

Employer Update

Sick after celebrating Australia Day? What steps can an Employer take?



As Australia Day approaches, it is reasonable to assume that there will be some employees who will find it hard to resist the temptation of a four-day long weekend.

For most businesses Friday will be considered a normal working day, however the media has predicted a 'wave' of phone calls and texts from staff apologising that they're nursing an Australia Day hangover and are too sick to come into work just to score a four-day weekend.

It's reported that employers are "bracing for a financial hit of more than \$50 million this Friday" while Business groups are bemoaning Australia's poor sick leave culture with estimates that absenteeism is costing the Australian economy \$28 billion in lost productivity and wages per annum, with the public service alone bearing costs of \$1-\$1.5 billion.

Savvy HR has encouraged our Employer clients to trust their staff to 'do the right thing' by applying for annual leave or otherwise presenting for work. However, Employers should also take a pragmatic approach that is based on planning ahead, clearly letting their staff know what's expected of them and knowing their Employer rights under the Fair Work Act.

• Shutting down for the day? – Take Care!

We know that that some Employers have been advised to simply close up shop completely on Friday, however care should be taken in merely deciding to 'shut-down' for the day.

While Employees may be directed to take annual leave during a shut-down, this is only if their award or agreement allows for it and, in any event, most awards provide for at least 4 weeks' notice before the leave needs to be taken.

If an employee doesn't have enough annual leave to cover the shutdown, they can agree with the employer to take:

- annual leave in advance or
- unpaid leave.

If an employee doesn't agree to either, they have to be paid their ordinary pay rate for the shut-down. They can't be forced to take unpaid leave.

• Know your rights

While all employees are entitled to sick leave, employers are also entitled to take sanctions against a staff member

that abuses their leave privileges.

Employers can ask employees to give evidence for their absence, typically a medical certificate – even if they have only been absent one day.

Employees also have a ‘workplace right’ to access their accrued personal sick leave.

Under the Fair Work Act it is unlawful to terminate a person or take adverse action against them because of their access to paid personal leave or because of their temporary absence from work.

Employers may be faced with a general protections claim or a disability discrimination claim if they were to take adverse action against a person because accessed their personal sick leave in circumstances where they provided the required evidence that they are in fact ill or injured.

An effective sick leave policy is essential. This sets out and communicates clear expectations to staff and provides some recourse for Employers to take action against those who might abuse sick leave. Typically, such policies require a medical certificate to be presented for an absence of a certain length or an absence immediately before or after a public holiday.

We recommend that Employers minimise risks by effective leave policies and procedures, such as those around sick leave.



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- For over a decade we have worked with our clients across all sectors and industries to build ‘fit for purpose’ structures wherein individuals understand expectations and accountability, the people systems and processes drive the right behaviours and capable and credible leadership creates a customer-focused culture.

If you are considering conducting a review of your workplace or project employment practices, contact Savvy Human Resources Associates:

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