



PUBLIC HOLIDAYS: DO EMPLOYEES SCORE TWICE ON THE 21st OF MARCH?

What happens if two public holidays fall on the same day (as happened in 2005 with Christmas and Boxing Day, or is happening now with 21 March being both Good Friday and Human Rights Day)? Some news reports have suggested that the two days should be seen as separate public holidays and that employees should be entitled to enjoy the benefit of two public holidays, implying that an employer will have to pay those who work on that day four times their daily rate while those who don't work must be paid for that day or given a further day off on full pay on a date to be agreed with the employer. We disagree with this interpretation.

An employee's entitlement to payment for public holidays is regulated by the Public Holidays Act and the Basic Conditions of Employment Act. The former determines the number of public holidays. The BCEA in turn provides in s 18 that an employee who does not work on a public holiday falling on what would have been a normal working day for him or her, must be paid the normal rate they would have received for work on that day. If the employee has agreed to work on a public holiday and does so, he or she must be paid at least double their rate for work on that day. If the employee works on a public holiday that is not an ordinary working day for him or her, the employer must pay the rate for the day plus the amount earned by the employee for work on that day (i.e. 1 day's wage plus, e.g. pay for a further 5 hours worked on that day). Section 18 does not apply to senior managers, sales staff who travel to their customers and who regulate their own hours of work, or to those earning in excess of R149736 per year. Their entitlement to pay for work on public holidays must be regulated by agreement with their employer.

Coming back to the question whether employees will have the benefit of two public holidays on 21 March, we are of the view that an interpretation that suggests as much flies in the face of logic as well as the provisions of the BCEA. It is based on the premise that because the Public Holidays Act provides for a minimum of 12 public holidays, employees are entitled to be treated as if they normally would have worked on all 12 days. This cannot be so, otherwise employees who do not work on a Saturday would be entitled to claim that every public holiday falling on a Saturday would have to be made good by the employer on some date in the future in the form of a day's leave on full pay. In any event, the reference in s 18 to the employee's rate of pay 'for work on that day' makes it clear that the remuneration of those who work on a public holiday is limited to two times their daily rate for work on that day only, not four times as has been suggested.