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Employee Leave Entitlements Over the Christmas Break

By Nicola Goss



It is important to note that an employee's entitlement to statutory annual holidays is absolute. Employers and employees cannot "contract out" of the provisions of the Holidays Act. In addition to annual holidays, the Holidays Act provides employees with an entitlement to 11 paid public holidays throughout the year when those holidays fall on days that would otherwise be working days for the employee. These public holidays include Christmas Day, Boxing Day, New Year's Day, 2nd January, Waitangi Day, Good Friday, Easter Monday, Anzac Day, Sovereign's Birthday, Labour Day and the provisional anniversary day. All employees are entitled to a paid day off on a public holiday if it would otherwise be a working day for them.

Example No. 1: John works in a music store Monday to Friday every week. As Christmas Day and Boxing Day fall on a Thursday and Friday this year, he is entitled to be paid for these days off.

Example No. 2: Paul works part time at the same music store, normally working four hours each day on Tuesday and Wednesday and normally working eight hours on a Friday. This year Paul would be given Boxing Day off with eight

hours pay, but would not be entitled to be paid for Christmas Day (which is on a Thursday).

Example No. 3: Ringo works in a drum factory on a roster system. His roster requires three 10 hour days on Monday until Wednesday one week (week 1) and the same hours on Thursday to Saturday the next week (week 2). This year week 1 coincides with the week in which Christmas and Boxing Day fall, so Ringo will not get paid for either of these days because he would not have been scheduled to work on that Thursday or Friday. However, if week 2 coincided with these days, then he would have been entitled to holiday pay for both the Thursday and Friday.

An employer has the right to require an employee to work on a public holiday when the public holiday falls on a day that the employee would otherwise have worked and the employee's employment agreement specifies that the employee may be required to work on the holiday. An employee is entitled to another day's holiday (an alter-

native holiday) instead of a public holiday if the public holiday falls on a day that would otherwise be a working day for the employee and the employee works on any part of that day in accordance with the employment agreement. They are entitled to a special pay rate for working on the public holiday.

Example No. 4: George works as a singer in a band which provides entertainment at various retirement villages throughout the Wellington area. George's employment agreement states that he works Monday to Friday and may be required to work on a public holiday if it falls on one of his usual working days. This year there is a big music festival at the Cavern Club Retirement Village on Boxing Day and George is the headline act. George is entitled to payment at time and a half his usual hourly rate for working on Boxing Day plus an additional day's leave on another day which he will also be paid for.

If you have any questions about whether or not you are entitled to payment for work over this Christmas period or whether or not you are required to pay your employees, please check with us.