

Guide to the Holidays Act

This guide summarises key entitlements for employees arising from the Holidays Act 2003 and its subsequent Amendments.

The intention of the Holidays Act is to promote balance between work and other aspects of employees' lives. The Act provides minimum entitlements to annual leave, public holidays, sick leave and bereavement leave.

As an employer, it is important to remember that the 'good faith' requirements of the Employment Relations Act apply. Employers and employees are required to deal with each other in good faith, which means fairness, openness, and honesty.

Definitions

Gross earnings

Includes all taxable payments, including:

- Salary and wages
- Allowances (but not reimbursing allowances)
- All overtime
- Performance payments
- Commission
- Payment for annual holidays and public holidays
- Payment for sick and bereavement leave
- The cash value of board and lodgings supplied
- Amounts compulsorily paid by the employer under ACC (i.e., the first week of compensation)
- Any other payments that are required to be made under the terms of the employment agreement.

Ordinary weekly pay

Represents an employee's normal weekly pay. It includes allowances, commission and incentive payments that are paid regularly, pay for regular overtime and the cash value of any board or lodging provided. It does not include any one-off or exceptional payments or other payments that are not required by the employment agreement. If the ordinary weekly pay cannot be established easily, there is a formula in the Act to average wages paid in the four weeks before the calculation is made.

Average weekly earnings

This means 1/52 of the employee's gross earnings for the immediate past 12 months.

Average daily pay

An average calculated by dividing the employee's gross earnings for the immediate past 52 weeks by the number of actual whole or part days on which the employee earned those gross earnings. The number of earning days includes any paid days, whether working or on paid leave.

Relevant daily pay

The pay the employee would have received had they worked on the day concerned. It includes wages for the day plus any overtime or commission/incentive payments that would have been payable for that day and the cash value of any board or lodging provided. It excludes any employer contribution for a superannuation scheme for the benefit of the employee. Special rules apply to the calculation of relevant daily pay for work on a public holiday where the employment agreement already provides for a penalty payment for work on a holiday.

Otherwise working day

Entitlements to public holidays, alternative holidays, sick leave, or bereavement leave depend on whether the day concerned would 'otherwise have been a working day' for the employee. It means a day that an employee would have worked on, had it not been a public holiday, an alternative holiday, a day of sick leave or bereavement leave for the employee, or during a closedown period.

Annual leave and holiday pay

Basic entitlement

All employees are entitled to at least four weeks' paid holiday for each year of employment. The four-week entitlement is a minimum. It does not prevent the parties from agreeing to a higher entitlement, but any such benefit should be carefully recorded in the employment agreement.

An employee's entitlement to annual leave commences on completion of 12 months' continuous employment. On that anniversary date, and on subsequent annual anniversaries, the employee will be entitled to be credited with not less than four weeks' paid annual holidays.

'Continuous employment' includes any period during which the employee was on paid leave or holidays under the Holidays Act, on statutory parental or voluntary service leave, receiving ACC as well as or instead of payment from the employer, on unpaid sick or bereavement leave.

The employer is required to ensure that annual leave is allowed within 12 months after the date the entitlement arose. Annual leave may be allowed 'in advance'.

Holidays are normally taken by agreement. If agreement cannot be reached, the employer is entitled to set the date on which the holiday will be taken, provided not less than 14 days' notice is given. If the employee requests, the employer is required to allow the employee to take at least two weeks of that leave in one continuous period. Any request by an employee to take annual holidays must be considered in good faith and may not be unreasonably refused.

Note that annual leave does not 'expire'. An entitlement will remain until taken and/or paid in accordance with the Act.

Payment for annual leave

Annual leave payments are the employee's ordinary weekly pay at the start of the leave period, or their average weekly earnings for the 12 months immediately before the leave is taken, whichever is the higher. This applies whenever the leave is taken and means that annual leave must be calculated on each occasion leave is taken.

The pay due for any period of annual leave taken should reflect the agreed portion of the leave taken (i.e., if one week of leave is taken, payment should be for one fourth of a four-week annual entitlement).

