

# EMPLOYMENT LAW ALERT

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INCORPORATING  
KIETI LAW LLP, KENYA

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Calls for an extra public holiday may add a little extra festive cheer in employee leave calendars this year

This is an updated version of a [CDH Alert published on 28 November 2016](#).



## Calls for an extra public holiday may add a little extra festive cheer in employee leave calendars this year

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Many South Africans spend a large part of December and January on leave celebrating the holidays with friends and family.

Four public holidays fall during December and January each year: 16 December is the Day of Reconciliation, 25 December is Christmas Day, 26 December is the Day of Goodwill and 1 January is New Year's Day. These are four out of 12 public holidays provided for by the Public Holidays Act 36 of 1994 (Act).

The Act provides that "*whenever any public holiday falls on a Sunday, the following Monday shall be a public holiday*". The courts have confirmed that where a public holiday falls on a Sunday, it does not cease to be a public holiday on the Sunday, and the Monday following the public holiday is an additional public holiday.

This year, 25 December falls on a Sunday. This means that the Monday, 26 December 2022, will also be a public holiday. However, 26 December 2022 is already a public holiday in terms of the Act.

The 2022 calendar gives rise to a situation where the "*additional public holiday*" on the Monday falls on a day already scheduled as a public holiday. In 2016, when a similar situation prevailed, then President Jacob Zuma declared an additional day a public holiday, that being Tuesday, 27 December 2016. This year, there has not yet been confirmation that President Cyril Ramaphosa will declare an additional public holiday on Tuesday, 27 December 2022. However, there is a possibility that this may occur.

## 2022 RESULTS

**CHAMBERS GLOBAL 2014 - 2022**  
ranked our Employment Law practice in Band 2: employment.

**Aadil Patel** ranked by  
**CHAMBERS GLOBAL 2015 - 2022**  
in Band 2: employment.

**Fiona Leppan** ranked by  
**CHAMBERS GLOBAL 2018 - 2022**  
in Band 2: employment.

**Imraan Mahomed** ranked by  
**CHAMBERS GLOBAL 2021 - 2022**  
in Band 2: employment.

**Hugo Pienaar** ranked by  
**CHAMBERS GLOBAL 2014 - 2022**  
in Band 2: employment.

**Gillian Lumb** ranked by  
**CHAMBERS GLOBAL 2020 - 2022**  
in Band 3: employment.



Cliffe Dekker Hofmeyr

## Calls for an extra public holiday may add a little extra festive cheer in employee leave calendars this year

CONTINUED

If an additional public holiday is declared, as well as in instances where a public holiday falls on a Sunday, questions arise as to whether an employer is obliged to pay an employee for the Sunday and Monday, or only one of these days. The legal position in this regard is as follows.

If an employee works on a public holiday, the employer must consider the provisions of the Basic Conditions of Employment Act 75 of 1997 (BCEA) when determining the amount to pay the employee. In particular, the employer must consider whether the public holiday falls on a day on which the employee would ordinarily work. If the public holiday falls on a day on which the employee would ordinarily work and the employee works on that public holiday, the employee is entitled to double their ordinary wage for the day or, if greater, the

employee's ordinary wage for the day *"plus the amount earned by the employee for the time worked on that day"*. However, if the employee does not work on the public holiday which falls on a day the employee would ordinarily work, the employee is entitled to their ordinary wage for the day.

If the public holiday falls on a day on which the employee would not ordinarily work and the employee works on that public holiday, the employee is entitled to their ordinary wage for the day and *"the amount earned by the employee for the work performed that day, whether calculated by reference to time worked or any other method"*. Importantly, the Labour Appeal Court has held that based on an interpretation of the Act, if the public holiday falls on a Sunday, the Sunday remains a public holiday in addition to the following Monday.

In other words, an employer is required to treat both days as a public holiday and to remunerate an employee accordingly, with reference to the abovementioned provisions of the BCEA, depending on whether the employee works on the public holidays. It follows that in those instances where the public holiday falls on a Sunday, employees shall enjoy an additional public holiday for the year in question. The same applies in respect of Sunday, 1 January 2023 where both that day, together with the Monday following it, are deemed to be public holidays.

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**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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