



Employee Entitlements On Public Holidays Guide

This Guide details employee entitlements for public holidays worked or not worked under the:

- *Hospitality Industry (General) Award 2010* ('HIGA'), and
- National Employment Standards ('NES') in the *Fair Work Act 2009*.

Employers covered by an Enterprise Agreement (or other formally ratified Agreement such as a Collective or Certified Agreement), or other modern award should refer to that agreement/award. Alternatively, seek advice from the QHA on the operation of that agreement/award in relation to public holidays.

FULL DAY PUBLIC HOLIDAYS

	Employee required to <u>work on a public holiday</u>	Employee <u>not required to work on a public holiday, but has ordinary hours of work on that day</u> (as per the NES)	Employee's rostered day off falls on a public holiday
Casual Employee	250% * Minimum 2 hour payment.	No entitlement.	No additional entitlement.
Part-time Employee	225% * Minimum 4 hour payment.	Entitled to payment at their base rate of pay for their ordinary hours of work on that day. **	No additional entitlement.
Full-time Employee	225% * Minimum 4 hour payment.	Entitled to payment at their base rate of pay for their ordinary hours of work on that day. **	Employee must either: <ul style="list-style-type: none"> • Be paid an extra day's pay; • Be provided with an alternative day off within 28 days; or • Receive an additional day's annual leave. ***
Salaried Full-Time or Part-Time Employee (Salary pursuant to clause 27.1 of the HIGA)	Entitled to: (1) paid time off that is of equal length to the time worked on the public holiday, or, (2) the equal length of time worked added to their annual leave entitlement.	Entitled to payment at their base rate of pay for their ordinary hours of work on that day. **	<u>Where the employee is full-time</u> Employee must either: <ul style="list-style-type: none"> • Be paid an extra day's pay; • Be provided with an alternative day off within 28 days; or • Receive an additional day's annual leave.***

	Employee required to work on a public holiday	Employee <u>not required to work</u> on a public holiday, but <u>has ordinary hours of work on that day</u> (as per the NES)	Employee's rostered day off falls on a public holiday
			<p><i>Note: the above entitlement will not apply where there is written agreement between the employer and employee for this entitlement to be "bought out" as part of the salary.</i></p> <p><u>Where the employee is part-time</u></p> <p>No additional entitlement.</p>
Salaried Manager as per the Managerial Staff (Hotels) classification (Salary pursuant to clause 27.2 of HIGA)	Entitled to paid time off that is of equal length to the time worked on the public holiday, to be taken within 28 days of accruing it.	Entitled to payment at their base rate of pay for their ordinary hours of work on that day.**	No additional entitlement.
Non-Salaried Manager as per the Managerial Staff (Hotels) classification (clause 20.2 of the HIGA applies only)	225% * Minimum 4 hour payment. (If employed as <u>full-time</u> or <u>part-time</u>) 250% * Minimum 2 hour payment. (If employed as a <u>casual</u>)	Where the employee is full-time or part-time: Entitled to payment at their base rate of pay for their ordinary hours of work on that day. ** Where employee is <u>casual</u> : No additional entitlement	<p><u>Where the employee is full-time</u></p> <p>Employee must either:</p> <ul style="list-style-type: none"> • Be paid an extra day's pay; • Be provided with an alternative day off within 28 days; or • Receive an additional day's annual leave. *** <p><u>Where employee is part-time</u></p> <p>No additional entitlement.</p> <p><u>Where employee is casual</u></p> <p>No additional entitlement.</p>

KEY FOR THE ABOVE TABLE:

* The public holiday penalties prescribed within this column are as per clause 32 of the HIGA. However, as these penalties may be subject to transitional arrangements, members are encouraged to refer to the QHA wage rate sheets for further information.

** This entitlement is as per section 116 of the National Employment Standards.

*** This entitlement is as per clause 37.1(b)(i) of the HIGA: to be read in conjunction with clause 32.2 of the HIGA.

CHRISTMAS EVE PART- DAY PUBLIC HOLIDAY
(24 December, 6pm – midnight)

On 27 November 2019 amendments to the Holidays Act 1983 (the 'Act') were passed by Queensland Parliament, prescribing that from 2019, 6pm to midnight on 24 December will be a part-day public holiday in Queensland.

Schedule H of the HIGA (which has provisions specifically dealing with part-day public holidays) will apply to the Queensland part-day public holiday, and the below table has been developed to outline an employee's entitlements as derived from Schedule H and other relevant Award terms, as well as entitlements derived from the National Employment Standards.

