

**EMPLOYMENT
NEW ZEALAND**

Leave and holidays

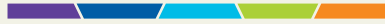
A guide to employees'
legal entitlements



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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[New Zealand Government](https://www.govt.nz/)

EMPLOYMENT NEW ZEALAND



Disclaimer. This document provides an overview of Leave and Holiday entitlements, as at June 2016. The Ministry of Business Innovation and Employment are not responsible for the results of any action taken on the basis of information in this document, or for any errors or omissions.

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The Holidays Act 2003

A summary of employees' rights under the Holidays Act 2003 is

- › All employees are entitled to 4 weeks' paid annual holidays (or 'annual leave') each year.
- › All employees should be entitled to take public holidays as leave, where possible for the observance of days of national, religious, or cultural significance. Where an employee does work on a public holiday that work should be specially rewarded.
- › After 6 months employment, it is reasonable to expect employers to support their employees with sick leave and bereavement leave when required.

Annual holidays entitlements

All employees are entitled to at least 4 weeks' paid holidays a year. Employees generally get their annual holiday entitlements after 12 months of continuous employment with their employer and then after every subsequent 12 months of employment.

Employment agreements can provide for extra days or weeks of holidays on top of the minimum statutory entitlement.

Annual holidays can be taken at any time agreed between the employer and the employee. Employees must be given the opportunity to take at least 2 of the 4 weeks' holidays continuously, if they want to do so.

Establishing entitlements

There are two exceptions to employees becoming entitled to their annual holidays 12 months after their start date. These are:

- › When the business has an annual closedown period and an employee is not yet entitled to annual holidays: This is covered later under 'Regular annual closedowns'.
- › When an employee takes unpaid leave of more than a week during the year: This is covered under 'The effect of unpaid leave on annual holidays'.

Where employees are employed on a regular work pattern, establishing their entitlement is easier. On each anniversary date, the employee is entitled to 4 weeks' of paid annual holidays.

Where a permanent employee is employed on a work pattern that varies from week to week, what a week's annual holiday looks like in terms of time off work, should be determined at the point the leave is taken.

For example if the employee's work pattern is predictable (as in a roster pattern that does not change, eg 4 days on 4 days off), a week will depend on what days the employee would have been working in the week in which they want to take annual holidays.

If the employee's work pattern is clearly unpredictable, then a week could be defined as an average number of days/hours determined over a suitable number of weeks prior to the leave being taken.

An employer and employee can agree on how the entitlement to annual holidays is to be met, but it must be based on what genuinely constitutes a working week for the employee.

Where agreement can't be reached, either party can seek assistance from Employment New Zealand, call us free on [0800 20 90 20](tel:0800-20-90-20).

Where an employee is employed on a genuine fixed-term agreement of less than 12 months, the employee can be paid annual holiday pay with their salary (i.e. on a paid-as-you-earn basis). The annual holiday pay must be separately identified in the employee's employment agreement, and wage and time records, and shown as a separate item on any pay-slip. This reflects the fact that these employees are not expected to reach the 12 months service date when they would qualify for annual holidays.

More details of this approach are set out under 'Employees on genuine fixed-term agreements (paid-as-you-earn provisions)'.

Where an employee is employed on a genuine casual basis, they have no expectation of ongoing employment. If an employee's employment pattern is so intermittent or irregular that it isn't possible or practicable to attempt to provide 4 weeks' paid annual holidays, the employee may be paid annual holiday pay with their regular pay (i.e. on a paid-as-you-earn basis). This should be set out in the employment agreement and shown as a separate calculation on any pay-slips.

Employees paid on a paid-as-you-earn basis do not get specific time off for their annual holidays.

Employers should ensure they:

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

They 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.

You can find examples of wages and time and holiday and leave records at www.employment.govt.nz

Payment for annual holidays

Payment for annual holidays is at the rate of **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.

Definition of ordinary weekly pay and average weekly earnings

Ordinary weekly pay is everything an employee is normally paid weekly under the employment agreement, 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.

Ordinary weekly pay doesn't include irregular, one-off payments or discretionary payments.

