

The Holidays Act 2003

managing
change smoothly
a handbook for employers



DEPARTMENT OF
LABOUR
TE TARI MAHI



**Employment
Relations Service**
Te Ratonga Hononga Taimahi



Employment Relations
infoline
0800 800 863
www.ers.dol.govt.nz



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INTRODUCTION

The passage of the Holidays Act 2003 continues the modernisation and review of employment relations legislation that began with the Employment Relations Act 2000.

These changes are designed to create productive and mutually rewarding workplace relationships.

The Holidays Act 2003 provides minimum legal entitlements to:

- annual holidays
- public holidays
- sick leave
- bereavement leave.

The new Act replaces legislation that was difficult to understand and apply, that no longer reflected practice in many workplaces, and that was widely seen as not meeting the needs of employers and employees.

The new legislation is intended to create:

- improved entitlements and more consistent arrangements for public holidays
- separate entitlements for sick leave and bereavement leave
- more certainty in holiday and leave calculations
- from 2007, improved minimum entitlements for annual holidays (sometimes known as “annual leave”).

The Holidays Act 2003 has two dates for implementation:

- The majority of the provisions are in force from 1 April 2004.
- The increase from three to four weeks’ minimum annual holidays comes into force on 1 April 2007.

The new Act will affect every workplace differently. All employers will need to review their practices to ensure they meet the new requirements. This includes:

- ensuring that they and their employees understand the public holiday provisions, which will apply from the Easter holidays in April 2004
- ideally checking all employment agreements, and working through any required changes with employees or their unions
- ensuring that records, holiday policies and procedures reflect at least the minimum provisions of the Holidays Act 2003
- preparing to implement four weeks' annual leave from 1 April 2007.

In this handbook we discuss holiday and leave entitlements, and how to calculate payments correctly.

If you need more information to ensure a smooth transition in your business, please contact the Employment Relations Service of the Department of Labour on 0800 800 863.

The Service's website (www.ers.dol.govt.nz) also explains the changes, and has examples of approaches you can take in employment agreements and payroll management.

TABLE OF CONTENTS

1. Principles underpinning the Holidays Act 2003.	6
2. How and when the changes take place	7
3. Annual holidays.	8
Entitlements	8
Annual holiday entitlement from 2007	10
Payment	10
Definitions: “ordinary weekly pay” and “average weekly earnings”	11
No more “wash-up” payments	14
Example: calculation of final payment for annual holidays	16
Issues to consider with pay as you go arrangements.	18
Examples of genuinely irregular or intermittent employment.	20
When should annual holiday pay be paid?.	20
Regular annual closedowns.	20
The effect of unpaid leave on annual holidays	22
Employment agreements	22
4. Public holidays.	23
Entitlements	23
Examples: “otherwise a working day”	25
Definition: relevant daily pay.	27
Employment agreements	29
The transitional provisions for existing employment agreements	30
The effect of various work patterns.	31
Transitional arrangements for current “days in lieu”	32
5. Sick leave	33
Entitlements	33
Payment for sick leave	34
Informing the employer and proof of illness.	34
The effect of various work patterns.	35
Transitional arrangements.	36
Employment agreements	36

6. Bereavement leave	37
Entitlement	37
Using bereavement leave	37
Payment for bereavement leave	38
Employment agreements	38
The effect of various work patterns	39
7. Entitlements on resignation	40
Annual holidays	40
Public holidays	40
Alternative holidays	40
Sick leave and bereavement leave	41
Example of calculation on termination	41
8. Recording requirements	42
9. Managing changes to employment agreements	43
10. Help available	44

1. Principles underpinning the Holidays Act 2003

New Zealand law on holidays and leave has been based on three key concepts:

- For the purposes of rest and recreation, all employees should enjoy paid annual holidays (sometimes called “annual leave”) each year. For nearly 30 years, the minimum entitlement for annual holidays has been three weeks.
- Public holidays are a key cultural, social and family time which, where possible, all employees should be entitled to take as leave. Where it is necessary for an employee to work on a public holiday, that work needs to be specially rewarded.
- The employment relationship is both financial and human. Therefore, after a period of employment, it is reasonable to expect that employers will support employees with sick leave and bereavement leave when required.

Since these broad principles were first established, work patterns and payment systems have changed. The previous legislation became so outdated that it could not be applied correctly without understanding a series of legal decisions by the Courts.

The Holidays Act 2003 improves employees’ basic entitlements in each of these three areas, and sets out how these three principles can be applied in a modern economy.

In many workplaces the new Act enhances entitlements; for others, it changes how entitlements are described and calculated.

Some workplaces currently have employment agreements with entitlements that are in some ways more generous than the previous legislation. Where these provisions refer to the previous Holidays Act, you should check that they are still appropriate.

For some more complex working arrangements, the Holidays Act 2003 clarifies (and in some cases changes) holiday entitlements and procedures.

The Employment Relations Service has been working with commercial payroll companies to develop specifications for new payroll systems. In choosing a system, you should check that it is appropriate for the type of employment relationships you have.

On the Employment Relations Service website (www.ers.dol.govt.nz) you will find a calculation tool. It can be downloaded and, when used in conjunction with your wage and holiday records, it will help you to calculate the correct payments for your employees.

2. How and when the changes take place

Most provisions of the Holidays Act 2003 are in effect from 1 April 2004.

The exception is the entitlement to four weeks' annual leave, which takes effect from 1 April 2007.

Systems and records need to reflect the new Act's provisions from 1 April 2004.

The first public holiday under the legislation is Good Friday, 9 April 2004.

In some cases, the new Act contains transitional arrangements to manage entitlements that exist on 1 April 2004, and entitlements that are being established from that date. These are highlighted in the relevant sections of this booklet.

3. Annual holidays

Entitlements

Initially under the Holidays Act 2003, employees will continue to be entitled to a minimum of three weeks' annual holidays per year after the first year of employment. This provision is increased to a minimum of four weeks' annual holidays from 1 April 2007, and the detail of that change is covered under "Annual holiday entitlement from 2007" on page 10.

The key for all employers and employees will be:

- working out and agreeing what the entitlement to three weeks' paid annual leave means for them
- ensuring the employee is correctly paid when they take annual holidays or leave employment.

On each anniversary of the date of commencing employment, the employee is entitled to three weeks' paid annual holidays. The leave can be taken at any time agreed between the employer and the employee. Employees must be given the opportunity to take at least two of the three weeks' leave continuously, if they wish to do so.

Under two circumstances, the date on which the employee's entitlement accrues is adjusted:

- *When the business has an annual closedown period:* This is covered on page 20 under "Regular annual closedowns".
- *When an employee takes unpaid leave of more than a week during the year:* This is covered on page 22 under "The effect of unpaid leave on annual holidays".

