

## EMPLOYMENT ISSUES AROUND EASTER

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Easter is fast approaching. That means the last of the summer holidays to some, Easter Eggs to others, and additional costs with "time and a half" and "alternative day" obligations for those businesses that continue to trade over the Easter period. Given the Holidays Amendment Act 2011 only came into effect on 1 April 2011 some employers and employees may find themselves wondering how the changes will impact their workplace over the Easter period.

We all know employees are entitled to up to 11 paid public holidays in any one year. Unfortunately this year most employees will only enjoy 9 public holidays as Anzac Day and Easter Monday fall on the same day and Waitangi Day fell on a Sunday.

However, the usual rules still apply. Employees who would normally work 'but for' the public holiday are entitled to be paid for that public holiday. An employee who works on a public holiday is entitled to be paid time and a half for the hours worked provided the public holiday falls on a day that would otherwise be a working day for the employee. In addition, 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, an employer must provide the employee with an alternative holiday or, as is better known, a day in lieu. Employers may be pleased to note you are not required to pay an employee time and a half twice or provide two alternative days to an employee who works on 25 April 2011 (Easter Monday coinciding with Anzac Day)!

Prior to 1 April 2011 payment for a public holiday was based on the employee's Relevant Daily Pay. Relevant Daily Pay is based on what the employee would have been paid if they had worked on that particular day. Unfortunately for many employers, the Relevant Daily Pay calculation was open to abuse by some employees. Those employers who pay regular overtime, allowance and commission often found situations where staff would take their alternative holidays at times when their relevant daily pay was at its highest.

However, from 1 April 2011, if it is not practicable to determine an employee's Relevant Daily Pay, or an employee's daily pay varies within each pay period, the employer is to provide payment for the public holiday, alternative day, sick or bereavement leave using Average Daily Pay instead. This, in essence, is the employee's gross earnings over the previous year divided by the days worked in that year. The formula is designed to remove much of the incentive to take leave on the best paying day and should limit the windfall some employees currently receive.

Another change introduced from 1 April 2011 is that employees are no longer able to determine when they will take alternative holidays. If an agreement cannot be reached between the employer and employee as to when an alternative holiday is to be taken, the alternative holiday will be taken on a day determined by the employer acting reasonably. Again, this removes the problem of some employees choosing to take their alternative day on the day that would result in the most payment to them.

The changes also benefit shift workers who were on occasion disadvantaged when part of their shift either started or finished on a public holiday. Now employers and employees can agree that part or all of a public holiday will be observed or transferred to another day. Those employers who do not wish to allow the transfer of the whole or part of a public holiday can introduce a policy preventing such transfer.

1 April 2011 brought in a range of other changes to employment legislation. Those wishing to take advantage of those changes should take legal advice particularly when considering amendments to employment agreements and around disciplinary processes and disputes.