For many people, ordinary weekly pay is quite clear because they are paid the same amount each week.

Where ordinary weekly pay is unclear for any reason, there is a formula for working it out. Ordinary weekly pay is calculated by:

- › going to the end of the last pay period
- › from that date, going back;
 - 4 calendar weeks, or;
 - if the pay period is longer than 4 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 the employer doesn't have to pay, and
- › dividing the answer by 4.

If an employment agreement includes an amount for ordinary weekly pay, the figure in the employment agreement must be compared with the actual ordinary weekly pay (as calculated above), and the greater of the two amounts must 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:

- › Salary and wages
- › Allowances (but not reimbursing allowances)
- › All overtime
- › Piece work
- › At-risk, productivity or 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.

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

Remember: When calculating both ordinary weekly pay and average weekly earnings, the greater figure must be used for the employee's annual holiday pay.

When an employee is going 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 3 days per week has agreed with their employer that their 4-week holiday entitlement will be 12 days, when they take a day off work, this will be one-third of a week of annual holidays.

Payment would be a proportion of the greater of ordinary weekly pay or average weekly earnings based on the period of leave taken, in this case, one-third.

The Holidays Act 2003 describes how to calculate annual holiday payments in a variety of circumstances. These calculations are outlined in the following subsections of this guide:

- › 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 leaving their employment
- › Employees on genuine fixed-term agreements

- › Moving from fixed-term to permanent employment with the same employer
- › Where the fixed-term agreement is not genuine or more than 12 months
- › Employees with intermittent or irregular work patterns.

For an employee after completion of 12 months' service

After the completion of 12 months' service, the employee is paid the relevant portion of the greater of ordinary weekly pay and average weekly earnings.

This calculation needs to occur at the time the employee takes the holiday. This calculation applies to all employees, including those whose pay has varied over the year or whose work pattern has changed during the year.

For employees who have worked the same hours for the same rate of pay throughout the year, and haven't had any bonus or additional payments, ordinary weekly pay is often the greater amount, but both calculations need to be done to make sure payment is calculated correctly. It is important to check whether the employee has had done any overtime earlier in the year that could affect the average.

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 employer may approve an employee's request to take 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 under 'Regular annual closedowns'
- › The employee may leave their employment. Entitlements on leaving employment are covered later in this guide.

Employees can ask to take paid annual holidays in advance

Employees can ask to take paid annual holidays in advance of becoming entitled to them—either because they haven't completed 12 months of service, or because they have already taken their entitlement. The employer can choose whether or not to approve annual holidays in advance, unless the employee has a right to take annual holidays in advance in their 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 for taking annual holidays in advance where the employee has been employed for more than 12 months use the 12 months prior to the end of the last pay period before the holiday.

If an employer approves annual holidays in advance, they should make sure that the employee has agreed in writing that the employer can deduct any overpayment of holiday pay from their final pay.

Employees taking parental leave

An employee's time on parental leave is included as continuous service and taking parental leave doesn't affect their entitlement to annual leave. The employee will still be entitled to a minimum of 4 weeks of annual holidays. However, the payments for the annual holidays that the employee becomes entitled to while on parental leave and in the 12 month period following their return will be affected by the parental leave.

Under the Parental Leave and Employment Protection Act 1987, if an employee becomes entitled to annual holidays during parental leave or in the following 12 months, that holiday pay is paid at the rate of their average weekly earnings over the 12 months before the annual holidays. (Note that if the employee has previous entitlements they hadn't used, then the normal pay provisions still apply to that leave.)

When an employee leaves employment

There are 2 ways to calculate payment for annual holidays on resignation or termination depending on if the employment ends:

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

If an employee's employment ends before they have completed their first 12 months of service, they are entitled to a payment for annual holidays of 8 per cent of gross earnings during the employment. The dollar value of 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 paid-as-you-earn basis.

Where an employee's employment ends after becoming entitled to annual holidays, there are two amounts to be calculated, which are added together to get the total annual holiday payment to be made. The first amount to be calculated is the greater of ordinary weekly pay or average weekly earnings for the annual holidays the employee is entitled to, 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 outlined on page 4' 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 holidays. This is calculated at 8 per cent of the employee's gross earnings since their entitlement last arose.