TABLE CURRENT AS AT 17 DECEMBER

	<u>Employee required to work on 24 December</u>	<u>Employee not required to work on PDPH, but has ordinary hours of work during 6pm-midnight 24 December</u> (as per the NES)	Employee's rostered day off falls on 24 December
Casual Employee	<p>For hours worked between 6pm – midnight:</p> <p>250% * Minimum 2 hour payment for shift.</p> <p>Note: if your <i>whole shift</i> is compliant with the minimum payment, this will be sufficient for Award compliance, even if the shift spans both before/after the PDPH timeframe.</p> <p>For hours worked ONLY before 6.00pm on 24 December:</p> <p>24 December is only a PDPH between 6.00pm – midnight. The employee has not worked on the PDPH.</p>	No entitlement.	No additional entitlement.
Part-time Employee	<p>For hours worked between 6pm – midnight:</p> <p>225% * Minimum 4 hour payment for shift.</p>	<p>Entitled to payment at their base rate of pay for their ordinary hours of work falling between 6.00pm – midnight. **</p> <p>Example :</p>	Due to Schedule H.1(d) of the Award, the employee would be entitled to payment at their ordinary rate of pay for the ordinary hours the employee would usually have worked between 6.00pm - midnight, had the day not been their rostered day off.

	<u>Employee required to work on 24 December</u>	<u>Employee not required to work on PDPH, but has ordinary hours of work during 6pm-midnight 24 December</u> (as per the NES)	Employee's rostered day off falls on 24 December
	<p>Note: if your <i>whole shift</i> is compliant with the minimum payment, this will be sufficient for Award compliance, even if the shift spans both before/after the PDPH timeframe.</p> <p>For hours worked ONLY before 6.00pm on 24 December:</p> <p>24 December is only a PDPH between 6.00pm – midnight.</p> <p>The employee has not worked on the PDPH and will have no additional entitlement in relation to the PDPH.</p>	<p>Sue is part-time and works 12.00pm to 7.00pm on Mondays and Tuesdays. Sue's employer has made a decision to close at 6pm on Tuesday 24 December and as a result Sue will only be working between 12.00pm and 6.00pm. Sue will still receive payment at her base rate of pay for one hour in addition to her wages for 12.00pm – 6.00pm, to represent her ordinary hours of work between 6.00pm – 7.00pm.</p> <p><i>Please note, if you have a part-time employee that ordinarily works between 6.00pm – midnight on the day that Christmas Eve will fall, but you have made a decision to close your venue early due to the PDPH, and you want to roster the employee earlier to reflect this, consider:</i></p> <ol style="list-style-type: none"> <i>Clause 8A of the HIGA, which refers to consultation about changes to rosters or hours of work.</i> <i>Clause 30 of the HIGA which provides requirements as to when you can alter a roster.</i> 	<p>Assessing whether the employee would have ordinary hours between 6.00pm – midnight on 24 December, had the employee not been on an RDO, will involve assessing the shift times that occur on the days the employee actually works, to see if a pattern can be identified.</p> <p><u>Example 1 (pattern identified, hours falling within 6.00pm – midnight)</u></p> <p>Stephanie is part-time. She works Wednesday to Sunday. Her RDO's are Monday and Tuesday. Christmas Eve (24 December) falls on a Tuesday in this example.</p> <p>On Stephanie's working days, her shifts are 4.00pm to 9.00pm. This is a very regular pattern of shift times.</p> <p>Stephanie would be entitled to payment for 3 hours for the PDPH. This is because based on her normal working hours of 4.00pm to 9.00pm on her actual work days, <i>had Stephanie not been on an RDO on Christmas Eve</i>, it could be viewed that she would have had 3 ordinary hours falling between 6.00pm – midnight on Christmas Eve.</p> <p><u>Example 2 (pattern identified, hours do not fall within 6.00pm – midnight):</u></p> <p>Con is part-time. Con works Wednesday to Sunday. His RDO's are Monday and Tuesday. Christmas Eve (24 December) falls on a Tuesday in this example.</p> <p>On Con's working days, his shifts are 12.00pm to 5.00pm. This is a very regular pattern of shift times.</p> <p>Con would have <u>no additional entitlement</u>. This is because based on his normal working hours of 12.00pm to 5.00pm on his actual work days, <i>had Con not been on an RDO on Christmas Eve</i>, it could be viewed that Con wouldn't have worked between 6.00pm – midnight.</p> <p><u>Example 3 (pattern cannot be identified, hours do not fall within 6.00pm – midnight):</u></p>

