

To: <review@oir.commerce.nsw.gov.au>
Date: 2/07/2009 2:28 pm
Subject: Review of Banks and Bank Holiday Act

In relation to Local public holidays and half-holidays, I would like to request that consideration be given to ensuring that there is a consistent approach to such days in both the State and Federal jurisdictions. Since the commencement of WorkChoices, there has been much confusion, particularly in small businesses, about which jurisdiction they fall into in the first instance and whether or not there is entitlement to the Newcastle Show Holiday when gazetted. This will not change with the commencement of the Fair Work Act.

GP Access is an organisation working closely with general practices in our geographic area (Newcastle/Lake Macquarie/lower Hunter). What has occurred in 2008 and 2009 when the Newcastle Show Holiday was proclaimed was mass confusion amongst general practices, some of which are constitutional corporations and some of which are not. At least one general practice that I'm aware of is a mixture - GPs are employed by a company and therefore fall into the Federal jurisdiction with entitlement to the public holiday and the nursing and clerical staff are employed by a partnership and therefore fall into the State jurisdiction with no award-based entitlement to the public holiday. The majority of general practice staff are covered either by a State award or Federal NAPSA.

Based on the level of enquiry I receive each year, there is still a lot of confusion about which jurisdiction they are in and whether or not they should be observing the Newcastle Show holiday or paying penalty rates if they operate on the day. Some practice staff are entitled and some are not, which means that for the general community, there is uncertainty about whether their local general practice is open or closed. Staff do not know whether they are entitled to the public holiday or if they should be paid a higher penalty rate if they do work.

Even if a practice is not in the Federal jurisdiction, Medicare allows public holiday rebates which are considerably higher and this means that practices are able to charge patients at a higher rate on the day. So what this means is that some staff are paid as usual with not additional penalty for working while the practice is charging at higher rates because a public holiday has been gazetted.

The Banks and Bank Holiday Act is long overdue for modernisation and it would be a great opportunity to remove the current inequity and confusion between the State and Federal jurisdictions.

I also believe that there should be more checks and balances required before a local public holiday can be proclaimed but have to admit that I'm not sure what they should be. The public holiday proclaimed in 2009 during the current economic downturn placed a high burden on many businesses and did seem somewhat irresponsible.

Thank you for the opportunity to comment.

Regards

Janelle White
Manager Employee & Customer Services
GP Access

P: 02 4926 0548

F: 02 4925 2268

E: jwhite@gpaccess.com.au

www.gpaccess.com.au

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