If an employee has taken any annual holidays in advance or has received any holidays on a paid-as-you-earn basis the amount paid for these is deducted from the final amount. Refer also to the 'Entitlements on leaving employment'.

Example: Calculation of final payment for annual holidays.

Ted has been employed for one year and one month. He leaves his employment on 12 May, and the last date he became entitled to annual holidays was 12 April. Ted has already used 1 week of annual holiday, so has 3 weeks remaining at the end of his employment. Ted also has 2 alternative holidays from working on public holidays that are left untaken at the end of his employment.

Ted is entitled to payment for:

- › 2 alternative holidays
- › 3 weeks of annual holiday remaining of his 4 week entitlement from April at the greater of average weekly earnings or ordinary weekly pay
- › 8 per cent of gross earnings for the 1 month period between 12 April and 12 May.
The gross earnings for the 8 per cent calculation also include the holiday pay paid to Ted for his 3 weeks of unused holiday and the value of the 2 alternative holidays.

**Employees on genuine fixed-term agreements
(paid-as-you-earn provision)**

The entitlement to 4 weeks' paid holiday 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 2000 allows for fixed-term employment agreements if, on appointment, there is a genuine reason for the fixed term. Examples of genuine reasons:

- › The job is to prune trees in the west block, and your job will cease when all of the trees are pruned. The estimate that this pruning job will take you and your co-workers two months from the start date.
- › The appointment is for a fixed term to cover for an employee who is taking 4 months' parental leave.

If a fixed-term agreement is for less than 12 months, an employee may agree to the employer adding 8 per cent to their weekly earnings each week instead of getting a totalled 8 per cent at the end of the fixed term.

Any such arrangement should be included in the employment agreement, and the 8 per cent 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 annual 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's employment becomes permanent, the payment of the additional 8 per cent annual holiday pay in the employee's regular pay must stop.

The employee will then become entitled to 4 weeks' annual holidays 12 months after the final fixed-term period started. Because the employer has already paid the additional 8 per cent annual holiday pay during the final fixed-term period of employment, the pay for annual holidays is reduced by the amount of holiday pay already paid at 8 per cent.

The employment agreement should be updated as required.

If the fixed-term agreement isn't genuine or is longer than 12 months

If an employer has incorrectly paid annual holiday pay on a paid-as-you-earn basis, after 12 months' continuous employment, the employee will become entitled to paid annual holidays, and any amount paid on a paid-as-you-earn basis can't 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 paid-as-you-earn arrangements

Fixed-term agreements can be linked to the completion of projects. In this situation, there is a risk that the fixed term will go on for more than 12 months, at which time the employee becomes entitled to paid annual holidays, despite having already been paid on a paid-as-you-earn basis.

Therefore, paid-as-you-earn 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 might last more than 12 months.

Genuine casual employees

The employment of casual employees is on an as and when required basis they have no expectation of ongoing employment (eg beyond the event). In these cases, the employer and employee an arrangement can be agreed to add 8 per cent of the employee's gross earnings as annual holiday pay to their pay.

For a paid-as-you-earn arrangement, it must be by genuine agreement and be included in the employment agreement, and the 8 per cent 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 a paid-as you-earn arrangement, the employer should timetable regular reviews to see whether a regular cycle of work has developed. If it has, the employer and employee should enter into a new employment agreement (or amend the current agreement) to state that annual holidays accrue, and the 8 per cent payment is removed.

Examples: Genuine casual employment



The Holidays Act 2003 doesn't refer to 'casual work' because the term is used to describe so many types of employment arrangements. Instead, it refers to intermittent or irregular employment.

Examples of casual employment for the purposes of the Holidays Act 2003:

- › An employee who works occasionally 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 they start their holiday, unless the employer and employee agree that the normal pay cycle will continue as usual while they are on holiday.

This provision is designed to ensure that employees have money available to them to pay for any travel and accommodation expenses, which often have to be paid in advance.

