Calculating pay over the Christmas and New Year holidays

The new Holidays Act brings increased complexity in working out holiday pay, and pay calculations for the coming Christmas and New Year period may be particularly complex for some firms. Employers are advised to organise their holiday pay calculations well in advance of the onset of the holidays, and to seek the help of their regional business association if in doubt.

The following is a general guide:

This year Christmas and New Year fall on Saturdays and Sundays, and new Holidays Act changes mean working out payment rates for individual employees.

1. For employees who do not usually work on Saturdays or Sundays (typically Monday to Friday employees) the holidays are 'mondayised' – observed on the following Monday and Tuesday. Employees must be paid for the Monday and Tuesday what they would have been paid had they worked on those days.

2. For employees who do usually work on Saturday and Sunday (Christmas Day, Boxing Day, New year's Day and 2nd January) the holidays are observed on the days themselves, with the following consequences:

   (a) If the employee does *not* work, the employee must be paid what would have been paid if he or she *had* worked,
   (b) If the employee does work, payment is either
      - what the employee would been paid plus half that amount again, minus any public holiday penal rate, or
      - the rate provided for in the employment agreement,
      whichever is greater.

   In terms of (a), an employee who would have received an additional payment for working on a Saturday and/or Sunday must also receive the Saturday/Sunday payment.

   Employees who work on public holidays are paid only for hours worked, so even though a penal rate applies, they may receive less for working than for taking the holiday. To compensate, they must be given an alternative holiday on another day on which they would usually have worked. (This can be paid out if not taken within a year).

   Employees who work on a public holiday but do not ordinarily work on that day must receive the penal rate but not an alternative day.

The above describes the general situation but many employers will have roster systems that do not produce a tidy, either/or result. Examples are where an employee usually works, or is down to work, on Saturday and Tuesday or on Sunday and Monday.

Where an employee usually works on Saturday and Tuesday (but not Sunday), the situation is:

- Saturday is the public holiday. If worked, a public holiday penal rate is payable either in terms of the employment agreement or relevant daily pay plus half that amount again, minus any penal rate, whichever is greater.

- If Saturday is not worked, employees receive what they usually receive on a Saturday (which could include a payment for Saturday work).

- Tuesday is also a public holiday. This is because the employee does not usually work on a Sunday and so the holiday is transferred to the Tuesday.

- Since the employee usually works on Tuesday, any work on the day must have a penal rate component and an alternative holiday must also be allowed. If the employee does not work, payment is what the employee would usually earn ("relevant daily pay" – see below) on a Tuesday.

The same applies to Sunday and Monday employees. Both days are public holidays, Sunday being the actual public holiday with Christmas Day transferred to the Monday (because both are days on which the employee usually works).

Rostering may complicate matters since it may not be entirely clear whether or not a particular day is one on which the employee would usually work. In such cases the employer will need to look at the work pattern to see if the employee works more often than not on the day in question.

It is also important to remember that employees who would usually work but who take the holiday instead must be paid their "relevant daily pay" for the day. Relevant daily pay is what an employee would have earned if he or she *had* worked (minus the public holiday penal rate but including any penal rate specifically payable for Saturday/Sunday work). Relevant daily pay is also payable to an employee down to work who calls in sick. For such employees the public holiday is then treated as a public holiday and not as sick leave.

The term "relevant daily pay" covers anything an employee would have received for working other than a public holiday penal rate. It might include (if usually paid):

- Productivity or incentive-based payments (including commission),
- Overtime payments, and
- The cash value of any board and lodgings.

No employee is entitled to more than 4 days' holiday for the Christmas/New Year period, that is, an employee cannot take the Saturdays, Sundays, Mondays and Tuesdays as holidays.