	<u>Employee required to work on 24 December</u>	<u>Employee not required to work on PDPH, but has ordinary hours of work during 6pm-midnight 24 December</u> (as per the NES)	Employee's rostered day off falls on 24 December
			<p>Jason is part-time. He usually has his RDOs on Monday and Tuesday. Christmas Eve (24 December) falls on a Tuesday in this example.</p> <p>Jason's start and finish times on his working days are different every roster, depending on business demand. There is no easily identifiable pattern as to what hours Jason would have theoretically worked on Tuesday 24 December.</p> <p>If there is no easily identifiable pattern of hours which can be ascertained from Jason's actual work days, it could be viewed that Jason would not have had any ordinary hours of work between 6.00pm – midnight on Tuesday 24 December.</p> <p>Jason would have <u>no additional entitlement</u>.</p>
<p>Full-time Employee</p>	<p>For hours worked between 6pm – midnight:</p> <p>225% * Minimum 4 hour payment for shift.</p> <p>Note: if your <i>whole shift</i> is compliant with the minimum payment, this will be sufficient for Award compliance, even if the shift spans both before/after the PDPH timeframe.</p> <p>For hours worked ONLY before 6.00pm on 24 December:</p> <p>24 December is only a PDPH between 6.00pm – midnight.</p> <p>The employee has not worked on the PDPH and will have no additional entitlement in relation to the PDPH.****</p>	<p>Entitled to payment at their base rate of pay for their ordinary hours of work on that PDPH. **</p> <p><i>Please note, if you have a full-time employee that ordinarily works between 6.00pm – midnight on the day that Christmas Eve will fall, but you have made a decision to close your venue early due to the PDPH, and you want to roster the employee earlier to reflect this consider:</i></p> <ol style="list-style-type: none"> <i>Clause 8A of the HIGA, which refers to consultation about changes to rosters or hours of work.</i> <i>Clause 30 of the HIGA which provides requirements as to when you can alter a roster.</i> 	<p>As per Schedule H.1(d), the employee would be entitled to payment at their ordinary rate of pay for the ordinary hours the employee would usually have worked between 6.00pm - midnight, had the day not been their rostered day off.</p> <p>Assessing whether the employee would have ordinary hours between 6.00pm – midnight on 24 December, had the employee not been on an RDO, will involve assessing the shift times that occur on the days the employee actually works, to see if a pattern can be identified.</p> <p>Schedule H.1(d) will override the application of clause 37.1(b) in relation to a PDPH. This means that, for example, if it is assessed that the employee would've had ordinary hours between 11.00am to 7.00pm on 24 December had they not been on their RDO, then the employee will only be entitled to payment for <u>one hour</u> (being for the hour between 6.00pm and 7.00pm).</p>

	<u>Employee required to work on 24 December</u>	<u>Employee not required to work on PDPH, but has ordinary hours of work during 6pm-midnight 24 December</u> (as per the NES)	Employee's rostered day off falls on 24 December
Salaried Full-Time or Part-Time Employee (Salary pursuant to clause 27.1 of the HIGA)	For hours worked between 6pm – midnight: Entitled to: (1) paid time off that is of equal length to the time worked on the PDPH, or, (2) the equal length of time worked added to their annual leave entitlement.	Entitled to payment at their base rate of pay for their ordinary hours of work on that PDPH. ** <i>Please note, if you have a full-time employee that ordinarily works between 6.00pm – midnight on the day that Christmas Eve will fall, but you have made a decision to close your venue early due to the PDPH, consider:</i> <ol style="list-style-type: none"> 1. <i>Clause 8A of the HIGA, which refers to consultation about changes to rosters or hours of work.</i> 2. <i>Clause 30 of the HIGA which provides requirements as to when you can alter a roster.</i> 	<u>Where the employee is full-time</u> As per Schedule H.1(d), the employee would be entitled to payment at their ordinary rate of pay for the ordinary hours the employee would usually have worked between 6.00pm - midnight, had the day not been their rostered day off. Assessing whether the employee would have ordinary hours between 6.00pm – midnight on 24 December, had the employee not been on an RDO, will involve assessing the shift times that occur on the days the employee actually works, to see if a pattern can be identified. Schedule H.1(d) will override the application of clause 37.1(b) in relation to a PDPH. This means that if it is assessed that the employee would've had ordinary hours between 11.00am to 7.00pm on 24 December had it not been their RDO, then the employee will only be entitled to payment for one hour. Note: the above entitlement will not apply where there has been an agreement between the employer and employee for this entitlement to be "bought out" as part of the salary. <u>Where the employee is part-time</u> Entitlement under Schedule H.1(d) will apply the same as it does to a full-time employee. See above information.
Salaried Manager as per the Managerial Staff (Hotels) classification (Salary pursuant to clause 27.2 of HIGA)	Entitled to paid time off that is of equal length to the time worked on the PDPH, to be taken within 28 days of accruing it.	Entitled to payment at their base rate of pay for their ordinary hours of work on that PDPH. ** <i>Please note, if you have a full-time employee that ordinarily works between 6.00pm – midnight on the day that Christmas Eve will fall, but you have made a decision to close your</i>	No additional entitlement.

