

Employers face penalties for using the wrong public holiday rules

Thursday, 05 April, 2007

The Office of Workplace Services (OWS) Director Nicholas Wilson has spelt out for employers that, while an employee can be called on to work over Easter or on ANZAC Day, they can refuse a request to work if they have reasonable grounds for doing so.

"Employers are entitled to ask employees to work on a public holiday, because of the industry or nature of the work for which they are engaged," said Mr Wilson.

"But importantly, the law provides that an employee can refuse if they have reasonable grounds and that an employer must not dismiss, or disadvantage that employee as a result.

What are reasonable grounds?

Under the federal Workplace Relations Act 1996, reasonable grounds for refusing a request can include:

- the nature of the employee's work;
- the type of employment (for example, whether full-time, part-time, casual or shift work); and
- the nature of the employer's workplace or enterprise (including its operational requirements); and
- the employee's reasons for refusing the request;
- the employee's personal circumstances (including family responsibilities);
- whether the employee is entitled to additional remuneration or other benefits as a consequence of working on the public holiday;
- whether a workplace agreement, award, other industrial instrument, contract of employment or written guideline or policy that regulates the employee's employment contemplates that the employer might require work on public holidays, or particular public holidays;
- whether the employee has acknowledged or could reasonably expect that the employer might require work on public holidays, or particular public holidays;
- the notice in advance of the public holiday given by the employer when making the request;
- the notice in advance of the public holiday given by the employee in refusing the request; and
- whether an emergency or other unforeseen circumstances are involved.

The cost for employers of misinterpreting the law?

Employers face either penalties of up to \$33,000 if an aggrieved employee pursues the matter through the OWS and the matter is taken to court or, reinstatement of the employee if the employee was terminated.

* * * * *

Need more information or assistance?

Contact our Legal Compliance experts on:

E-mail: legal_compliance@croesusmgt.com

Website: www.croesusmgt.com

This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to render legal advice. No reader should act on the basis of any matter contained in this publication without first obtaining specific independent professional advice.