

Employee Entitlements on Public Holidays

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Overview

This Guide details full-day and part-day public holiday entitlements under the *Hospitality Industry (General) Award 2020* ('HIGA'), and the National Employment Standards (NES) in the *Fair Work Act 2009* (the Act), as in force on 5 December 2022.

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

Table 1 - Full day public holiday entitlements

	Employee works on public holiday	Employee does not work on public holiday
Casual Employee[^]	250% * Minimum 2-hour payment for whole shift.	No entitlement.
Part-time Employee[^]	225% * Minimum 4-hour payment for whole shift.	Part-time employees are entitled to be absent from work on a public holiday and be paid their base rate of pay for the ordinary hours they would have worked, had it not been for the public holiday.** For part-time employees whose ordinary hours do not include the day of the week on which the public holiday falls, they are not entitled to payment.
Full-time Employee[^]	225% * Minimum 4-hour payment for whole shift.	Full-time employees are entitled to be absent from work on a public holiday and be paid their base rate of pay for the ordinary hours they would have worked, had it not been for the public holiday.** Where a public holiday falls on a full-time employee's day off, the employer must do one of the following: a) Pay the employee an extra day's pay; or b) Give the employee an alternative day off within 28 days; or c) Give the employee an additional day's annual leave.
Paid Annualised Wage per clause 24 of the HIGA.	Entitled to: a) Receive their normal annualised wage amount in their pay; and b) The hours worked on the public holiday to be counted toward the penalty rates outer limit or the overtime outer limit calculation (where applicable). Payment made if	The entitlement is conditional on the written annualised wage agreement between the employer and employee, specifically whether the annualised wage compensates for the additional public holiday arrangements for full-time employees considered in cl. 35.3 of the HIGA. If the annualised wage compensates for the public holiday entitlement, there is no additional pay or leave entitlement for the employee.

<p>Paid Annualised Wage per clause 24 of the HIGA (Continued)</p>	<p>the work is in excess of an outer limit.</p> <p>The employer must incorporate the hours worked on a public holiday when completing the annualised wage reconciliation process, as per cl. 24.3.</p>	<p>If the annualised wage does <u>not</u> compensate for public holiday entitlements from cl. 35.3, the employer is required to do one of the following:</p> <ul style="list-style-type: none"> a) Pay the employee an extra day’s pay; or b) Give the employee an alternative day off within 28 days; or c) Give the employee an additional day’s annual leave. <p>Full-time employees are entitled to be absent from work on a public holiday and be paid their base rate of pay for the ordinary hours they would have worked, had it not been for the public holiday. Under clause 24, this payment would form part of their annualised wage.**</p>
<p>Managerial Staff (Hotels) classification paid a salary per clause 25 of the HIGA.</p>	<p>Entitled to paid time off that is of equal length to the time worked on the public holiday, to be taken within 28 days after the entitlement is accrued.</p> <p>This timeframe is able to be extended by mutual agreement, to require that the time off in lieu be taken within 6 months of its accrual, subject to cl. 25.6</p>	<p>No additional entitlement on top of their salary, as the salary arrangements entered into under clause 25 absorbs any additional public holiday arrangements from cl. 35.3 for full-time employees.</p>

KEY FOR THE TABLE 1:

^ Including Managerial Staff (Hotels) Classification paid in accordance with clause 18.2 of the HIGA.

* Public holiday penalty rates set out in clause 29 of the HIGA.

** As per section 116 of the Act, payment for absence on public holiday.

Table 2 - Part-day public holiday entitlements

In Queensland, the only part-day public holiday is **6pm - 12 Midnight on 24 December** (Christmas Eve). Following the amendments made to the HIGA in November 2022, the same public holiday entitlements set out above now apply to the period of 6pm – Midnight on a pro-rata basis, as per the below:

	Employee works between 6pm - Midnight on 24 December	Employee does not work between 6pm – Midnight on 24 December
Casual Employee[^]	250% * Minimum 2-hour payment for whole shift.	No entitlement.
Part-time Employee[^]	225% * Minimum 4-hour payment for whole shift.	<p>Part-time employees are entitled to be absent from work on a public holiday and be paid their base rate of pay for the ordinary hours they would have worked, had it not been for the part-day public holiday. The employee would be entitled to payment at their base rate of pay for their ordinary hours of work falling between 6pm – midnight on 24 December, if they are not required to work those hours.</p> <p>If the employee does not normally work 6pm – midnight on the day the part-day public holiday falls, there is no entitlement to an additional payment or addition to the employee’s annual leave accruals.</p> <p><i>Example 1:</i></p> <ul style="list-style-type: none"> • 6pm – midnight Saturday 24 December is the part-day public holiday. • Jack usually works ordinary hours from 1pm - 8pm on Saturday. • Jack’s employer has made a decision to close at 6pm on 24 December. This means Jack will only work between 1pm and 6pm on 24 December (instead of their ordinary hours of 1pm - 8pm). • Jack will receive their wages for 1pm to 6pm plus payment for two ordinary hours (at base rate of

