

Express law fast track information for clients

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Public holidays in South Australia

South Australian holidays legislation may lead to unexpected employment costs for agencies.

State and Territory holiday legislation applies to enterprise agreements

The *Fair Work Act 2009* (FW Act) applies to national system employees to the exclusion of State and Territory laws.

In most cases, this means that State and Territory legislation will not affect the terms and conditions of employment of Commonwealth employees.

However, the FW Act specifically leaves some matters to be determined in accordance with State and Territory laws, including the declaration of public holidays.

Holidays Act 1910 (SA)

The *Holidays Act 1910* (SA) applies throughout South Australia. It specifies that any days listed in Sch 2 to that Act 'will be public holidays and bank holidays'.

Schedule 2 to the Act lists Sunday as a public holiday.

Implications

Many agencies' enterprise agreements will contain terms:

- setting penalty rates for work done on Sundays
- setting higher penalty rates for work done on public holidays
- recognising that employees are entitled to public holidays prescribed under a law of a State or Territory.

Where an agency's enterprise agreement contains these terms, the agency may be required to pay their South Australian employees public holiday rates rather than the usual Sunday rates for working on Sundays. An agency should confirm that it is paying its employees the correct rates for working on Sundays in South Australia.

It would be possible for an agency to address this issue in subsequent enterprise agreements. For example, an enterprise agreement could make clear that employees in South Australia receive Sunday rates for working on Sundays, not public holiday rates, if this is the desired outcome.

An agency that has concerns about whether it is paying the correct rates for employees in South Australia should seek legal advice.

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