

# ACTUS WORKPLACE LAWYERS

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## **BHP applies for special leave to appeal the Federal Court's public holiday decision**

BHP has applied to the High Court of Australia for special leave to appeal the 28 March 2023 [decision](#) of the Full Federal Court which held that employers must request, not just require, employees to work on a public holiday.

The Federal Court's decision is causing widespread concern amongst employers that need to operate on public holidays, including employers in the mining, manufacturing, aviation, healthcare, emergency services and hospitality industries.

In their joint judgment Collier, Thomas and Raper JJ said:

5. *..... In this Court's view, a "request" within the meaning of s 114(2), connotes its ordinary meaning, an employer may make a request of employees in the form of a question, leaving the employee with a choice as to whether he or she will agree or refuse to work on the public holiday. Ultimately, after discussion or negotiation, the employer may require an employee to work on a public holiday if the request is reasonable and the employee's refusal is unreasonable.*

For assistance in drafting employment contract terms that address in a practical manner the effects of the Full Federal Court's decision, please contact Justine Smith, Lawyer at Actus Workplace Lawyers on 0414 947 651 or Email: [justine.smith@actuslawyers.com.au](mailto:justine.smith@actuslawyers.com.au).