An employer and employee may agree on what three weeks' annual holiday means in their circumstances. Any agreement should ideally be recorded at the start of the employment relationship, even where it is clear what three weeks means. The agreement must be a genuine reflection of the employee's working week.

Where agreement cannot be reached, either party can seek the assistance of a Labour Inspector.

Where employees are permanently employed on a constant work pattern, establishing their entitlement is easy.

Where an employee is employed on a work pattern that changes during the year, for example going from part-time to full-time work, the employer and the employee should agree how the entitlement to three weeks' leave is provided. Such an agreement may affect the annual holiday entitlements that the employee was earning under their previous work pattern. For example, the employee's entitlement could be provided as if the employee was a full-time employee for the whole period. Alternatively, the entitlement could be proportionate to the time in each form of work. Where a new agreement is reached, it is strongly advisable to record it in writing.

Where an employee is employed on a genuine fixed term agreement of less than 12 months, the employee may be paid annual holiday pay with their salary – that is, separately identified in the employee's employment agreement and shown as a separate item on the pay slip (i.e. on a pay as you go basis). This reflects the fact that these employees are not expected to reach the date on which they qualify for annual holidays.

More details of this approach are set out under "Employees on genuine fixed term agreements (pay as you go provisions)" on page 17.

Many types of employees are described as *casual employees*. The range of uses of this term means it is not possible to include a single definition of casual employee in the Act. But where an employee's employment pattern is so intermittent or irregular that it is not meaningful or practicable to attempt to provide three weeks' paid annual holidays, the employee may be paid annual holiday pay with their regular pay – i.e. on a pay as you go basis.

Details of this approach are set out under "Employees with a work pattern that is intermittent or irregular (genuine casual work)" on page 19.

Employees paid on a pay as you go basis do not become entitled to time off for annual holidays.

Where an employee has an irregular or changing work pattern over the entire 12-month period, either because of moving between full- and part-time work or because of variable work patterns, the principle of three weeks' annual holidays continues to apply. The method currently used in most payroll systems is to express the accruing entitlement in hours, with a holiday entitlement of 3/52 of an hour accruing for each hour worked.

If you keep records manually, make sure you:

- have an accurate wage and time record
- correctly complete your employees' holiday and leave records.

You can then accurately calculate the average weekly earnings for the purposes of annual holiday pay by dividing the gross earnings for the year prior to the holiday by 52.

Examples of wages and time records, and of holiday and leave records can be downloaded from www.ers.dol.govt.nz/holidays/records.html or obtained by phoning the Employment Relations Service Infoline on 0800 800 863.

Annual holiday entitlement from 2007

From 1 April 2007, the minimum entitlement to annual holidays increases from three to four weeks.

Employees' entitlements will change to four weeks on the date that their next entitlement to annual holidays arises. This could be at any time from 1 April 2007 to 31 March 2008.

The details of implementation can be found on www.ers.dol.govt.nz, and will be fully advertised in 2007.

Payment

Payment for annual holidays is at *the greater of the ordinary weekly pay* at the time the holiday is taken or the employee's **average weekly earnings** over the 12-month period before the annual holiday is taken.

Definitions: “ordinary weekly pay” and “average weekly earnings”

“Ordinary weekly pay” represents everything an employee is normally paid weekly, including:

- regular allowances, such as a shift allowance
- regular productivity or incentive-based payments (including commission or piece rates)
- the cash value of board or lodgings
- regular overtime.

Intermittent or one-off discretionary payments are not included in ordinary weekly pay.

1. For many people, ordinary weekly pay is quite clear because they are paid the same amount each week.
2. Where ordinary weekly pay is unclear for any reason, the Act provides a formula for working it out. Ordinary weekly pay is established by:
 - going to the end of the last pay period
 - from that date, going back
 - four weeks, or
 - if the pay period is longer than four weeks, the length of the pay period
 - taking the gross earnings for that period
 - deducting from the gross earnings any payments that are irregular or that are discretionary
 - dividing the answer by four.
3. Sometimes an employment agreement will include a specified ordinary weekly pay. If this is the case, the figure in the employment agreement should be compared with the actual ordinary weekly pay (as calculated under 1 or 2 above), and the greater of the two should be used as “ordinary weekly pay”.

“Average weekly earnings” are determined by calculating gross earnings over the 12 months prior to the end of the last payroll period before the annual holiday is taken, and dividing that figure by 52. The following payments make up gross earnings and should be included in the calculation:

1. Salary and wages.
2. Allowances (but not reimbursing allowances).
3. All overtime.
4. Piece work.
5. At-risk, productivity or performance payments.
6. Commission.
7. Payment for annual holidays and public holidays.
8. Payment for sick and bereavement leave.
9. The cash value of board and lodgings supplied.
10. Amounts compulsorily paid by the employer under ACC (i.e. the first week of compensation).
11. Any other payments that are required to be made under the terms of the employment agreement.

Unless the employment agreement says otherwise, reimbursement payments and discretionary or *ex gratia* payments (for example, genuinely discretionary bonuses) are not included in these calculations; nor are payments made by ACC or when an employee is on voluntary military service.

Remember: When you have calculated both “ordinary weekly pay” and “average weekly earnings”, the *greater* figure is used for the employee’s annual holiday pay.

When an employee is to take annual holidays, the first step is to determine what portion of the entitlement is being taken, taking into account what a week means for that employee. This portion may be a period of weeks, or a period of less than a week.

For example, if an employee who works three days per week has agreed with their employer that their three-week holiday entitlement will be nine days then takes a day off work, this will be one-third of a week of annual holidays.

In this case payment would be a proportion of ordinary weekly pay or average weekly earnings based on the period of leave taken, namely, one third of the greater of those weekly earnings.

The Act describes how you should calculate annual holiday payments in a variety of circumstances. These calculations are outlined in the following sub-sections of this booklet:

- Employees after completion of 12 months' service.
- Employees during their first year of service.
- Employees who take annual holidays in advance of entitlement.
- On an employee's resignation or termination.
- Employees on genuine fixed term agreements.
- Employees with intermittent or irregular work patterns.

Employees after completion of 12 months' service

For an employee after completion of 12 months' service, the calculation of annual holiday pay requires the comparison between ordinary weekly pay and average weekly earnings. The greater amount should be paid to the employee. This calculation needs to occur at the time the employee takes the holiday.

These calculations apply to all employees, including those whose pay has varied over the year or whose work pattern has changed during the year.

If this is being done for an employee who has worked the same hours for the same rate of pay throughout the year, and hasn't received any bonus or additional payments, the answer is likely to be their ordinary weekly pay. It is important to check that the employee hasn't had a period of overtime earlier in the year that could affect the average.