	Employee required to work on 24 December	Employee <u>not</u> required to work on PDPH, but <u>has</u> ordinary hours of work during 6pm-midnight 24 December (as per the NES)	Employee's rostered day off falls on 24 December
		venue early due to the PDPH, consider: 1. Clause 8A of the HIGA, which refers to consultation about changes to rosters or hours of work. 2. Clause 30 of the HIGA which provides requirements as to when you can alter a roster.	
Non-Salaried Manager as per the Managerial Staff (Hotels) classification (clause 20.2 of the HIGA applies only)	For hours worked between 6pm – midnight: 225% * Minimum 4 hour payment. (If employed as full-time or part-time) 250% * Minimum 2 hour payment. (If employed as a casual) Note: if your <i>whole shift</i> is compliant with the minimum payment, this will be sufficient for Award compliance, even if the shift spans both before/after the PDPH timeframe. For hours worked ONLY before 6.00pm on 24 December: 24 December is only a PDPH between 6.00pm – midnight. The employee has not worked on the PDPH and will have no additional entitlement in relation to the PDPH.****	Where the employee is full-time or part-time: Entitled to payment at their base rate of pay for their ordinary hours of work on that PDPH. ** <i>Please note, if you have a full-time employee that ordinarily works between 6.00pm – midnight on the day that Christmas Eve will fall, but you have made a decision to close your venue early due to the PDPH, consider:</i> 1. Clause 8A of the HIGA, which refers to consultation about changes to rosters or hours of work. 2. Clause 30 of the HIGA which provides requirements as to when you can alter a roster.	<u>Where the employee is full-time</u> As per Schedule H.1(d), the employee would be entitled to payment at their ordinary rate of pay for the ordinary hours the employee would usually have worked between 6.00pm - midnight, had the day not been their rostered day off. Assessing whether the employee would have ordinary hours between 6.00pm – midnight on 24 December, had the employee not been on an RDO, will involve assessing the shift times that occur on the days the employee actually works, to see if a pattern can be identified. Schedule H.1(d) will override the application of clause 37.1(b) in relation to a PDPH. This means that if e.g. it is assessed that the employee would've had ordinary hours between 11.00am to 7.00pm on 24 December had it not been their RDO, then the employee will only be entitled to payment for one hour. <u>Where the employee is part-time</u> Entitlement under Schedule H.1(d) will apply the same as it does to a full-time employee. See above information. <u>Where employee is casual</u> No additional entitlement.

KEY FOR THE ABOVE TABLE:

* The public holiday penalties prescribed within this column are as per clause 32 of the HIGA.

** This entitlement is as per section 116 of the National Employment Standards.

*** This entitlement is as per clause 37.1(b)(i) of the HIGA: to be read in conjunction with clause 32.2 of the HIGA.

**** Please note, it is recommended that if the employee is working on 24 December and on 25 December, that the time period between the finish time of the 24 December shift and the start time of the 25 December shift is less than 24 hours. This is recommended due to the definition of an RDO for the purposes of the HIGA.

Annual Leave coinciding with the PDPH

Division 6 of the NES specifies that if a Part-Day or a Full Day Public Holiday falls during an employee's period of paid annual leave, the employee is not taken to be on annual leave during hours of a part-day public holiday which they would usually work (ie an employee's normal Tuesday shift is 4pm to midnight, and in 2019 Christmas Eve falls on a Tuesday). The employee is therefore paid for the hours of the PDPH which they would normally work, without any deduction from their annual leave entitlements. All hours outside the PDPH are to be deducted from their annual leave entitlements.

Example: Samantha is a Housekeeping Supervisor and is paid an annualised salary in accordance with Clause 27.1. In this example, 24 December falls on a Tuesday. Her normal Tuesday shift would be from 8am until 4pm. She will be on Annual Leave on 24 December. As her normal shift does not fall between 6pm and midnight, the full 8 hours (less meal break) is considered annual leave.

Members are encouraged to review a full copy of the *HIGA* for further information on the above entitlements.

For further information on the above or employee entitlements under other awards, please contact the ER Department on (07) 3221 6999 or at er@qha.org.au.

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December 2019