If an agreement is reached to pay the employee any annual holiday pay in their normal pay cycle, this should be recorded in writing (it can be in the employment agreement).

Regular annual closedowns

Calculating an employee's annual holiday entitlement is different if the employer chooses to have a regular or customary annual closedown. The 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 can only have this type of closedown once a year and require employees to take annual holidays during the period of the closedown, even where this requires employees to take time off for which they are not fully reimbursed. The employer is required to provide employees with at least 14 days' advance notice of the closedown.

To determine whether a day that falls during a closedown period would be an 'otherwise working day' in regard to entitlements to public holidays, alternative holidays, sick leave and bereavement leave, see the section below on 'Public holidays during a closedown period'.

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

- › the employer paying the employee 8 per cent 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 employee is not yet entitled to annual holidays.

If you are in doubt, Employment New Zealand can help, call us free on [0800 20 90 20](tel:0800209020).

For all employees whose work is subject to a regular annual closedown, the employer can nominate a date that 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.

Other than in this situation, an employer cannot nominate a particular date for annual holiday entitlement calculations.

An employer who wants to implement more than one closedown in any year can if their employees agree, but can't make them take annual holidays using the above provisions. The date of entitlement to annual holiday is not 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 dealt with in one of 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. For example, if an employee takes 2 weeks' unpaid leave, they become entitled to annual holidays 1 week after the anniversary of their starting date of employment
- › The employer and employee can agree that the employee's average weekly earnings calculation will be changed 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 2 weeks' unpaid leave during the year, it can be agreed that the average weekly earnings for 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 doesn't affect the anniversary date for annual holiday purposes.

Cashing-up annual holidays

Employees can ask their employer to pay out in cash up to 1 week of their entitlement to annual holidays per entitlement year.

An entitlement year usually starts on the anniversary of the employee's employment start date. An employee who becomes entitled to annual holidays on their anniversary date can request cash up of up to 1 week of their annual holidays during the 12 month period of their entitlement year.

For example, an employee with an anniversary date of 1 June can ask that up to 1 week cashed up that they receive on 1 June. Their request can be made at any point in the entitlement year that runs from 1 June to 1 June in the following year.

Cashing up annual holidays can only be at the employee's request in writing. Employees may request to cash up less than a week at a time. More than one request may be made, up to a maximum of 1 week of the employee's annual holidays per entitlement year.

Unless they have a no cashing up policy, the employer must consider a request to cash up annual holidays in good faith and within a reasonable time. They can turn down the request and must advise their employee of this in writing. The employer is not required to provide a reason for their decision.

If an employer agrees to pay out a portion of the employee's annual holidays, the payment should be made as soon as practicable, which will usually be the next pay day. The value of the payment must be calculated at the rate of the greater of the employee's average weekly earnings or ordinary weekly pay.

An employer can't pressure an employee to cash up holidays. Cashing up can't be raised in wage or salary negotiations or be a condition of employment. Requests to cash up can't be part of an employment agreement. However, an employment agreement may outline the process for making a cash up request, which must meet the minimum requirements in the legislation.

Employers can have a workplace policy that they won't consider requests to cash up annual holidays. This can apply to the whole or only some parts of the business. The policy can only be on whether the employer will consider any requests. It can't be about the amount of annual holidays an employee can cash up or the number of requests an employee can make. An employer should consult with employees on the development of such a policy, and advise new employees of the policy when they make an offer of employment, as part of their good faith obligations.

If an employer is found to have incorrectly paid out a portion of the employee's annual holidays where the employee didn't ask for it, the employee can still take the portion of paid annual holidays cashed up and also keep the cash up amount. The employer may also face a penalty.

If an employer agrees to pay out a portion of the employee's annual holidays, but the employer and employee can't agree on the proportion or payment amount, a Labour Inspector can determine the proportion or amount for them.

There are other details that employers and employees considering cashing up holidays might need to know, for example how it affects superannuation payments, Working for Families, child support and income tax and what happens when there is parental leave.

Employment New Zealand can assist with information about parental leave and you can call us free on [0800 20 90 20](tel:0800209020). For tax related matters please contact Inland Revenue on [0800 227 774](tel:0800227774) or go to www.ird.govt.nz.