No more “wash-up” payments

Two key changes in the Holidays Act 2003 are the:

- *removal* of the provision that entitlement can accrue on a set annual date for all staff, except where the company has an annual closedown period
- *removal* of the provision for an annual wash-up payment.

Previously, employers were permitted in some circumstances to set a particular date as the basis for everyone’s leave calculations. They were also required to check annually that the employee had received *the greater of* ordinary or average pay for annual holidays where the employee took holidays in advance of entitlement. This calculation was commonly known as the “wash-up”.

Neither setting a particular date for leave calculations nor the “wash-up” calculation are permitted under the Holidays Act 2003.

The special arrangements permitted for annual closedowns are covered on page 20, under “Regular annual closedowns”.

Employees during their first year of service

During the first year of employment, three circumstances can arise that require the calculation of the payment due for annual holidays:

- The employee may seek, and the employer may approve, the taking of annual holidays in advance. Payment for holidays taken in advance is covered below.
- The employer may have a regular annual closedown of the workplace. Entitlements in these circumstances are covered on page 20 under “Regular annual closedowns”.
- The employee may resign or the employer may terminate the employment. Entitlements on resignation or termination are covered in Chapter 7 of this booklet.

Employees who take annual holidays in advance of entitlement

Employees can ask to take paid annual holidays in advance where they do not have an entitlement – either because they have not completed 12 months of service, or because they have used all of their entitlement. In these circumstances, approval is at the discretion

of the employer, unless a right to take annual holidays in advance is included in the relevant employment agreement.

The payment for holidays taken in advance is still based on *the greater of* the employee's ordinary weekly pay or average weekly earnings.

To calculate average weekly earnings where the employee has less than 12 months' service, the gross earnings from starting work until the last pay period before the holiday are divided by the number of weeks worked.

To calculate average weekly earnings where the employee has been employed for more than 12 months but is taking annual holidays in advance of entitlement, the calculation covers the 12 months prior to the end of the last pay period before the holiday.

When an employer approves annual holidays in advance, the employee should be asked to agree in writing that the employer be able to reduce any final pay to recover from the employee the amount of any overpayment of holiday pay that results from taking annual holidays in advance.

On an employee's resignation or termination

The Act provides two ways to calculate payment for annual holidays on resignation or termination. These are:

- where the employment ends within 12 months (that is, before the employee is entitled to annual holidays)
- where the employment ends after 12 months (that is, where an entitlement to take annual holidays has arisen for the first and any subsequent years' employment).

Where an employee resigns or is terminated in the first 12 months of service, they are entitled to a payment for annual holidays of 6% of gross earnings during the employment. This entitlement is reduced by any payment for annual holidays taken in advance during the employment or by any payment for annual holidays on a pay as you go basis.

Where an employee resigns or is terminated after becoming entitled to annual holidays, the first amount to be calculated is *the greater of* ordinary weekly pay or average weekly earnings for the annual holidays to which the employee is entitled under the Act as if the holidays were being taken at the end of the employment.

If the employee's rate of ordinary weekly pay at the time is not clear, the calculation in the "Definitions" box on page 11 is used to establish the correct figure. The 12 months prior to leaving are used to establish average weekly earnings.

The second amount to be calculated is annual holiday pay for the period since the employee last became entitled to leave, which is calculated at 6% of gross earnings since the entitlement last arose.

The payment for any annual holidays taken in advance is deducted from the final amount, as is any amount paid on a pay as you go basis.

Example: calculation of final payment for annual holidays

Moana was employed on 1 December 2001 at \$15 per hour for a 40-hour week. She worked an extra half day (four hours) every two weeks, for which she was paid double time (a total of \$120 each fortnight).

Moana became entitled to annual holidays on 1 December 2002. She took one week's annual holidays beginning on 1 February 2003. It was paid at the rate of \$660, since her average weekly earnings during the year before her holiday (\$660) were greater than her ordinary weekly pay at the time she took her holiday (\$600).

One of the days of Moana's holiday was a day that she would otherwise have worked four hours' overtime.

Moana continued to work the same pattern of overtime until she resigned, with her last day being 1 August 2003.

Her annual holiday pay on resignation comprised:

- two weeks' pay at *the greater of* her ordinary weekly pay or average weekly earnings ($\$660 \times 2 = \1320), *plus*
- 6% of her gross earnings for the period since her anniversary date on 1 December 2002.

The "gross earnings" calculation includes her weekly pay, her two weeks' holiday pay and her overtime earnings.

Employees on genuine fixed term agreements (pay as you go provisions)

The entitlement to three weeks' paid leave after 12 months' service is sometimes not the best way to deal with holidays when the employment relationship is short term.

The Employment Relations Act allows for fixed term employment agreements, if on appointment there is a genuine reason for the fixed term. Examples of genuine reasons are:

- "the job is to prune trees in the west block, and your job will cease when all of the trees are pruned. I estimate that this pruning job will take you and your co-workers two months from the start date"
- "this appointment is for a fixed term to cover for an employee who is taking four months' leave. The employee will return on [dd/mm/yyyy] and there will be a hand-over period of one week. As a consequence your employment will cease on [dd/mm/yyyy]"

Where such a fixed term agreement is for less than 12 months, an employee may agree to the employer adding 6% to their gross weekly earnings in lieu of annual holidays or in lieu of getting an aggregated 6% at the end of the fixed term.

Any such arrangement should be included in the employment agreement, and the 6% should appear as a separate and identifiable amount on the employee's pay slip. On the completion of the fixed term, the employee will have received all pay for annual holidays. No further payment will be outstanding and no holidays are available.

If the employee is later employed on one or more further fixed term agreements of less than 12 months with the same employer, the same arrangement can be made even when there is no break in employment, provided the two parties agree and document the arrangement.

Moving from fixed term to permanent employment with the same employer

If an employee enters into a permanent working arrangement, the payment of the additional 6% annual holiday pay in the employee's regular pay must cease.

The employee will then become entitled to three weeks' annual holidays one year after the final fixed term period started. Because the employer has already paid the additional 6% annual holiday pay during the fixed term period, the pay for annual holidays is reduced by the amount of holiday pay already paid at 6% during the final period of fixed term employment.

Where the fixed term agreement is not genuine or exceeds 12 months

If an employer has incorrectly paid annual holiday pay on a pay as you go basis, after 12 months' continuous employment the employee will become entitled to paid annual holidays, and any amount paid on a pay as you go basis may not be deducted from the employee's annual holiday pay.

Examples of circumstances where this occurs are:

- where a fixed term agreement was not genuine
- where a fixed term agreement was for a period of greater than 12 months.

Issues to consider with pay as you go arrangements

Fixed term agreements are in some cases linked to the completion of projects. In these circumstances there is a risk to the employer that the fixed term will exceed 12 months, at which time the employee becomes entitled to paid annual holidays, despite having already been paid on a pay as you go basis.