Cashing in annual leave

Employees can request to cash in up to one week of their annual leave entitlement.

A written request to cash in annual leave must be considered within a reasonable time and the employer must respond in writing. If the employer agrees to the request, payment must be made as soon as practicable.

A maximum of one week of leave may be cashed up in any entitlement year. An employee cannot, therefore, 'save up' and cash in leave from an earlier year along with newly earned leave.

Closedown periods

An employer can determine that there will be one 'closedown period' in each year where the workplace closes for all or some employees. This term is used to define instances when the employer customarily closes their business annually for a period of time. This most commonly occurs at Christmas time.

Annual leave for a closedown period is paid the same as any other annual leave, but where the employee does not have enough holiday pay to cover the closedown, payment does not need to be made to cover a shortfall in wages. The employer may agree to allow holiday pay in advance for a closedown.

Employees who have not accrued a full year's leave at the closedown date are entitled to at least receive any holiday pay accrued since the start of employment or since the last time holidays were due, calculated at 8% of gross earnings less holiday pay already allowed for the period. Where holiday pay is paid in this way, the employee's anniversary date for holiday pay purposes is reset to the start of the closedown period to allow holidays and holiday pay to accrue before the next annual closedown.

Public holidays which fall during a closedown period are payable if they fall on an otherwise working day for the employee.

Leave in advance

The employer has the discretion to allow an employee to take leave before the end of the year when they are due. Payment for any leave allowed in advance is calculated on the same basis as any other annual holiday – the greater of the employee's ordinary weekly pay or their average weekly earnings.

Public holidays

Basic entitlement

The Act provides for 12 public holidays for all employees, falling into two groups:

Transfer affected days:

- Christmas Day and Boxing Day (25 and 26 December)
- New Year's Day and the day after (1 and 2 January)
- Waitangi Day (6 February)
- Anzac Day (25 April)

All other public holidays:

- Good Friday and Easter Monday (dates vary each year)

- Queen's Birthday (first Monday in June)
- Matariki (date varies each year, always a Friday)
- Labour Day (fourth Monday in October)
- Provincial Anniversary day as observed in the area.

The Act provides that where a public holiday is observed on a day that would 'otherwise be a working day' for an employee, they are entitled to either:

- Have the day off and be paid the 'relevant daily pay' rate for the day, or 'average daily pay' if appropriate.
- If required to work, to be paid for the time worked at not less than time and a half and to be granted an alternative holiday on pay (day in lieu) to be taken at a later time.

In other instances where an employee accepts work on a holiday that was not a normal working day for them, they are entitled to payment for the time worked at the rate of time and a half but are not also entitled to an alternative day.

Any employee may agree to accept work offered on a public holiday. An employee may be required to work on a public holiday only where the day falls on an 'otherwise working day' and this requirement is included in the written terms of their employment agreement.

There is no requirement in the Act to pay for a holiday that falls on a non-working day, except in the case of the Christmas, New Year, Waitangi and Anzac holidays, as explained below. For example, an employee who always has Monday off has no entitlement for a holiday observed on a Monday.

Time and a half for work on a holiday

All work done on a public holiday is to be paid at not less than time and a half based on the employee's 'relevant daily pay'. This means that in addition to the wages payable for the day, the rate must take into account any overtime that would have been payable for that day.

The only time pay for work on a public holiday can be based on 'average daily pay' (ADP) will be when the employee's daily pay varies in that pay period. If using ADP the employer must calculate the portion of ADP that relates to the time actually worked on the day (minus any penal rates) and then multiply by one and a half. This figure must still be compared with the employee's relevant daily pay (including penal rates) and the higher of the two figures is payable.

The requirement to pay not less than time and a half applies to all employees, including those paid on salary.

Be aware that the entitlement to time and a half for work on a public holiday is absolute. The Act makes it unlawful for an employment agreement to state that the relevant daily pay of the employee already includes an amount to cover this time and a half payment.