<p>Part-time Employee[^] (Continued)</p>		<p>pay) to represent their ordinary hours of work between 6.00pm – 8.00pm.</p> <p><i>Example 2:</i></p> <ul style="list-style-type: none"> • Minnie is rostered to work three ordinary hours on the part-day public holiday. Minnie requests not to work, which is approved by their manager. Minnie does not work but is still paid for three ordinary hours at their base rate of pay. <p><i>Example 3:</i></p> <ul style="list-style-type: none"> • Tara works Monday-Friday. As 24 December falls on a Saturday this year, which is not a day Tara normally works or has ordinary hours on, Tara receives no payment for the part-day public holiday.
<p>Full-time Employee[^]</p>	<p>225% * Minimum 4-hour payment for whole shift.</p>	<p>Full-time employees are entitled to be absent from work on a public holiday and be paid their base rate of pay for the ordinary hours they would have worked, had it not been for the part-day public holiday.</p> <p>Where a part-day public holiday falls on a full-time employee’s day off, the employer must do one of the following:</p> <ol style="list-style-type: none"> a) Pay the employee on a pro-rata basis for the number of ordinary hours on the part-day public holiday; or b) Give the employee an alternative part-day off within 28 days; or c) Credit to the employee’s annual leave balance the number of ordinary hours on the part-day public holiday. <p><i>Example 1:</i></p> <ul style="list-style-type: none"> • 6pm – midnight Saturday 24 December is the part-day public holiday. • James has a rostered day off on Saturday 24 December. • James usually works between 6pm – 9pm on the days he ordinarily works (three ordinary hours).

		<ul style="list-style-type: none"> James is entitled to one of the three entitlement options, based on their three ordinary hours. For example – to be paid an extra three hours pay or be provided three hours off within 28 days or have three hours credited to his annual leave balance. <p><i>Example 2:</i></p> <ul style="list-style-type: none"> Mary usually works ordinary hours from 1pm - 8pm on Saturday. Mary’s employer has made a decision to close at 6pm on 24 December. This means Mary will only work between 1pm and 6pm (instead of their ordinary hours of 1pm - 8pm). Mary will receive their wages for 1pm to 6pm plus payment for two ordinary hours (at base rate of pay) to represent their ordinary hours of work between 6.00pm – 8.00pm.
<p>Paid Annualised Wage per Clause 24 of the HIGA</p>	<p>Entitled to:</p> <ol style="list-style-type: none"> Receive their normal annualised wage amount in their pay; and The hours worked on the part-day public holiday to be counted toward the penalty rates outer limit or the overtime outer limit calculation (where applicable). Payment made if the work is in excess of an outer limit. <p>The employer must incorporate the hours worked on a public holiday when completing the annualised wage reconciliation process as per cl. 24.3.</p>	<p>This entitlement is conditional on the written annualised wage agreement between the employer and employee and whether it has been agreed that the annualised wage compensates for the provisions of cl. 35.3 of the HIGA.</p> <p>If the annualised wage compensates for the entitlement under cl. 35.3, the employee receives no additional entitlement from their rostered day off falling on the part-day.</p> <p>If the annualised wage does <u>not</u> compensate for entitlements under cl. 35.3, the employer is required to do one of the following:</p> <ol style="list-style-type: none"> Pay the employee on a pro-rata basis for the number of ordinary hours on the part-day public holiday; or Give the employee an alternative part-day off within 28 days; or Credit to the employee’s annual leave balance the number of ordinary hours on the part-day public holiday. <p>Full-time employees are entitled to be absent from</p>

		<p>work on a public holiday and be paid their base rate of pay for the ordinary hours they would have worked, had it not been for the part-day public holiday. Under clause 24, this payment would form part of their annualised wage.</p>
<p>Managerial Staff (Hotels) classification paid a salary per clause 25 of the HIGA.</p>	<p>Entitled to paid time off that is of equal length to the time worked on the part-day public holiday, to be taken within 28 days after the entitlement is accrued.</p> <p>By mutual agreement, the paid time off may be taken within 6 months of its accrual, subject to the conditions in clause 25.6 of the HIGA being met.</p>	<p>No additional entitlement on top of their salary, as the salary arrangements entered into under clause 25 absorbs any additional public holiday arrangements for full-time employees.</p>

KEY FOR THE TABLE 2:

^ Including Managerial Staff (Hotels) Classification paid in accordance with clause 18.2 of the HIGA.

* Public holiday penalty rates set out in clause 29 of the HIGA, applicable for the part-day public holiday from 6pm – Midnight on 24 December.