Therefore, pay as you go arrangements are not recommended where it is possible that the employment will last longer than 12 months.

You should seek to clarify entitlements and renegotiate the relevant employment agreement as soon as it appears likely that a fixed term arrangement will unexpectedly last more than 12 months.

***Employees with intermittent or irregular work patterns
(genuine casual work)***

Many employees who are described as “casual” are part-time employees whose future employment is actually clear – for example, supermarket or hospitality employees whose work pattern is established on a fortnightly roster. These employees are entitled to three weeks’ leave calculated as described in the “Definitions” box on page 11.

For a minority of employees, however, this is not the case. Generally, these are employees whose employment is triggered by an event that cannot be accurately anticipated, or whose work pattern can be described as so irregular or intermittent that the concept of three weeks away from work is difficult to apply. In such cases, an arrangement can be agreed to add 6% of the employee’s gross earnings as annual holiday pay to their pay.

For these employees, the arrangement must be by genuine agreement and be included in the employment agreement, and the 6% annual holiday pay should appear as a separate and identifiable amount on the employee’s pay slip.

On the termination of the employment relationship, no additional pay for annual holidays is due.

If an employee agrees to enter into such an arrangement, the employer would be wise to keep it under review to see whether a regular cycle of work has developed. If this occurs, the employer and employee should enter into a new employment agreement that provides for annual holidays to accrue, and that removes the 6% payment.

Examples of genuinely irregular or intermittent employment

The Holidays Act 2003 contains no reference to “casual work” because the term is applied to so many types of employment arrangements. Instead, it refers to intermittent or irregular employment.

Here are two examples of intermittent or irregular work for the purposes of the Holidays Act:

- A retired employee who is called back in emergencies to cover for sickness.
- A specialist tradesperson who is employed only when a particular process (such as repairing a broken machine) is required.

When should annual holiday pay be paid?

Employees are entitled to receive their pay for annual holidays before the holiday commences, unless the employer and employee agree that the normal pay cycle will continue undisturbed by the time off work.

This provision is designed to ensure that employees have money available to them to pay for the travel and accommodation expenses involved in a holiday, which often are required either at the start of a holiday or in advance.

If an agreement is reached to pay the employee any annual pay in their normal pay cycle, it is advisable to record it either as part of the employment agreement or in writing on a case-by-case basis.

Regular annual closedowns

The method of calculating the annual holiday entitlement is different where the employer chooses to instigate an annual closedown on a regular basis.

This closedown can occur either:

- across the entire workplace (for example, where a company closes over the Christmas/New Year period), *or*
- for part of an enterprise (for example, where the factory closes for maintenance while the office, dispatch and sales departments remain open).

The employer may implement such a closure once a year and require employees to take leave during the period of the closedown, even where this requires employees to take leave for which they are not fully reimbursed.

The employer is required to provide employees with at least 14 days' advance notice of the closedown.

For employees in their first year of employment, the level of annual holiday pay for the period of the closedown can be established by:

- the employer paying the employee 6% of gross earnings to date, *or*
- the employer and employee agreeing to the employee taking annual holidays in advance and being paid even though the leave has not yet accrued.

If you are in doubt, the Employment Relations Service can assist with advice on 0800 800 863.

For all employees whose work is subject to a regular annual closedown, the employer can nominate a date which will be treated as the date that the closedown begins, and on which the employees become entitled to annual holidays. This date must be reasonably connected to the timing of the regular annual closedown. For example, where there is a Christmas closedown the date could be set at 15 December to ensure that it always comes before the annual closedown commences.

An employer who wants to implement more than one closedown in any year can do so with the agreement of their employee or employees, but cannot direct them to take annual holidays utilising the above provisions. Nor is the date of entitlement to annual holiday adjusted by a second closedown.

The effect of unpaid leave on annual holidays

When an employee takes unpaid leave of more than a week during the year, this can be managed in three ways:

- The employer can choose to extend the time required before the employee becomes entitled to annual holidays by the period of unpaid leave in excess of one week. That is, if an employee takes two weeks' unpaid leave, they become entitled to annual holidays one week after the anniversary of the starting date of employment.
- The employer and employee can agree that an employee's average weekly earnings calculation will be modified to reflect the number of whole or part weeks greater than one week that the employee was on unpaid leave. For example, if an employee takes two weeks' unpaid leave during the year, it can be agreed that the annual holiday pay is calculated on the basis of a 51-week year, not on the basis of 52 weeks.
- The employer and employee can agree that the unpaid leave will have no effect on the employee's annual holiday entitlement.

Time while an employee is on ACC, parental leave or leave for voluntary military service does not affect the anniversary date for annual holiday purposes.

Employment agreements

The annual holiday provisions in the Holidays Act 2003 are deemed to be part of any employment agreement that is silent on the subject of leave.

Many employment agreements contain provisions that vary the provisions of the Holidays Act 1981. Such variations are often to the benefit of the employee – for example, by providing additional annual holidays, establishing a higher rate for annual holiday pay, or providing consultative arrangements about closedowns.

The Act does not prevent the employer providing the employee with enhanced entitlements. However, it is important that the employer and employee review such arrangements to ensure they are not affected by the changes made by this Act.

In the past, the concept of “overall advantage” was sometimes used to establish whether variations in employment agreements were legal. This concept no longer applies. The Holidays Act 2003 makes clear that *each component* of holiday arrangements must be at least as favourable to the employees as the entitlements specified in the Act.

This means, for example, that an employer cannot provide an employee with an extra week of annual holidays in exchange for the employee giving up their public holidays’ entitlements.

4. Public holidays

Entitlements

Employees are entitled to a paid day off on a public holiday if it would otherwise be a working day.

These public holidays are separate from and additional to annual holidays.

The public holidays

The Holidays Act 2003 has made some adjustments to entitlements to leave on public holidays. There are now only two groups of holidays, with slightly differing entitlements applying to each:

- *Christmas and New Year*: Christmas Day (25 December), Boxing Day (26 December), New Year’s Day and the day after (1 and 2 January).
- *All other holidays*: Waitangi Day (6 February), Good Friday and Easter Monday (dates variable), ANZAC Day (25 April), Queen’s Birthday (first Monday in June), Labour Day (fourth Monday in October) and Provincial Anniversary Day (date determined locally).

The public holidays over the **Christmas and New Year** period continue to have special arrangements, but the Holidays Act 2003 changes the previous arrangement that deemed these holidays to be celebrated on Monday and Tuesday if they fell at a weekend.

From Christmas 2004:

- if the holiday falls on a weekend, and the employee doesn't normally work on the weekend, the holiday is transferred to the following Monday or Tuesday so that the employee still gets a paid day off
- if the holiday falls on a Saturday or Sunday and the employee normally works on that day, the holiday remains at the traditional day and the employee is entitled to that day off on pay.

