

# Christmas & New Year Public Holidays 2021/2022



<b>Christmas Day</b>	<b>Saturday 25 December 2021</b>	<b>or</b>	<b>Monday 27 December 2021</b>
<b>Boxing Day</b>	<b>Sunday 26 December 2021</b>	<b>or</b>	<b>Tuesday 28 December 2021</b>
<b>New Year's Day</b>	<b>Saturday 1 January 2022</b>	<b>or</b>	<b>Monday 3 January 2022</b>
<b>2 January Holiday</b>	<b>Sunday 2 January 2022</b>	<b>or</b>	<b>Tuesday 4 January 2022</b>

## Transfer of public holidays over Christmas 2021 and New Year 2022

Boxing Day 2021 and the 2 January public holiday 2022 will fall on weekend days and are therefore subject to the transfer of Christmas and New Year public holidays provisions of the Holidays Act 2003.

- ▶ If a public holiday falls on a Saturday, and the day would otherwise be a working day for the employee the public holiday must be treated as falling on that day and will not transfer.
- ▶ If a public holiday falls on a Saturday, and the day would not otherwise be a working day for the employee, the public holiday must be treated as falling on the following Monday.
- ▶ If a public holiday falls on a Sunday, and the day would otherwise be a working day for the employee the public holiday must be treated as falling on that day and will not transfer.
- ▶ If a public holiday falls on a Sunday, and the day would not otherwise be a working day for the employee, the public holiday must be treated as falling on the following Tuesday.

Where Saturday is the public holiday for an employee, the Monday will just be treated as an ordinary day. Where Sunday is the public holiday for an employee, the Tuesday will just be treated as an ordinary day. If you do not require the employee to work on the Monday or Tuesday then annual leave or changes in rostered days may be considered as options as long as you comply with the Holidays Act 2003 and any relevant terms of employment.

It is recommended that employers consider the impact of the transfer provisions and how the days will be managed and discuss your requirements with employees in advance.

## Public holiday Saturday or Monday

### If Saturday or Sunday is normally a working day for the employee

#### Public holiday

Christmas Day	Saturday 25 December 2021
Boxing Day	Sunday 26 December 2021
New Year's Day	Saturday 1 January 2022
2 January Holiday	Sunday 2 January 2022

### If Saturday or Sunday is not normally a working day for the employee

#### Public holiday

Christmas Day	Monday 27 December 2021
Boxing Day	Tuesday 28 December 2021
New Year's Day	Monday 3 January 2022
2 January Holiday	Tuesday 4 January 2022

*NOTE: Employees are entitled to a maximum of 4 public holidays for these public holidays.*

## Public holidays

All employees for whom the day would otherwise be a working day will be entitled to a paid public holiday not worked or an alternative holiday and time and a half if they work on that day.

Employers therefore need to consider whether the day on which the public holiday falls is otherwise a working day for each employee in order to determine public holiday entitlements. The otherwise working day test applies to all employees regardless of whether they are permanent, fixed term or casual employees, or have just commenced employment.

## Otherwise working day for an employee

In most situations it will be clear whether the day on which the public holiday falls would otherwise be a working day for an employee.

However, if it is not clear an employer and employee should consider the following factors with a view to reaching an agreement on the matter.

- ▶ The employee's employment agreement
- ▶ The employee's work patterns
  - ▶ Any other relevant factors, including
    - ▶ whether the employee works for the employer only when work is available
    - ▶ the employer's rosters or other similar systems
    - ▶ the reasonable expectations of the employer and the employee that the employee would work on the day concerned
- ▶ Whether, but for the day being a public holiday, the employee would have worked on the day concerned

## Christmas/New Year closedown and public holidays

If a public holiday falls during a closedown period, the factors listed above in relation to what would otherwise be a working day must be considered as if the closedown were not in effect. This means employees may be entitled to be paid public holidays during a closedown period.

## Annual Holidays, Public holidays, Termination of employment

A public holiday that occurs during an employee's annual holidays is treated as a public holiday and not an annual holiday.

An employee who has an entitlement to annual holidays at the time that their employment ends will be entitled to be paid for a public holiday if the holiday would have:

- ▶ Otherwise been a working day for the employee; and
- ▶ Occurred during the employee's annual holidays had they taken their remaining holidays entitlement immediately after the date on which their employment came to an end.

When applying the provision you are only required to count the annual holiday's entitlement an employee has when their employment ends. Employees become entitled to 4 weeks annual holidays at the end of each completed 12 months continuous employment.

## Public holiday transfer

The Holidays Act allows an employer and employee to agree in writing to transfer a public holiday to any 24 hour period.

This means with agreement a public holiday may be transferred:

- ▶ By a few hours to match shift arrangements
- ▶ To a completely different day

In the absence of a written agreement, a public holiday is observed midnight to midnight.

**Please note that this guide is not comprehensive. It should not be used as a substitute for professional advice. For specific assistance and enquiries, please contact EMA AdviceLine, Consultants or Legal Services. AdviceLine NZ 0800 300 362 or AU 1800 300 362.**