

Employers may be liable for public holiday pay for a worker on ACC

The Ministry of Business Innovation and Employment (MBIE) has admitted the guidance from it and ACC on who pays an employee on a public holiday when they otherwise would have worked, but are on ACC, has been unclear.

ACC's advice is that employers may need to pay an employee who is on ACC for public holidays in the usual way, and that MBIE can let you know your obligations. MBIE has since become aware of variable information being provided to employers, and accepted more information and guidance is needed. It has removed the guidance from its website, and is now working on updated guidance, which will be communicated to stakeholders shortly.

Chief Executive of New Zealand Payroll Practitioners Association, Mr David Jenkins has said that in the past, the guidance was that ACC compensation would cover a public holiday while an employee was off from work and they otherwise would have worked that day, and employers did not have to pay any additional payment. Recently, MBIE has said that the employer is liable to pay for the public holiday while the employee is on ACC, if the employee would otherwise have worked.

Mr Jenkins says this is a major change, because it is an additional cost that employers would have to pay going forward. It could also create an outstanding liability which would require employers to go back six years to calculate back pay owing to each affected employee.

The Holidays Act working group will be looking into this, and Business NZ is involved in that conversation.

Despite MBIE's apparent confusion, and while we wait for any updated guidance, it is helpful and timely to consider exactly what the Holidays Act does require when an employee is sick on a public holiday.

An employee who is ill and on sick leave is not treated as being on sick leave on a public holiday. The employer must pay the employee as a public holiday and no deductions can be made to the employee's sick leave entitlements.

If however an employee is on ACC and receiving weekly compensation (80% of their usual wages), they are not entitled to sick or bereavement leave. But an employer can exercise their discretion and by agreement with the employee top up the weekly compensation payments by deducting from the employee's sick leave one day per week.

Those obligations and discretion do not flow through to the public holiday sections of the Holidays Act, which is perhaps where some of the confusion between MBIE and ACC lies.

In our view, if an employee has suffered a personal injury; are incapacitated; and in receipt of weekly compensation; then this is fundamentally different to an employee who is on sick leave. In these circumstances, and consistent with ACC's view, employer's may need to pay an employee for a public holiday. The issue of entitlement is not straight forward and is dependent on whether or not the day would otherwise be a working day.

That is a difficult question to answer with certainty and each situation depends on a number of factors. On any reasonable analysis there would be no expectation that an employee on long term ACC would have worked a public holiday, say 4 months after becoming incapacitated. In that scenario there ought to be no obligation on an employer to pay an employee a public holiday.

**Employers may be liable for public holiday pay for a worker
on ACC
(Continued)**

Want to know more?

Because the Holidays Act is long overdue for change and difficult to interpret correctly, if you have any questions about payments to employees on ACC, please contact our specialist [Employment Team](#)