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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.





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

Thursday, 24 December (SA only)

7pm to midnight

Christmas Eve ⊁

Christmas Day ⊁

Boxing Day *

Friday, 25 December

(ACT, NSW, Victoria, Queensland and WA) or Monday, 28 December (NT, SA and Tasmania)

Boxing Day Additional Day 🧩

Saturday, 26 December

New Year's Eve ⊁

Victoria, Queensland and WA)

Monday, 28 December (ACT, NSW,

7pm to midnight Thursday, 31 December (SA only)

New Year's Day 🛠

Friday, 1 January

Payment forworking 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.

The

Standards

holiday

provides that

employee can refuse to work on a public

refusal is reasonable (or the employer's request to work is not

National

(NES)

their

Payment

for NOT working on a public holiday

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.

Permanent

employees

ordinarily work on the day the public holiday falls are entitled to be absent from work without loss of pay. Accordingly,

would

that

reasonable). Determining whether a request or refusal to work on a public holiday is reasonable Refusing to work apublic holiday

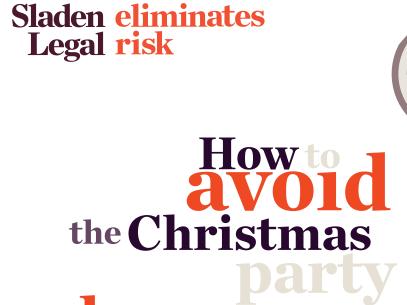
depends the employee's particular circumstances their family responsibilities or whether they will be entitled to receive penalty rates or overtime for working) and the needs of the business the nature the workplace and its operational requirements the type of work

performed by the employee).

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.

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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.



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 offsite 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

An employer can be found

may be compensable under workers' compensation laws.

protect

to

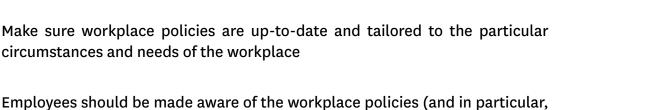
injuries suffered at a Christmas party

potential claims arising from the bad behaviour of an employee or employees.

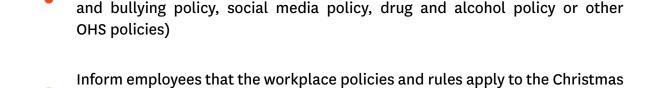
Employers need to be proactive

themselves

from



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



those relevant to the event, such as any anti-discrimination, harassment

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

claims, including:

- 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

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

manner in which

fairness in respect of any allegations.

(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

alcohol is served

at functions

the party

Consider the

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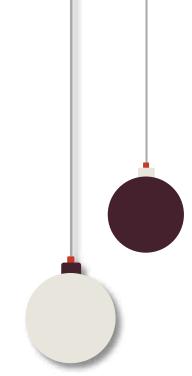


For many businesses, Christmas means hiring extra staff to handle increased demands. We have set out below some simple tips to help guide businesses through the Christmas rush when using Christmas Casuals.

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.



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).

an award or agreement applies and what entitlements are owed.

It is up to the employer to check whether

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

Reviewing the relevant award or agreement

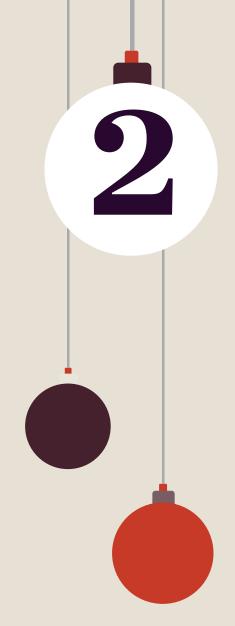
can work under the award or agreement, any minimum shift engagements or other limitations to their employment. It is important to also check an employee's eligibility to work in Australia (through the online visa verification system) or what restrictions are imposed on employing young workers in the 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.



Properly induct all new employees, even if they are only going to be temporarily

Induction & training

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

Training helps to ensure a safer work environment.

workplace or industry.

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

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.

Sladen eliminates Legal risk contacts At Sladen Legal our team of experienced employment and Louise safety lawyers will assist you Houlihan to navigate the complexities of Principal these areas of the law. **Employment, IR & OHS** M 0409 835 809 D+61396110144 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 jbandara@sladen.com.au sladen.com.au