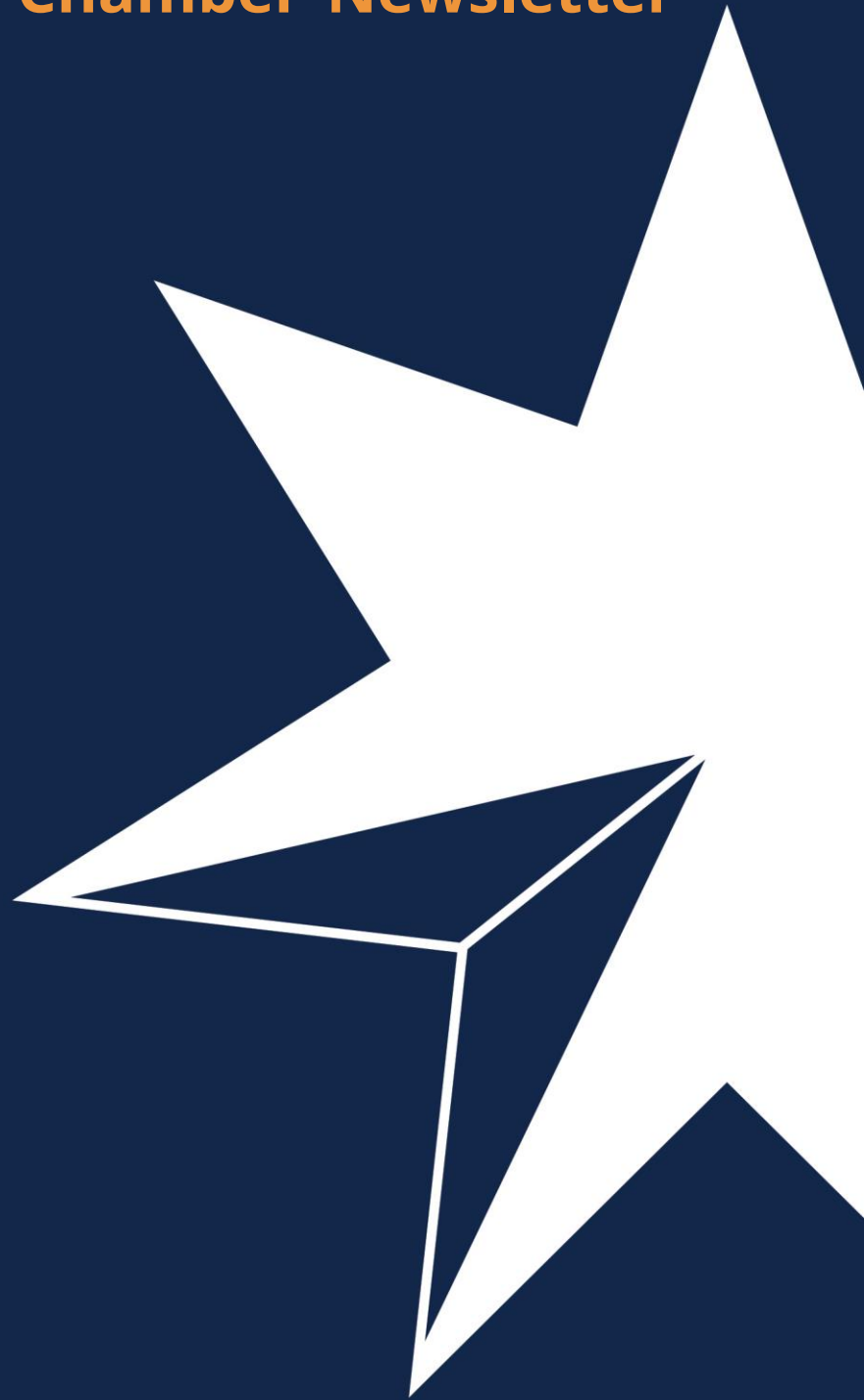


CCIWA Regional Chamber Newsletter

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Chamber of Commerce
and Industry WA
We stand for business

Is your business prepared for Easter?

Natasha Marsala | *Employee Relations Adviser*

In the lead up to Easter employers are urged to revisit the relevant public holiday entitlements that apply to their business. This busy period can often bring challenges relating to adequate staffing and potential disputes with employees regarding their rights to pay and leave. Knowing your business's obligations ahead of time can relieve some of these issues. Below are some reminders to help address common concerns this holiday season.

Easter Public Holidays

In WA, the following dates are recognised as Easter public holidays,

- Good Friday – 29th March 2024
- Easter Sunday - 31st March 2024
- Easter Monday – 1st April 2024

National System Employers

Under the National Employment Standards (NES), all employees whose ordinary hours fall on a public holiday have the right to be absent from work without loss of pay. Typically, a full-time employee or part time employee who has ordinary hours on that day will be entitled to receive their base rate of pay for the hours they would have ordinarily worked. If an employee does not have ordinary hours of work on the public holiday, then they are not entitled to payment. For example, a genuine casual who is not rostered to work the public holiday or a part time employee whose part time hours do not include the day of the week which the public holiday falls on.

Working the Public Holiday

An employee cannot be directed to work or be automatically rostered to work a public holiday without prior consultation. In some instances, it may be reasonable for the employer to request the employee to work, for example in an organisation that requires a certain level of staffing (emergency services). Employers should communicate to the employee, in advance the likelihood being requested to work the public holiday.

If an employee refuses a request to work on the public holiday, then the refusal must be reasonable. The NES outlines the below considerations to determine whether both the request or refusal to work is reasonable:

- The nature of the work performed;
- The employee's personal responsibilities;
- Whether there is a reasonable expectation that the employer may request the employee to work on a public holiday;

- Whether the employee is entitled to receive penalties for working on the public holiday;
- The employment status (full time, part time, casual);
- The amount of notice given by the employer to request the employee to work;
- The amount of notice given by the employee in refusing the request; and
- Other relevant factors.

