
CIRCULAR: GEN/023/CCV/2020
DATE: 8 April 2020
SUBJECT: Stand Down – Interaction with public holidays
ATTENTION: Club Managers

Our circular of 3 March 2020 outlined the upcoming public holidays for each State / Territory over April 2020. Since this circular was distributed, Australia's battle to contain COVID-19 has significantly deepened and unfortunately, this has resulted in a number of businesses standing down employees.

The purpose of this circular is to provide guidance to employers on the interaction of unpaid stand down (addressed in our circular of 13 March 2020) with public holidays.

Public holiday entitlement under the NES

The National Employment Standards include the entitlement for full-time or part-time employees to be absent on a public holiday but receive payment at his / her base rate of pay for their ordinary rostered hours on that day. If the employee does not have ordinary hours of work on the public holiday, the employee will not be entitled any payment for that day.

The above entitlement remains during a stand down, despite any argument that – during stand down – the employee is not required work any (ordinary) hours.

By way of example, in respect of Good Friday:

- where a full-time or part-time employee would ordinary work on a Friday, but – due to the public holiday – he/she would be entitled to be absent for that day, the employee will be entitled to payment at their base rate for their ordinary rostered hours on a Friday.

The same principles will apply in respect to other public holidays during the period of stand down (including ANZAC day).

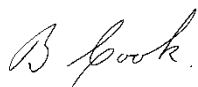
The above reflects the current position of the Fair Work Ombudsman, and we consider that there are reasonable prospects that a Court or Commission who is asked to consider this scenario will adopt this view.

Applicability of the above

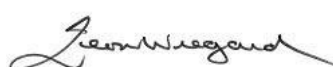
The above advice is:

- based on a stand down under the *Fair Work Act 2009* (Cth) – as at 7 April 2020 – noting that parliament is currently considering changes to the Act to enable greater flexibility for employers to manage their workforce in response to the COVID-19 pandemic. We will keep CCV members across these changes as they are approved and become law;
- assumes that no enterprise agreement or contract of employment apply to provide more beneficial entitlements for employees on stand down – should these apply, the business will be bound by those arrangements.

The Information provided in this e-mail is generic advice. For advice in respect of your specific situation, please contact the SIAG National Advisory Service on 03 9644 1400 or 1300 742 447.



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