

**Sladen eliminates
Legal risk**



Christmas **Essentials**

As the festive season rolls around again, Sladen Legal would like to take this opportunity to wish you a happy and safe holiday season.

To help you navigate safely through the silly season, we have prepared this guide on what you need to know about public holiday trading, employing Christmas casual staff and avoiding the legal hangover from the office end-of-year party.

If you have any queries or would like to discuss any of these issues, the Employment, IR & OHS team are here to help.





5 things you need to know about public holidays if trading through Christmas

While some businesses quieten down over Christmas and actually shut their doors, for many others, Christmas marks a peak time. Below are the top 5 things you need to know about public holidays if you trade over Christmas.

Public holiday dates

Christmas Eve *
7pm to midnight
Thursday, 24 December (SA only)

Christmas Day *
Friday, 25 December

Boxing Day *
Saturday, 26 December
(ACT, NSW, Victoria,
Queensland and WA) or
Monday, 28 December
(NT, SA and Tasmania)

Boxing Day Additional Day *
Monday, 28 December (ACT, NSW,
Victoria, Queensland and WA)

New Year's Eve *
7pm to midnight
Thursday, 31 December (SA only)

New Year's Day *
Friday, 1 January

2 Payment for working on a public holiday

Modern awards and enterprise agreements generally provide for penalty rates to be paid to employees working on a public holiday. Some awards and agreements may enable employees to substitute the public holiday for a different day, have a day added to their annual leave balance, or get time off in lieu.

3 Payment for NOT working on a public holiday

Permanent employees that would ordinarily work on the day the public holiday falls are entitled to be absent from work without loss of pay. Accordingly, you should pay those employees at their base rate of pay for the ordinary hours they would have worked, unless their agreement provides for a higher rate.

4 Refusing to work a public holiday

The National Employment Standards (NES) provides that an employee can refuse to work on a public holiday if their refusal is reasonable (or the employer's request to work is not reasonable).

Determining whether a request or refusal to work on a public holiday is reasonable depends on the employee's particular circumstances (e.g. their family responsibilities or whether they will be entitled to receive penalty rates or overtime for working) and the needs of the business (e.g. the nature of the workplace and its operational requirements and the type of work performed by the employee).

5 Public holidays during paid leave

If an employee is on personal or annual leave when a public holiday falls, the day should be treated as a public holiday and not as paid leave. This means that the employee should be paid as is usual for the public holiday and that day should not be deducted from the employee's leave balance.

How to **avoid** the Christmas party **hangover**

No employer wants to be accused of playing the Grinch over end of year celebrations but any employer who has been left to deal with a legal hangover from the staff Christmas party will tell you that

preparedness is the key

and making staff aware of their obligations at work functions, before they take place, is worth sounding a little Grinch-like.

It is important to understand that an employer's obligation to prevent harassment, discrimination and/or bullying and to ensure the health and safety of employees continues to apply at the Christmas party.

Why it matters

An employer can be found liable for an employee's inappropriate behaviour if such behaviour is committed in the course of employment, including at work-sponsored events occurring on-site or off-site or even at unplanned events such as drinks after a client meeting or, depending on the circumstances, an after-party.

Employers should also be aware that injuries suffered at a Christmas party may be compensable under workers' compensation laws.

Employers need to be proactive to protect themselves from potential claims arising from the bad behaviour of an employee or employees.

What to do

There are some simple steps that employers should take to reduce the risk of an issue arising and to better protect against potential claims, including:

- ✿ Make sure workplace policies are up-to-date and tailored to the particular circumstances and needs of the workplace
- ✿ Employees should be made aware of the workplace policies (and in particular, those relevant to the event, such as any anti-discrimination, harassment and bullying policy, social media policy, drug and alcohol policy or other OHS policies)
- ✿ Inform employees that the workplace policies and rules apply to the Christmas party and also to other unplanned functions or events that may be work-related and that responsible and respectful behaviour is required by all attending
- ✿ Remind employees of the possible consequences for failing to observe the policies
- ✿ Talk to the function venue about responsible service of alcohol
- ✿ Ensure plenty of food and non-alcoholic drinks are available
- ✿ Set specific start and finish times for the Christmas party and organise travel arrangements, or provide options to get employees home safely at the end of the party
- ✿ Tell employees that any 'after party' which may follow the event is undertaken by the employee in their own time and is not endorsed by the business – of course, do not then endorse that party by, for example, paying for the drinks
- ✿ Consider the manner in which alcohol is served at functions (eg. should it be unlimited, should you provide spirits, etc)

If despite best efforts, there is still some bad behaviour – employers should be careful to consider what conduct warrants disciplinary action, up to dismissal, and ensure employees are afforded procedural fairness in respect of any allegations.

3 tips for employing Christmas casuals

For many businesses, Christmas means hiring extra staff to handle increased demands. We have set out below some simple tips to help guide businesses through the Christmas rush when using Christmas Casuals.

1

Put it in writing

Be clear about what is being offered and put it in writing. An employment contract confirming the terms of the casual engagement helps to avoid confusion later and is an absolute minimum.

If copies of any licences held by the employee are required, for example a Forklift Licence, make sure copies of these are provided before the employee starts and always follow up the employee if they have not provided them.

2

Know your obligations

Remember that just because they are seasonally employed, does not mean that Christmas Casuals are excluded from modern award or enterprise agreement coverage or from the National Employment Standards (NES).

It is up to the employer to check whether an award or agreement applies and what entitlements are owed.

Reviewing the relevant award or agreement will enable the employer to determine the minimum pay rates, penalty rates, overtime rates, allowances and loadings that apply and avoid issues of underpayment.

Also check if there are any limitations to the number of hours that the employee can work under the award or agreement, any minimum shift engagements or other limitations to their employment. It is important to also check an employee's eligibility to work in Australia (through the online visa verification system) or what restrictions are imposed on employing young workers in the State or Territory. Some States and Territories not only restrict the age that young people can be employed, but also the type of work they can do and when it can be done.

You must also make sure that you provide all new employees with a copy of the Fair Work Information Statement.

If you are unsure about what obligations you owe to an employee, you should seek advice.

3

Induction & training

Properly induct all new employees, even if they are only going to be temporarily hired. The induction should, at a minimum, cover workplace policies and procedures e.g. procedures for calling in late or sick, workplace safety obligations (including evacuation procedures and who to contact in an emergency or if they are injured), who they should contact if they have any issues in the workplace, dress standards, performance expectations and timesheet requirements.

Provide employees with a copy of the relevant workplace policies and procedures in writing wherever possible – this reduces the likelihood of misunderstandings later.

Young and/or casual workers are recognised as particularly vulnerable as they may not have gained enough knowledge to be aware of potential hazards that relate to the workplace or industry.

Training helps to ensure a safer work environment.

There are a variety of ways workers can be assisted to reduce the risk of being harmed or causing harm in a new workplace, such as via formal training sessions or the implementation of a buddy system.

It is also important to remember that once the Christmas rush is over, if the business decides to permanently employ a Christmas Casual, make sure to update their contractual documentation to avoid a sometimes very significant issue of not having an applicable contract in place.

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Key contacts

At Sladen Legal our team of experienced employment and safety lawyers will assist you to navigate the complexities of these areas of the law.

Louise Houlihan

Principal
Employment, IR & OHS
M 0409 835 809
D +61 3 9611 0144
E lhoulihan@sladen.com.au



Rohan Kux

Senior Associate
Employment, IR & OHS
M 0408 270 480
D +61 3 9611 0107
E rkux@sladen.com.au



Jane O'Brien

Senior Associate
Employment, IR & OHS
M 0409 183 975
D +61 3 9611 0155
E jobrien@sladen.com.au



Joanna Bandara

Associate
Employment, IR & OHS
M 0434 926 919
D +61 3 9611 0196
E ejbandara@sladen.com.au