An employee cannot be entitled to more than four public holidays over the Christmas and New Year period, regardless of their work pattern.

All other public holidays are celebrated on the day on which they fall. In years where Waitangi Day (6 February) or ANZAC Day (25 April) fall at the weekend, employees who do not normally work on the weekend have no entitlement to payment for the day.

An employer and employee can agree to celebrate the holidays on different days, but cannot agree to an arrangement that would diminish the total number of public holidays the employee would get that year, e.g. by deliberately choosing substitute days that are days the employee wouldn't otherwise be working. Any agreed variation should be in writing, preferably within the employment agreement. "Custom and practice" may not be sufficient if there is a dispute.

Taking a public holiday

The concept of "otherwise a working day" is key to determining an employee's entitlement regarding public holidays.

In most cases, whether a day is otherwise a working day is clear because the working week or roster is constant and both the employer and employee can understand and agree about whether the employee would otherwise work on the day.

Where the employer and the employee cannot agree whether a day would “otherwise be a working day,” they should consider the following issues:

- What the employment agreement says.
- The employee’s usual work patterns.
- The employer’s rosters or other similar systems.
- The reasonable expectations of the employer and employee as to whether the employee would work on the day concerned.
- Whether the employee works for the employer only when work is available.
- Any other relevant factors.

Examples: “otherwise a working day”

- If a part-time employee normally works four hours each day on Tuesday and Wednesday and normally works eight hours on Friday, the employee would be given Good Friday off with eight hours’ pay, but would not be entitled to pay for Easter Monday.
- Where an employee’s roster requires three 10-hour days on Monday to Wednesday one week (week one) and the same hours on Thursday to Saturday the following week (week two), and if week one coincides with the week in which Good Friday falls, this employee will not get paid for Good Friday or Easter Monday (that will fall in week two) because they would not have been scheduled to work on that Friday or Monday. If, however, week two coincides with Good Friday, the employee will be entitled to a holiday on pay for both Good Friday and Easter Monday.

If the employer and employee are unable to reach agreement, a Labour Inspector has the power to determine the matter taking into consideration the same issues.

If an employee has a day off on a public holiday, the employee is paid for that day if it is “otherwise a working day”.

The employee is paid as if they had worked as normal on the day, and for employees working a regular pattern of hours the pay cycle continues unchanged.

An employee who does not normally work on the day in question and who does not work is not entitled to a payment for the day. For example, a part-time employee who never works Friday has no entitlement to a holiday or payment for Good Friday.

Payment for working public holidays

If an employee works on any public holiday, that work now attracts a minimum payment of time and a half for the time they actually work on a public holiday.

Where the employee is working a shift that includes some time on the public holiday, only the time actually worked on the public holiday attracts the time and a half payment; the balance may be paid at the normal rate of pay.

Where the person is specifically employed only to work on public holidays (for example, an employee who is only employed to work at the racetrack for the Waitangi Day meeting), there is no entitlement to an alternative day's holiday, but the employee must still be paid at least time and a half.

Some employment agreements specify a salary rate with unspecified hours or patterns of work, or set specific wage rates for public holidays. Employees on such agreements must be paid at least time and a half if they work on a public holiday.

Definition: relevant daily pay

Relevant daily pay is used to calculate payment for public holidays, alternative holidays, sick leave and bereavement leave.

The payment represents the amount the employee would otherwise have earned on the day, and includes:

- productivity or incentive payments, including commission or piece rates, if those payments would have been received had the employee worked
- overtime payments
- the cash value of board and lodgings provided.

If relevant daily pay is being determined for a public holiday, the amount does not include additional amounts added because of the requirement to pay time and a half.

In cases where the amount is not clear the payment is calculated by **dividing** the employee's gross earnings for either:

- the four weeks before the end of the pay period immediately before the holiday or leave, *or*
- where the pay period is longer than four weeks, the pay period before the calculation

by the number of whole or part days the employee either worked or was on paid leave or holiday during that period.

Employment agreements may specify a rate of relevant daily pay, but only if that rate is greater than or equal to the rate determined according to the above.

Alternative holidays for working public holidays

If an employee is required to work on a public holiday, and it is "otherwise a working day" for the employee, they are entitled to a whole day's alternative holiday at a later stage.

Unlike the previous legislation, the entitlement to an alternative holiday now applies consistently to all public holidays, including ANZAC Day and Waitangi Day.

This provision includes employees working shifts and some employees on call. Both types of employees get the full day off, even if they only work for a small part of the day.

Where an alternative holiday does not apply

Where an employee:

- works on a public holiday that is not otherwise a working day
- is on call on a public holiday but is not required to restrict activities
- is only employed to work on public holidays

there is **no** entitlement to an alternative holiday.

The alternative holiday can be taken at any time mutually agreeable to the employer and employee, and is paid at the employee's relevant daily pay for the day taken off.

If the employer and employee cannot agree, the alternative holiday may be taken at a time determined by the employee, having regard to the employer's view of what is convenient.

If the alternative holiday is not taken within 12 months of it accruing, the employer can direct the employee to take the alternative holiday. Alternatively, at that time the employee may ask the employer to make a payment instead of having the holiday off. If the employer agrees to make a payment, the level of payment is a matter of agreement between the employer and employee.

If any alternative holidays are outstanding at the time of resignation or termination, these are paid out at the rate of pay for the employee's last day of work, i.e. the relevant daily pay.

The requirement to work on a public holiday

An employer may require an employee to work on a public holiday when:

- the public holiday falls on a day the employee would otherwise have worked, *and*
- the employee's employment agreement specifies that the employee will be required to work on the holiday.

Employment agreements

Most existing employment agreements will require amendment or clarification as a result of the changes in the Holidays Act 2003 so that they *specifically provide* that an employee will receive at least time and a half for working on a public holiday. This applies to all employees, including salaried employees.

Ideally, the changes should be made before the new Act comes into force on 1 April 2004, in order to provide certainty for the employer and the employee. The agreement *must* be amended to provide for time and a half at the *earlier* of the next renegotiation, or within 12 months of the Act coming into force.

New employment agreements need to specifically provide that an employee will receive at least time and a half for working on a public holiday.

Example of required clause:

“If the employee works on a public holiday they will be paid at the rate of time and a half of hours for hours worked.”

An employment agreement cannot in future specify that the rate of pay already includes a component for time and a half (except in the transitional provision mentioned on page 30).

Time and a half payment means the portion of the employee’s relevant daily pay for the time that the employee actually works.