Frequently asked questions

Can an employee refuse to work a Public Holiday?

Generally, all employees have a right to be absent from work on a day or part-day that is a public holiday. However, under section 114 of the Act, an employer may request an employee to work on a public holiday, if the request is reasonable. The employee may refuse a request to work on a public holiday, if it is unreasonable to expect them to do so. Factors to take into account when determining whether a request is reasonable may include:

- The operational needs of the business.
- The employee's personal circumstances, including their reason for the refusal.
- If an employee's employment contract specified a requirement to work public holidays.
- The amount of notice given to the employee about the requirement to work, and the amount of notice given by the employee when refusing to work.
- Whether the employee will be entitled to receive additional payment for working or whether their salary otherwise compensates them for work on a public holiday.

What are the minimum hours on public holidays?

Regardless of how long they actually work, when an employee works on a public holiday, they have to be paid a minimum of 4 hours for full-time and part-time employees, and a minimum of 2 hours for casual employees. NOTE: This minimum does not apply to Managerial Staff (Hotels) classification paid a salary per clause 25 of the HIGA.

Hours worked right before or after a public holiday, as part of one continuous shift, count towards the minimum shift length. For example, if a casual employee works 1.5 hours on the night before a

public holiday (10:30pm – 12:00am) and only 30 minutes (12:00am – 12:30am on the actual public holiday). Their shift was still the minimum 2 hours' engagement for casual employees and is therefore compliant.

I've got an employee who is on annual leave at the time when a public holiday falls. How do I pay them?

In accordance with section 89 of the Act, if a public holiday falls during a period of paid annual leave, the public holiday hours should not be deducted from the employee's annual leave balance. For example, Stacey is a full-time employee who takes 10 days paid annual leave. This period includes Labour Day on Monday 1 May 2023. As Monday is a day that Stacey ordinarily works, she has to be paid for the public holiday. This means that the public holiday will not be deducted from Stacey's annual leave amount, resulting in only 9 days being deducted from Stacey's annual leave balance.

Can I make an agreement with an employee to substitute another day for a public holiday?

Yes. Clause 35.2 of the HIGA allows an employer and an employee to agree to substitute another day (or part-day for 24 December) for a day (or part-day) that would have otherwise been a public holiday.

What if the employee is on unpaid leave, do they receive the public holiday pay?

No. If an employee is unable to work and is accessing unpaid leave, including to claim workers' compensation, they are not entitled to the public holiday entitlements set out above.

What do I do if an employee calls in sick on the days either side of the public holiday? I don't believe that they are sick, I think they are trying to

extend their period of leave over the public holidays.

If an employee takes sick leave either side of a public holiday, they should still be paid for their ordinary hours on the public holiday if it is on a day that they would normally work. However, normal sick leave rules apply for the time taken as sick leave. The employer is able to ask the employee for evidence to support their application for sick leave.

How do I work out whether a part-time employee has ordinary hours on the day that the public holiday falls?

If a part-time employee does not work on a public holiday, the employer needs to determine whether the employee has ordinary hours on the day, to determine whether they have an entitlement to payment per section 116 of the Act.

To determine this, employers will need to look to the part-time employee's usual hours of work and to the days that they are normally rostered to work. The public holiday entitlements under s.116 operates under the assumption that the employee would otherwise be required to work on that day, had it not been a public holiday. For example,

1. Jennifer is rostered to work Wednesday-Friday each week and the public holiday falls on a Monday. As Jennifer's ordinary hours of work does not include Mondays, she is not entitled to payment for the Monday public holiday.
2. Rosters for Business A are published one month in advance. Nathan works part-time and has been rostered to work Saturday 24 December, from 4pm to 11pm. Business A

decides to close from 6pm on this day. As 24 December is a part-day public holiday, Nathan will receive payment for time worked between 4pm – 6pm plus the additional payment at his base rate of pay from 6pm – 11pm, for the part-day public holiday.

Where the employee does not have an established pattern of ordinary hours of work that are contemplated by the above examples, we must turn our attention to the requirements under the HIGA for there to be clear agreement reached about the days when an employee will be regarded as having ordinary hours of work.

Clause 10.4 of the HIGA requires an employee and their employer to reach a written agreement on the number of hours of work guaranteed to be provided, and the days of the week on which, and the hours on those days during which, the employee is available to work the guaranteed hours, to establish a reasonably predictable hours of work arrangement. Written agreement is required for any variations to the hours of work.

This means that the HIGA requires that part-time employees must have reasonably predictable hours of work which in turn allows an employer to determine whether the employee would have had ordinary hours of work on a particular day. If that day is a public holiday, then the employer is able to identify whether the employee would be entitled to a public holiday payment for that day.

How do I know when the Public Holidays are?

The QHA's *Public Holidays Fact Sheet* lists public holiday dates in Queensland.

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