www.fairwork.gov.au/Employee-entitlements/hours-of-work-breaks-and-rosters/default)
- [Annual leave \(www.fairwork.gov.au/Leave/Annual-leave/default\)](http://www.fairwork.gov.au/Leave/Annual-leave/default)

## Help for small business

Find tools, resources and information you might need in our [Small business showcase \(www.fairwork.gov.au/small-business-showcase/default\)](http://www.fairwork.gov.au/small-business-showcase/default) .

## Think a mistake might have been made?

Mistakes can happen. The best way to fix them usually starts with talking.

Check out our [Fixing a workplace problem \(www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/default\)](http://www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/default) section for practical advice on:

- figuring out if a mistake has been made
- talking to your employer or employee about fixing it

- getting help from us if you can't resolve it.

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## Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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