The National Employment Standards ("the NES") are a statutory set of 10 minimum employment entitlements provided for in the *Fair Work Act 2009* ("the Act"). The NES apply to employers and employees operating in the ‘National System’ from 1 January, 2010.

This fact sheet deals with public holidays. In some cases, a modern award or an industrial instrument can expand on or vary the entitlement provided for in the NES. Accordingly, in determining a particular employee’s terms and conditions of employment, it is advisable to refer to all the NES, any relevant modern award or industrial instrument and the employee’s contract of employment.

**PUBLIC HOLIDAYS**

The NES recognise public holidays to include the following days:

- 1 January (New Year's Day);
- 26 January (Australia Day);
- Good Friday;
- Easter Monday;
- 25 April (Anzac Day);
- the Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
- 25 December (Christmas Day);
- 26 December (Boxing Day); and
- any other day, or part-day, declared under a State or Territory law to be observed within the State or Territory, or a region of the State or Territory, as a public holiday.

**N.B.** The *Public Holidays Act 2010* (NSW) provides for additional days, substitute days and local event days to be recognised as public holidays in NSW, either for the whole or part of the State.

For a full list of the recognised public holidays in NSW for 2012, please see below from page 4.

Substitution rules apply where a State or Territory has substituted one of the abovementioned public holidays for another day. The substituted day will be deemed to be the public holiday. For example, if 26 January (Australia Day) falls on a Sunday and the NSW Government substitutes the following Monday as the substitute public holiday, only the Monday would be considered a public holiday in NSW and not the Sunday.
Modern awards and enterprise agreements may contain provisions dealing with substituted public holidays at a particular workplace.

Clause 37.1 of the Hospitality Industry (General) Award 2010 (“the Hospitality Award”) allows for substitution of public holidays.

Award/agreement free employees (those employees to whom neither a modern award nor an enterprise agreement applies) and employers may agree on the substitution of a public holiday for another day. Any such agreement should be recorded in writing.

ENTITLEMENT ON A PUBLIC HOLIDAY

The NES provides that an employee is entitled to be absent from his or her employment on a day or part-day that is a public holiday. An employer may, however, request an employee to work on a public holiday. The employee may only refuse the request if the request was not reasonable or if the refusal is reasonable.

In determining whether a request or a refusal of a request, to work on a public holiday is reasonable, the following factors must be taken into account:

a) the nature of the employer's workplace (including its operational requirements), and the nature of the work performed by the employee;
b) the employee's personal circumstances, including their family responsibilities;
c) whether the employee could reasonably expect that the employer might request work on the public holiday;
d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, work on the public holiday;
e) the type of employment of the employee (e.g. whether full time, part time, casual or shiftwork);
f) the amount of notice given by the employer when making the request to work on the public holiday;
g) the amount of notice given by the employee if refusing the request to work on the public holiday;
h) any other relevant matters.

PAYMENT ON A PUBLIC HOLIDAY

The NES provide that if an employee is absent on a public holiday, and that day would generally constitute part of the employee’s ordinary working hours, they are entitled to receive payment for their absence at their base rate of pay.

If the employee does not have ordinary hours of work on the public holiday, the employee is not entitled to payment. For example, if the employee is a casual employee who is not rostered to work on the public holiday, or is a part time employee whose part time hours do not include the day of the week on which the public holiday occurs.
However, it is important to note that a relevant modern award or industrial instrument and the employee’s contract of employment may provide for other payments or entitlements to be made to the employee on a public holiday.

If the Hospitality Industry (General) Award 2010 (“the Hospitality Award”) applies to you and your employees, you should refer to clauses 32.2 and 37.1.

For further information, please see the AHA (NSW)’s Arrangements for Work on Public Holidays Fact Sheet.

INTERACTION WITH ANNUAL LEAVE AND PERSONAL LEAVE

The NES provides that if an employee is absent on a period of paid annual leave or paid personal leave and a public holiday falls during that period, the employee is taken not to be on paid annual leave or paid personal leave on the public holiday. For further information please refer to the AHA (NSW)’s Annual Leave and Personal/Carer’s Leave and Compassionate Leave Fact Sheets.

For further information on public holidays please contact the AHA (NSW) Legal and Industrial Affairs Department on (02) 8218 1855.
## LISTING OF 2012 PUBLIC HOLIDAYS

### GENERAL PUBLIC HOLIDAYS FOR NSW

<table>
<thead>
<tr>
<th>Day</th>
<th>Date</th>
<th>Holiday Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sunday</td>
<td>25 December 2011</td>
<td>ADDITIONAL HOLIDAY*</td>
</tr>
<tr>
<td>Monday</td>
<td>26 December 2011</td>
<td>CHRISTMAS DAY^</td>
</tr>
<tr>
<td>Tuesday</td>
<td>27 December 2011</td>
<td>BOXING DAY^</td>
</tr>
<tr>
<td>Sunday</td>
<td>1 January 2012</td>
<td>NEW YEARS DAY#</td>
</tr>
<tr>
<td>Monday</td>
<td>2 January 2012</td>
<td>ADDITIONAL HOLIDAY#</td>
</tr>
<tr>
<td>Thursday</td>
<td>26 January 2012</td>
<td>AUSTRALIA DAY</td>
</tr>
<tr>
<td>Friday</td>
<td>6 April 2012</td>
<td>GOOD FRIDAY</td>
</tr>
<tr>
<td>Saturday</td>
<td>7 April 2012</td>
<td>EASTER SATURDAY</td>
</tr>
<tr>
<td>Sunday</td>
<td>8 April 2012</td>
<td>EASTER SUNDAY^</td>
</tr>
<tr>
<td>Monday</td>
<td>9 April 2012</td>
<td>EASTER MONDAY</td>
</tr>
<tr>
<td>Wednesday</td>
<td>25 April 2012</td>
<td>ANZAC DAY</td>
</tr>
<tr>
<td>Monday</td>
<td>11 June 2012</td>
<td>QUEEN’S BIRTHDAY</td>
</tr>
<tr>
<td>Monday</td>
<td>1 October 2012</td>
<td>LABOUR DAY</td>
</tr>
<tr>
<td>Tuesday</td>
<td>25 December 2012</td>
<td>CHRISTMAS DAY</td>
</tr>
<tr>
<td>Wednesday</td>
<td>26 December 2012</td>
<td>BOXING DAY</td>
</tr>
<tr>
<td>Tuesday</td>
<td>1 January 2013</td>
<td>NEW YEARS DAY</td>
</tr>
</tbody>
</table>

*Public Holidays Order 2011: Published LW 18 February 2011
^Section 4 of the Public Holidays Act 2010
# Schedule 2, Part 2.2 of the Public Holidays Act 2010
LOCAL PUBLIC HOLIDAYS FOR NSW 2012

The local public holidays for 2012 are yet to be announced.

A further update will be made to this fact sheet once the NSW Government gazettes the local public holidays.

For further information on public holidays please contact the AHA (NSW) Legal and Industrial Affairs Department on (02) 8218 1855.