In most cases, what time and a half means will be easy to identify. For example, if the employee is paid an hourly rate, then they are entitled to one and a half times that rate for the time worked on a public holiday, as in the following clause:

“The pay rate for this position is \$12 per hour. For time worked on a public holiday, the pay rate is \$18 per hour (time and a half).”

In other cases there are a number of ways this can be done appropriately, depending on the wishes of the employer and employee. This may be a day rate, part-day rate or hourly rate. The basis on which time and a half is calculated should ideally be included in the employee's employment agreement, if the person is likely to work on a public holiday.

For example, if a salaried employee has regular hours of work, the relevant daily pay can be calculated by dividing the annual salary by 52, and by the number of days worked to identify the relevant daily pay.

The amount of the time and a half payment should then be based on the portion of the normal day that the employee actually works.

For example, for an employee whose salary is \$40,000 per annum, and who normally works five eight-hour days per week:

- weekly pay is \$769.23.
- the relevant daily pay is \$153.85 (weekly pay divided by five)
- time and a half the relevant daily pay is \$230.78.

The employee would be paid for the time actually worked on the basis of this amount. For example, if the above employee worked half a day, they would need to be paid \$115.39 (half of \$230.78).

Where it is difficult to tell what an employee's time and a half rate would be, a Labour Inspector will be available to help determine the employee's entitlement on a public holiday.

The transitional provisions for existing employment agreements

Where an employee's normal rate already includes provision for time and a half for public holidays (e.g. a composite rate), that arrangement can stay in place for 12 months after the Holidays Act 2003 comes into force on 1 April 2004 in certain circumstances. This is where the amount has been genuinely negotiated, and the amount can be shown to meet the requirement to pay at least time and a half for working on a public holiday.

If there is a dispute over whether the rate does or does not include a provision for time and a half for working on a public holiday, a Labour Inspector can determine the matter for the parties.

After 12 months, every employment agreement will need to *specifically provide* that an employee will receive time and a half for working on a public holiday. If a composite rate remains after that date, the employee will be entitled to one and a half times this rate for the time worked on the public holiday.

The effect of various work patterns

The Holidays Act 2003 addresses the public holiday entitlements for employees in a number of work patterns where entitlements were previously unclear, including:

- employees working shifts
- employees on call
- where the parties dispute what is “otherwise a working day”.

Employees working shifts are entitled to no less than:

- their relevant daily pay for their normal rostered shift when they take a public holiday as a day off work
- time and a half payment for hours worked on the public holiday, plus an alternative holiday for each public holiday *or part of a public holiday* the shift covers. For example:
 1. An employee starts at 10 p.m. on Christmas Day and ceases work at 6 a.m. on Boxing Day. The employee is entitled to eight hours’ pay at time and a half and *two* alternative paid holidays (one each for Christmas and Boxing Day).
 2. An employee works from 10 p.m. on Christmas Eve until 6 a.m. on Christmas morning. The employee works the same shift beginning on Christmas night, finishing on the morning of Boxing Day. The employee is entitled to two hours’ pay at ordinary time and six hours’ pay at time and a half for the first shift; to eight hours at time and a half for the second shift; and to two alternative paid holidays off (one each for Christmas Day and Boxing Day).
 3. An employee working an eight-hour shift starting on ANZAC Day at 10 p.m. is entitled to two hours’ pay at time and a half, six hours’ pay at the normal hourly rate, plus a full day’s alternative paid holiday off.

Employees on call on public holidays have different entitlements depending on the nature of the call-out arrangement:

- If the employee is called out, they are entitled to time and a half for the time worked, plus a full day's paid alternative holiday.
- If the employee is required to restrict activities on the day to the extent that they have not enjoyed a full holiday – for example, if the employee is required to stay at home all day – but is not called out, the employee is entitled to a full day's paid alternative holiday. Any payment for the time on call would depend on conditions in the employment agreement but must be paid at least at time and a half the normal rate.
- If the employee is on call, but is not required to restrict activities – for example, if the employee can choose not to accept the call-out – entitlement to payment and an alternative paid holiday would arise only if the employee accepts a call-out and the day would otherwise have been a working day for the employee.

These provisions do not apply where the person called out has an employment relationship with the employer *only* on the public holiday.

Transitional arrangements for current “days in lieu”

On 1 April 2004, any “days in lieu” owed to the employee for working on earlier public holidays become “alternative holiday” entitlements under the new Holidays Act. All of the rules about alternative holidays will apply to these “days in lieu”. (See page 28.)

5. Sick leave

Entitlements

For most employees there is a minimum provision of five days' paid sick leave a year after the first six months of continuous employment and an additional five days' sick leave after each subsequent 12-month period. Exceptions are covered under "The effect of various work patterns" on page 35.

Sick leave can be used when a employee is sick or injured, or when the employee's spouse or a dependent person (such as a child or elderly parent) is sick or injured and needs care.

At any time when the employee does not have a sick leave entitlement (including during the first six months of employment) the employer and employee can agree to the employee anticipating the sick leave entitlement. In this case, any sick leave taken can be deducted from the next entitlement that arises.

Relationship to ACC entitlements

The following rules apply in relation to the ACC scheme:

- When the employee is taking leave for the first week of a non-work accident, sick leave may be used.
- If an employee has a work-related accident, the employer has to pay "first week compensation" and cannot require the employee to take that time off as sick leave.
- If an employee has a work-related accident and remains on weekly compensation, the employer cannot require the employee to take time off as sick leave.
- If an employee is receiving weekly compensation from ACC, the employer has no obligation to pay the employee.
- Where the period of leave on ACC is in excess of five days (for either workplace or non-work accidents), the employer and employee can agree that the employer will top up the ACC payment from 80% to 100% by reducing the employee's sick leave entitlement by one day for each five days' leave taken.

Unused sick leave under the Holidays Act 2003 is automatically carried over. For example, if someone uses only one day's sick leave from the five-day entitlement in a 12-month period, they may carry

over the other four days, so in the next 12-month period the total entitlement is nine days' sick leave. The maximum accumulation under the Act is 20 days' leave, although employment agreements can provide more generous sick leave and/or accumulation.

Accumulated sick leave cannot normally be exchanged for cash, or form part of any final payment to the employee on resignation or termination, unless the employment agreement requires this.

Sick leave entitlements are not pro-rated in any way. For example, even if a part-time employee works three days a week, they become entitled to five days' sick leave a year after being in employment for six months. Sick leave also accumulates to up to 20 days for part-time employees.

Payment for sick leave

Payment for sick leave taken should be the amount the employee would ordinarily be paid if they had been at work on the day leave is taken (that is, their relevant daily pay). For example, where an employee who normally works eight hours Tuesday to Friday and four hours Saturday is sick on Saturday, a payment of four hours is due.

The payment can include overtime when overtime would have been worked on the day. For example, if the employment agreement specifies an hour for lunch but the employee at the employer's request usually takes only half an hour for lunch, the employee's sick leave payment would include the extra half hour normally paid for.

