

## PUBLIC HOLIDAYS THAT FALL ON A SUNDAY<sup>1</sup>

The issue at stake is a public holiday that falls on a Sunday, and the following Monday is declared a public holiday. What is the situation regarding remuneration?

Our source of reference on the subject is ***Randfontein Estates Ltd v National Union of Mineworkers [2006] 7 BLLR 683 (LC) : ( 2006) 27 ILJ 1204 (LC)***

Randfontein Estates sought an order, declaring that where a public holiday falls on a Sunday, the following Monday *shall be a public holiday in substitution for, or instead of, the public holiday on the Sunday.*

The question of payment for the public holidays in the above circumstances also arose.

Firstly, the question of – is it one public holiday or two public holidays? - was addressed.

The court ruled that the provisions of the Public Holidays Act are quite clear.

The Act states the ***“the days mentioned in schedule 1 shall be public holidays, and whenever any public holiday falls on a Sunday, the following Monday shall be a public holiday.”***

The Act goes further to define a public holiday as ***“the days mentioned in schedule 1 and any other day declared to be a public holiday under section 2K”***

From the above and without going into verbatim detail of the judgement, the Court found that the Monday is a public holiday ***additional*** to the public holiday on the Sunday. Some of the rationale was based on the fact that, for example, if Christmas Day falls on a Sunday, Christians do not transfer their celebrations to the Monday.

They will still celebrate Christmas on the Sunday, and the same applies to other public holidays such as Human Rights Day, Workers Day etc. In other words, the judgement stated ***“a date determined to be a public holiday does not change its character merely because it falls on a Sunday. It remains a public holiday.”***

Thus the answer is: if a public holiday falls on a Sunday, the following Monday is a public holiday, and there are thus two (2) public holidays – namely the Sunday and Monday.

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<sup>1</sup> Article by Derek Jackson – SA Labour News

Now to the question of payment – is the employee entitled to have both days off on full pay, thus getting a double benefit by being paid for two days off?

The judgement stated that the rationale behind section 2(1) of the Public Holidays Act (that both the Sunday and Monday are public holidays) is to ensure that employees, who do not normally work on a Sunday, such as office staff, bank employees, or employees in any other organisation that is not open for trading on a Sunday, do not lose out on the benefit of having a day off for work on full pay – those employees have the Monday off on full pay as a public holiday.

Thus, those employees get paid only for one public holiday and not for two public holidays.

In other words, the benefit of a day off on full pay, for those employees, is transferred from the Sunday to the Monday. The benefit of the Monday is not in addition to the benefit of the Sunday – it is in substitution for the benefit of the Sunday. **Note that there is only the benefit (of payment) that is transferred – not the public holiday itself.**

For employees who ordinarily do work on a Sunday, the transfer of the benefit to the Monday is not required.

The reason is that these employees, who ordinarily work on Sundays, will get a double payment for working on the Sunday public holiday. Therefore, they have received the benefit.

Similarly, such employees are entitled to the Sunday off on full pay, because it is a public holiday – they can therefore exercise that option, thus still receiving the benefit.

If such employees were allowed an additional public holiday on the Monday, it would mean that they would get a double benefit in that they would receive two paid days off work and not one day off work.

The judgement therefore ruled that employees are entitled to payment for only one public holiday.