

## HOLIDAYS AMENDMENT ACT 2004 - SUMMARY

**Commencement date:** 22 October 2004

**Public holiday penal rates:** An employee working on a public holiday as required by his or her employment agreement must be paid for time worked at the greater of:

- Relevant daily pay, plus half that rate again, minus any penal rate otherwise payable; or
- The portion of relevant daily pay for time worked.

The term “penal rate” refers to an additional amount payable for working on a public holiday or on a particular day of the week. It does not include any payment such as a payment for a sixth or seventh day of work.

**Compliance with the Act:** Employment agreements, collective and individual, that already include a penal payment for work on a public holiday may continue to pay for work on a public holiday as part of regular pay public holiday provided:

- An amount for working on a public holiday has been genuinely negotiated;
- The negotiated amount can be shown to meet the penal rate requirement;
- The employer can provide evidence to support the above two requirements.

Employment agreements that do not comply with the above must be amended to comply with the penal rate requirement by 1 April 2005 (or earlier if amended sooner for any reason). Individual agreements that already contain a genuinely negotiated penal amount have until 1 April 2007 to include a provision that confirms the employee’s right to be paid in accordance with the penal rate requirement. Collective agreements with a genuinely negotiated amount have until the later of 1 April 2007 or the date on which a replacement collective comes into force to comply.

**Public holiday where employee required to work takes sick or bereavement leave:** Where an employee required to work on a public holiday takes sick leave (because the employee or a dependant is sick or injured) or bereavement leave instead, the day must be treated as a public holiday and not as sick or bereavement leave. Payment will therefore be not less than the employee’s relevant daily pay but without the penal rate – provided either under the Act or under the employment agreement – payable if the employee had worked.

**Proof of sickness or injury:** An employer with reasonable grounds for suspecting that an employee’s use of sick leave is not genuine may ask for proof *before* 3 or more consecutive calendar days have passed. (Without a reasonable suspicion 3 days must otherwise pass before proof can be requested). To seek proof earlier than 3 days an employer must tell the employee of his or her suspicions as soon as possible and agree to meet the employee’s reasonable expenses in obtaining proof. The employer may not specify which medical provider the employee is to see.

An employer does not have to pay an employee for any sick leave taken if, when required, the employee fails to provide proof of sickness or injury, unless the employee has a reasonable excuse for failing to do so.