Where the employee works continuously but to an irregular pattern, sick leave would be payable if the employee were rostered to work on the particular day leave is taken, or could have expected to be rostered. The amount of pay is what the employee would otherwise have earned – that is, the relevant daily pay.

Informing the employer and proof of illness

Employees are required to inform the employer at the earliest opportunity of the intention to take sick leave – preferably before they are due to start work, but otherwise as early as possible after falling sick.

The employer has the right after the employee has been sick or injured for three calendar days to require the employee to provide proof, such as a medical certificate, of the injury or illness.

The three calendar days are not interrupted by a scheduled break. Therefore, an employee taking a day's sick leave on a Friday, then a two-day scheduled weekend break, can be asked to provide proof of the illness or injury if they take another day of sick leave on the Monday, even if that day is only the second day of sick leave.

If the employee does not provide proof when requested, the employer has the right to withhold the payment for the sick leave period until it is provided.

Where the employee is using sick leave to care for another person, such as a spouse or child, the employer can similarly require proof of sickness for that person after three calendar days.

Where the employer believes that the employee has misused a sick leave entitlement, this issue can be dealt with as an employment relationship problem under the Employment Relations Act. The normal processes for raising, progressing and determining problems of employee performance should be followed, and the Mediation Service of the Department of Labour can be asked to help resolve the dispute.

The effect of various work patterns

Most people are entitled to sick leave whether they are full- or part-time, permanent or fixed term employees, providing that they have completed six months' continuous service.

The Act also provides sick leave entitlements after six months to employees whose employment is **not** continuous if during those six months they have worked:

- an average of at least 10 hours per week, *and*
- at least one hour per week or 40 hours per month.

People on a series of fixed term agreements, or employees sometimes described as "casual", would become entitled to sick leave if they met this test.

The payment for sick leave would be made where it is a day that the employee would otherwise have worked, and would be made at the employee's relevant rate of pay for the day.

The entitlement to sick leave is subject to the same test each 12 months. If in any year the work pattern does not meet the above test, then sick leave entitlement ceases.

Transitional arrangements

Any special leave to which an employee is entitled under the Holidays Act 1981 automatically becomes sick leave on 1 April 2004. For example, if an employee has three days' special leave left on 1 April 2004 this will become three days' sick leave.

Employment agreements

The previous Holidays Act provided a joint sick leave and bereavement leave entitlement called "special leave". Many existing employment agreements use the language of that Act to express employees' conditions for leave.

If your agreement is framed in this way, even if its provisions in some way exceed the new minimum established, the employer, employee and union should consider renegotiating the employment agreement to reflect the provisions and language of the Holidays Act 2003.

Failure to make needed changes may create additional leave entitlements that were not intended.

When employers, employees and unions are renegotiating, make sure that any reference to each form of leave in the agreement (such as domestic leave, special leave or family leave) maintains the minimum sick leave entitlement of five days a year while also reflecting the special arrangement between the employer and their employees.

If the existing agreement has sick leave, accumulation or other provisions that are more favourable than the Holidays Act 2003, the relationship between the Act and those provisions should be clearly expressed.

Be sure that any negotiated changes are in writing, as "custom and practice" may not be sufficient if there is a dispute.

6. Bereavement leave

Entitlement

There are two separate entitlements to bereavement leave after six months' employment:

On the death of an immediate family member, the Act provides for up to three days' paid leave. This can be taken at any time and for any purpose genuinely relating to the death. "Immediate family members" are the employee's spouse, parent, child, sibling, grandparent, grandchild or the spouse's parent. Where there is a multiple fatality, the employee is entitled to three days' bereavement leave in respect of each death.

Using bereavement leave

Employees do not have to use bereavement leave immediately, or on consecutive days. Following are examples of bereavement leave usage that are allowable under the Holidays Act 2003:

- Bob is entitled to three days' paid bereavement leave when his brother Jack is killed in an accident while living overseas. The funeral is in Sydney. Bob uses two days of paid bereavement leave to attend the funeral. Six months later, Bob takes off another day of bereavement leave to attend a local memorial service.
- Rangi is entitled to three days' paid bereavement leave when his grandmother dies. He takes two days immediately to attend her tangi. A year later, he takes the third day's paid leave to attend the unveiling of his grandmother's headstone.
- Joyce takes two days' paid bereavement leave when her sister dies after a long illness. Over the next several weeks, she takes two more half days' paid leave to talk to the lawyer about settling the details of her sister's will.

In the event of a death outside the immediate family that causes a person to suffer a bereavement, up to one day's paid leave may be taken if the employer accepts that the employee has suffered a bereavement. In considering whether a bereavement has occurred the employer should take into consideration:

- how close the association was between the employee and the other person
- whether the employee is responsible for any aspects of the ceremonies around the death
- whether the employee has any cultural responsibilities they need to fulfil in respect of the death.

The Employment Relations Service Infoline is able to provide information on managing sick leave and bereavement leave.

Payment for bereavement leave

Payment for bereavement leave should be at the rate the employee would ordinarily be paid on the day leave is taken – that is, the relevant daily pay.

Employment agreements

The previous Holidays Act provided a joint sick leave and bereavement leave entitlement called "special leave". Many employment agreements use the language of that Act to express employees' conditions for leave.

If your agreement is framed in this way, even if its provisions in some ways exceed the new minimum established, the employer and employee should consider renegotiating the employment agreement to reflect the provisions and language of the new Holidays Act.

Failure to make needed changes may create leave entitlements that were not intended.

When you are renegotiating, make sure that any reference to each form of leave in your agreement (such as domestic leave, special leave or family leave) maintains the minimum bereavement leave entitlement while also reflecting the special arrangement between you and your employees.

Be sure that any negotiated changes are in writing, as “custom and practice” may not be sufficient if there is a dispute.

The effect of various work patterns

Most people are entitled to bereavement leave whether they are full- or part-time, permanent or fixed term employees, providing that they have completed six months’ continuous service.

The Act also provides bereavement leave entitlements after six months to employees whose employment is **not** continuous if they have worked:

- an average of at least 10 hours per week, *and*
- at least one hour per week or 40 hours per month.

Employees on a series of fixed term agreements, or employees sometimes described as “casual”, would become entitled to bereavement leave if they met this test.

The payment for bereavement leave would be made where it is a day the employee would otherwise have worked, and would be made at the employee’s relevant rate of pay for the day.

The entitlement to bereavement leave is subject to the same test each 12 months. If in any year the work pattern does not meet the above test, bereavement leave entitlement ceases.

7. Entitlements on resignation

On resignation, the employee becomes entitled to accrued payments which can both affect and be affected by public holidays, accrued alternative holidays, sick leave and bereavement leave.