Alternative holiday

Where an employee works on a holiday that is observed on a day that would 'otherwise have been a working day' they are entitled to an 'alternative holiday' on pay to be taken at a later date. Previously this was known as a 'day in lieu'. The day on which the alternative holiday is to be taken should be decided by agreement between the employer and the employee.

The entitlement is for a whole day off on pay, regardless of the time actually worked on the public holiday. This includes call-outs or other short periods of work.

An employee on-call is entitled to an 'alternative holiday' only if they are actually called on to work on the holiday, or where the on-call arrangements impose conditions on their freedom of action such that, for all practical purposes, the employee has not had a whole holiday.

Sick leave

Basic entitlement

All employees who are regularly employed are entitled to a minimum of 10 days' sick leave on pay after the completion of six months' employment, regardless of the hours worked each week. Sick leave can be taken when the employee is sick or injured and also when the employee's spouse or a dependent person (such as a child or elderly parent) is sick or injured and needs care.

Other employees who are not regularly employed, such as a casual, may become entitled to sick leave if they work an average of at least 10 hours per week in any six-month period with at least one hour in each week and at least 40 hours in each month.

Sick leave is paid at the rate of the employee's 'relevant daily pay' for the time that would have been worked on the day the leave is taken, or 'average daily pay', as appropriate. There is no provision for part days of sick leave. This means that if an employee works for part of the day and then goes home sick, this will be counted as using a whole day of sick leave, no matter how much of the day the employee has worked prior to going home.

However, it may be open to an employee and employer to agree to express the entitlement in terms such as hours or part days if this results in providing the employee with a better entitlement than the minimum set out in the Act.

Accumulating sick leave

At the end of each sick leave entitlement year any unused sick leave entitlement, up to 20 days, is to be carried forward for use in the next year. This means that an employee could have up to 20 days of paid sick leave available (or more if the employment agreement provides a more generous entitlement).

Taking sick leave

If an employee needs to take sick leave, they are required to notify the employer as early as possible before work is to start on the day, or where that is not practicable, as early as possible.

The employer can require proof of sickness or injury (a medical certificate), where the employee is incapacitated for three or more consecutive calendar days, or within three days providing they:

- Inform the employee of the requirement as soon as possible.
- Meet the employee's reasonable expenses in obtaining proof.

Bereavement leave

Basic entitlement

Bereavement leave is available to all employees who have completed six months' service and are regularly employed.

Payment for each day of bereavement leave is at the employee's 'relevant daily pay rate' or 'average daily pay', as appropriate, for any day that would otherwise be a working day for that employee. There is no cap on the overall amount of bereavement leave an employee might take if they suffer more than one bereavement in any year.

The Act allows three days' bereavement leave on the death of an employee's spouse, parent, child, brother, sister, grandparent, grandchild, or their spouse's parent. The three-day entitlement for a close family member may be taken in more than one period. For example, two days at the time of the funeral and one day at a later date for the unveiling of the headstone.

The Act also provides for one day of bereavement leave on the death of any other person if the employer accepts that the employee has suffered bereavement, having regard to factors such as:

- The closeness of the association between the employee and the deceased.
- Whether the employee has to take significant responsibility for all or any of the arrangements for the ceremonies relating to the death.
- Any cultural responsibilities of the employee in relation to the death.

When making a decision to allow or decline this entitlement to one day of bereavement leave, the employer will need to be able to show that they have had due regard to these factors and that they have acted in 'good faith.' As a minimum this will require that there has been genuine discussion and consideration of the employee's views before a decision is made.

Holiday and leave records

The Act requires employers to keep detailed records of leave entitlements and leave taken to allow the employee or any other person authorised to access the records to verify the entitlement. The records may be kept separately or as part of the wages records.

The Act requires that records be kept for not less than six years after the date it was entered, however, the IRD requires the same information be kept for seven years.

Further assistance

If you have any questions about the Holidays Act and employer obligations, we recommend that you call our HR advice line on 0800 484 347 or email hradvice@pgnz.org.nz.