



## Upcoming changes to state employment laws in WA

# Public holiday minimum conditions

New minimum entitlements relating to public holidays are being introduced in the state industrial relations system.

These new provisions in the *Minimum Conditions of Employment Act 1993* (MCE Act) have been introduced by the *Industrial Relations Legislation Amendment Act 2024* and will commence on 31 January 2025.

This fact sheet outlines changes relating to:

- Entitlement to be absent on a public holiday
- Requesting an employee to work on a public holiday
- Refusing a request to work on a public holiday
- Payment for public holidays
- Substituted public holidays
- Public holidays in periods of annual leave or paid personal leave

### New minimum entitlement to be absent on a public holiday

The MCE Act currently provides that full time and part time employees who are not required to work on a day solely because that day is a public holiday are entitled to be paid as if they were required to work on that day.

From 31 January 2025, a new minimum employment condition will entitle all state system employees to be absent from work on a day (or part of a day) that is a public holiday.

An employer will be able to request an employee to work on a public holiday if the request is reasonable, but an employee will be entitled to refuse a request to work on a public holiday if the request is not reasonable or refusal is reasonable. More information about requesting an employee to work on a public holiday is provided over the page.

These changes will bring minimum public holiday entitlements for state system employees into line with those for national system employees.

### State employment laws are changing

This fact sheet is part of a suite of information on the changes to state employment laws that will commence on 31 January 2025. For details on the changes visit [www.demirs.wa.gov.au/new-employment-laws](http://www.demirs.wa.gov.au/new-employment-laws).

## Requesting an employee to work on a public holiday

An employer will not be able to unilaterally require or roster an employee to work on a public holiday. However, an employer will be able to request an employee to work on a public holiday if the request is reasonable.

An employer must take into account all of the following factors when determining whether their request is reasonable:

- the nature and conduct of the employer's business or operations;
- the nature of the employee's work;
- the employee's personal circumstances, including family responsibilities;
- whether the employee could reasonably expect that the employer might request work on the public holiday;
- whether the employee is entitled to receive overtime payments, penalty rates or other compensation (including compensation in the form of an annualised salary), or a level of remuneration that reflects an expectation to work on the public holiday;
- the type of employment of the employee, for example, whether full time, part time, casual or shift work; and
- the amount of notice in advance of the public holiday given by the employer when making the request.

For example, where an employer's business operates on a 24/7 basis and there is requirement for a certain level of staffing, a request for an employee to work on a public holiday may be reasonable.

There may also be other matters which the employer may take into account.

## Employee refusing a request to work on a public holiday

An employee will be entitled to refuse an employer's request for them to work on a public holiday if:

- the employer's request is not reasonable; or
- the employee's refusal is reasonable.

Each of the same factors must be taken into account in determining whether an employee's refusal of the employer's request was reasonable.

For example, if an employee has notified their employer in advance of the need to be absent on a public holiday, their refusal of their employer's request to work on the public holiday may be reasonable.

## Requirement to work on a public holiday

The requirement for an employer to first make a request and the nature of the specified factors will mean that the employer must discuss their request with the employee in order to determine whether the employer's request is reasonable and the employee's refusal (if any) is unreasonable.

Where the employer has made a request, they will be able to require an employee to work on a public holiday if, in accordance with all of the abovementioned factors:

- the employer's request is reasonable; and
- the employee's refusal to work is unreasonable.

## Payment for public holidays

The current minimum condition for public holidays provides that full time and part time employees who are not required to work on a day solely because that day is a public holiday are entitled to be paid as if they were required to work on that day.

The new minimum condition will require that, if an employee is absent from work on a public holiday in accordance with the new minimum condition, they are entitled to be paid:

- as if they were required to work their ordinary hours on the public holiday; and
- at the rate they would have received as payment for those hours under a WA award, industrial agreement or contract of employment, whichever provides for the higher rate.

The entitlement to be paid for an absence from work on a public holiday will not apply to casual employees; employees who would not ordinarily work on the public holiday; or employees on unpaid leave on the public holiday.

Payment for an absence on a public holiday will not be required to include penalty rates or allowances.

As is the case currently, the MCE Act does not include provisions requiring the payment of penalty rates for any work done on a public holiday (though a WA award or agreement may provide for this).

### **Substituted public holidays**

Under some WA awards and industrial agreements, a public holiday which falls on a weekend is substituted with a weekday public holiday.

The new minimum condition for public holidays will make provision for substitutions, specifying that an award or agreement may provide for an employer and employee to agree to substitute another day (or part day) for a day that is a public holiday.

An employer and an employee who are not covered by a WA award or industrial agreement will also be able to agree to a substitution if their agreement is in writing and signed by the employer and employee.

If another day or part of a day is substituted for a public holiday, the substituted day or part of the day is taken to be the public holiday and the public holiday in the MCE Act is not considered to also be the public holiday.

### **Public holidays in periods of annual leave or paid personal leave**

If the period during which an employee takes paid annual leave or paid personal leave includes a public holiday that falls on a day the employee would ordinarily have worked, the employee:

- is taken not to be on paid annual leave or paid personal leave on that public holiday; and
- is entitled to be absent from work on that day or part-day; and
- is entitled to be paid for that public holiday.

This means that the employee is not required to take a day of paid annual leave or paid personal leave on a public holiday which falls during a period of leave for which they would otherwise be entitled to be absent from work.

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