Annual holidays

Any accrued annual holidays that the employee has not taken must be paid out on termination. Full details are provided above under the heading “On an employee’s resignation or termination” beginning on page 15 in Chapter 3 of this booklet.

Public holidays

On resignation or termination, the employee’s final date of work is notionally extended by any annual holiday entitlements not taken, and any public holidays falling during that period must be dealt with in accordance with the Holidays Act 2003.

For example, if an employee is to finish work four days before a public holiday and accrued annual holidays represent more than four days’ payment, the employee is entitled to a day’s payment at the relevant daily pay for the public holiday if it is a day on which they would normally have worked.

Public holidays falling during the notice period are dealt with in terms of the general provisions of the Act.

If the public holiday is a day on which the employee would have worked, they are to be paid as if they had worked. If the departing employee is required to work on the public holiday, then both time and a half and alternative holiday provisions apply.

Alternative holidays

If an employee has alternative holidays that accrued from working on a public holiday and that have not yet been taken or paid out, the days are paid on resignation at the same rate as the relevant daily pay for the last day of the employee’s work, regardless of the rate of pay at the time they accrued.

Accrued alternative holidays do not extend the period of employment for the calculation of annual holiday pay.

Sick leave and bereavement leave

Employees continue to be entitled to sick leave and bereavement leave during the period they are working out their notice. There is no entitlement to receive payment for unused sick leave on resignation.

The Holidays Act 2003 does not continue previous arrangements that in some circumstances pro-rated pay for public holidays by 1/10 for each day within the 10 days preceding the holiday that the terminating employee worked. However, if such provisions remain in the employment agreement, they continue to apply *in addition* to the provisions above.

Example of calculation on termination

John resigns and finishes work on Friday 15 October 2004.

John has been paid up to the preceding Tuesday, 12 October. He has three days' accrued alternative holidays and is entitled to three weeks' paid annual holidays. He last became entitled to annual holidays on 25 June 2004.

His final payment is made up of:

- payment for his work since the last pay period – that is, three days' pay for Wednesday, Thursday and Friday
- payment for his three accrued alternative holidays at the relevant daily pay rate for working on Friday 15 October
- payment of three weeks' annual holiday pay calculated as per the box "Definitions: 'ordinary weekly pay' and 'average weekly earnings'" on page 11
- an additional day's payment for Labour Day (at the relevant daily pay), as it falls during the three weeks' notional annual holiday added to the end of his employment
- an additional 6% of his gross earnings since 25 June 2004.

These gross earnings include:

1. The three weeks' annual holidays paid out.
2. Payment for the alternative holidays.
3. Payment for the public holiday.

8. Recording requirements

Good record keeping protects the employer in the case of a dispute and ensures that an employee's entitlements are correctly met.

The Holidays Act 2003 keeps the requirement to maintain a holiday and leave record *in addition* to the requirement to maintain a wages and time record. This record may be written or electronic.

The record has to include some additional information from 1 April 2004.

You may amend your current records to include the additional information, but you must ensure that the following information is recorded in a manner that enables the employee to verify entitlements (new requirements are in italics):

- The name of the employee.
- The date employment commenced.
- *The days on which the employee works, if the information is relevant to entitlement or payment under the Holidays Act.*
- The date the employee last became entitled to annual holidays.
- *The employee's current entitlement to annual holidays.*
- *The employee's current entitlement to sick leave.*
- *The dates any annual holiday, sick or bereavement leave was taken.*
- *The amount of payment for any annual holidays, sick leave and bereavement leave taken.*
- *The dates of and payment for any public holiday worked.*
- *The number of hours worked on any public holiday.*
- *The date on which the employee became entitled to any alternative holiday for any public holiday worked.*
- *The dates and payment of any public holiday or alternative holiday on which the employee did not work, but for which the employee had an entitlement to payment.*
- *The cash value of board and lodgings provided.*
- *The cash value of any alternative holidays that the employee has surrendered for payment.*
- The date of termination.
- *The amount of pay for holidays on termination.*

It would also be useful for employers to record the date on which employees become entitled to sick and bereavement leave, to avoid any dispute over whether the employee is entitled to this leave.

Examples of wage & time records and holiday & leave records can be downloaded from www.ers.dol.govt.nz/holidays/records.html, or obtained by phoning the staff at the Employment Relations Service Infoline 0800 800 863 who can answer your questions.

9. Managing changes to employment agreements

Most provisions of the Holidays Act 2003 are in force from 1 April 2004.

Under the Employment Relations Act, every employee has an employment agreement, which can be individual or collective. Where current employment agreements do not specifically outline holiday and leave provisions, or if they refer in general terms to the Holidays Act 1981, *the entitlements under the Holidays Act 2003 apply from 1 April 2004 unless a new agreement with better provisions is negotiated and agreed.*

Some employment agreements contain terms or conditions in a particular provision that are less favourable than the new Act in some parts, but comply or improve on the Act in other ways (for example, by providing double time on public holidays, but not providing for an alternative day's leave).

In this case, *the provision that is less favourable to the employee will be deemed to be changed, and the rest of the provision will continue to apply.* (In the example above, the employee would still earn double time, but the employee would also be entitled to an alternative day off with pay.)

Employers, employees and unions should review whether the Holidays Act 2003 coming into force on 1 April 2004 creates ambiguities, possibly including additional entitlements that were not previously agreed with employees or their unions. For example:

- any remaining reference to “special leave” rather than sick or bereavement leave might be seen as an additional entitlement
- the absence of some details could make it difficult to determine whether you are meeting the requirements of the new Act.

The issues that need attention will differ from workplace to workplace, but all employers, employees and unions are advised to review and, where appropriate, seek to renegotiate employment agreements before the Holidays Act 2003 comes into force.

Employers are also advised to ensure that any employment agreements offered to employees employed after 1 April 2004 meet the requirements of the new Act.

To assist employers, employees and unions in this review, the Department of Labour has developed an employment agreement tool containing the minimum conditions required and other entitlements that are frequently included in agreements. This can be accessed on www.ers.dol.govt.nz/holidays/records.html, and can be customised for the needs of each workplace.

The staff at the Employment Relations Service Infoline (0800 800 863) can also help to identify the effect of the new Act on your current arrangements.

10. Help available

If you're not sure about any of these items, or on any other aspect of the Holidays Act 2003, don't take chances.

You can get help from the Employment Relations Service Infoline (0800 800 863), on the Employment Relations Service website (www.ers.dol.govt.nz), or from your local employers' organisation.

This booklet is a guide only and may not be accurate for all situations. It should not be used as a substitute for legislation or for legal or other expert advice.

January 2004



Employment Relations
infoline
0800 800 863
www.ers.dol.govt.nz


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