If the employee accepts the request to work on a public holiday, employers should check the relevant award or agreement for any additional provisions concerning public holidays and which penalty and/or overtime rates apply. If an employee is on a period of annual leave or paid personal/carers leave, the employee is to be paid as per the public holiday with no deduction from their leave accruals.

State System Employers

Under the *Minimum Conditions of Employment Act 1993* (WA), full-time and part-time employees are not required to work on a public holiday and are entitled to receive payment as if they had worked that day. Casual employees who are not required to work on the public holiday are not entitled to receive payment for that day.

Under the *Public and Bank Holidays Act 1972* (WA), the Easter holidays (Good Friday, Easter Sunday and Easter Monday) are observed on the actual day of the public holiday. Many state awards and industrial agreements will outline the specific provisions for working on a public holiday, including that employees are to be paid at a higher rate of pay. Employees who are not covered by an award or industrial agreement are to be paid at their normal rate of pay unless otherwise agreed to in the employment contract.

Setting Expectations

To avoid internal disputes, employers should set clear expectations around what an appropriate time frame looks like for employees to notify management that they do not wish to work. Pre-planning rosters to relieve pressure of short staffing and absences over the public holidays is crucial, employers should also encourage their employees to come forward prior to rosters being drafted to discuss work arounds.

Some employees will look to extend their time off and book annual leave on either side of the public holiday days. Employers should communicate clear parameters around the correct process to apply for leave and keep track of what leave applications are received to reduce any undue stress on the business and other staff members who are picking up additional shifts.

Businesses also should not alter rosters to make a one-off change to avoid paying an employee for working, or not working, the public holiday. If the public holiday falls on a day that the employee ordinarily works, and a one-off change does occur, then the

employee may still be entitled to payment for it and the employer may be subject to anti-avoidance provisions in the relevant legislation.

Helpful Resources

CCIWA's Public Holidays information sheet provides more detailed information please see [ERAC Information Sheets](#).

To find out more information on public holidays, call the Employee Relations Advice Centre at CCIWA on 08 9365 7660 or email advice@cciwa.com.

Closing Loopholes No. 2

Natasha Marsala | *Employee Relations Adviser*

The *Fair Work Legislation Amendment (Closing Loopholes No.2) Act 2023* (Cth) officially passed both houses of Parliament on the 12th of February 2024, marking the third tranche of monumental IR reforms in Australia. Part 2 of the Bill was implemented with the purpose to develop and build on the initial workplace changes that were introduced in December 2023. As a result, some amendments have created entirely new laws whilst others have altered existing ones, nevertheless, they will each have significant impacts on businesses who are covered by the *Fair Work Act 2009* (Cth).

This article will provide guidance around two major workplace changes. For more information about other changes taking place, please refer to our website.

Casual Employment

The first significant change includes a new definition to casual employment that will commence on 26 August 2024. The characterisation of casual employment has steered away from strict contractual testing and now considers the substance, practical reality and true nature of the employment relationship. In essence, this requires assessing the conduct of the employment relationship and how it operates in practice, irrespective of what the terms are in the contract. The mutual understanding of whether there is a casual employment relationship present, will be inferred from the how the contract is performed after both parties have entered the employment contract.

The 'general rule' to defining a casual employee encompasses the following:

- a) an absence of a firm advance commitment to continuing and indefinite work, and
- b) that the employee is entitled to casual loading or a specific casual rate.

When assessing whether the employee has an absence of firm advance commitment to continuing indefinite work. This includes determining:

- terms and conditions within the employment contract and mutual understanding or expectation of the contract;

- whether the employee has the right to accept or refuse work and whether they exercise that right,
- whether it is reasonably likely that there will be future availability of continuing the same kind of work in that business for the employee,
- whether there are other full time or part time employees who perform the same kind of work and,
- whether there is a regular pattern of work for the employee.

The 'right to disconnect'

Another important change that will be introduced is an employee's right to disconnect from their workplace. Employers are not prevented from contacting the employee outside of their working hours, however the employee can legally refuse contact or attempted contact from their employer or a related third party, unless it is unreasonable to do so. This law will come into effect from 26 August 2024 for non-small businesses, and small businesses will have until 26 August 2025.

The right to disconnect will be included as a protected workplace right within the meaning of general protections. Therefore, employers need to be aware that any adverse action taken against an employee for exercising their right to disconnect may lead to a breach of general protections.

If there is a disagreement between the two parties regarding whether the contact made was reasonable, it must first be discussed at the workplace level before applying to the Fair Work Commission for external assistance. The Fair Work Commission will consider the following on an individual basis when determining whether the contact made is unreasonable:

- the reason why the contact/ attempted contact was made;
- how the contact was made and whether there was any disruption caused to the employee due to the contact being made;
- the extent to which the employee is compensated (for the employee's time to be available to perform work and for any additional hours worked outside of the employees' ordinary hours);
- the nature of the employee's role and level of responsibility they have;
- any personal circumstances such as family or care taking circumstances.

Whilst there is still some time to prepare, businesses should examine what forms of communication are currently being used to contact employees outside of their working hours to determine whether they could be challenged or considered unreasonable.

Helpful Resources

CCIWA's Right to Disconnect and the soon to be released Casual Employees information sheet provides more detailed information please see [ERAC Information Sheets](#).

To find out more information regarding these amendments, call the Employee Relations Advice Centre at CCIWA on 08 9365 7660 or email advice@cciwa.com.