Employment agreements

The annual holiday provisions in the Holidays Act 2003 apply even if the employment agreement doesn't state holiday entitlements.

The Holidays Act 2003 makes clear that each part of holiday arrangements must be at least as favourable to the employee as the entitlements in the Act. However, the law doesn't stop the employer giving the employee extra entitlements over and above those provided by the Act.

Payment for other holidays and leave

For public holidays, alternative holidays, sick leave and bereavement leave an employee is paid either at their relevant daily pay or average daily pay.

Definition of 'Relevant Daily Pay', 'Average Daily Pay' and 'Penal rates'

Definition: 'Relevant daily pay'

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

Relevant daily pay is the amount the employee would otherwise have earned on the day if they had worked, 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.

It doesn't include payment of any employer contribution to a superannuation scheme for the benefit of the employee.

An Employment Agreement may state a special rate of relevant daily pay for the purpose of calculating payment for a public holiday, an alternative holiday, sick leave, or bereavement leave, as long as the rate is equal to, or greater than, the rate that would otherwise be calculated using the method above.

Definition: 'Average daily pay'

Average daily pay may be used if it isn't possible or practicable to determine relevant daily pay, or if the employee's daily pay varies within the pay period when the holiday or leave falls.

Average daily pay is a daily average of the employee's gross earnings over the past 52 weeks. That is, the employee's gross earnings divided by the number of whole or part days the employee either worked or was on paid leave or holiday during that period.

If an employer and employee can't agree on the amount of the employee's relevant daily pay or average daily pay, a Labour Inspector may determine the amount.

Relevant daily pay or average daily pay?

Employers should try to calculate an employee's relevant daily pay in the first instance. An employer has the discretion to use either relevant daily pay or average daily pay if it isn't possible or practicable to determine relevant daily pay or if their employee's pay varies within the pay period in question. This discretion may be better exercised if the employer knows the results of both calculations.

Definition: 'Penal rate'

A penal rate is an identifiable additional amount paid to compensate the employee for working on a particular day or type of day.

Examples include:

- › a Saturday payment
- › a Sunday payment
- › a public holiday payment.

Penal rates don't include:

- › Allowances, such as wet weather money,
- › overtime rates
- › special rates for working a sixth or seventh day in a week.

A penal rate may be stated in an employment agreement.



Public holidays

Entitlements

Employees are entitled to a paid day off on a public holiday if they would have worked on that day if it wasn't a public holiday ('otherwise working day'). Public holidays are separate from and additional to annual holidays.

The public holidays

There are 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). Waitangi Day (6 February) ANZAC Day (25 April)
- › All other holidays: Good Friday and Easter Monday (dates variable), Queen's Birthday (first Monday in June), Labour Day (fourth Monday in October) and Provincial Anniversary Day (date determined locally).
- › If Waitangi Day, ANZAC Day, Christmas Day, Boxing Day, New Year's Day or the day after New Year's Day fall on a Saturday or Sunday and that day would not otherwise be a working day for the employee, the holiday is transferred to the following Monday (or Tuesday for Christmas Day, Boxing Day, New Year's Day and the day after New Year's day when they fall on a Sunday) so that the employee still gets a paid day off if the employee would usually work on that day.

- › If the holiday falls on a Saturday or Sunday and that day would otherwise be a working day for the employee, the holiday remains at the traditional day and the employee is entitled to that day off on pay.
- › An employee is not entitled to more than 4 public holidays over the Christmas and New Year period, regardless of their work pattern.

More information on whether a day would 'otherwise be a working day' can be found in the section 'Taking a public holiday'.

An employer and employee can agree to transfer a public holiday from the day listed in the Holidays Act 2003 to another day. See further details below 'Transferring a public holiday'.

Transferring a public holiday

Employers and employees can agree to transfer the observance of public holidays to another working day to meet the needs of the business or the employee. They should make the agreement in writing.

The public holiday to be transferred must be transferred to another identified or identifiable calendar day or 24-hour period and otherwise be a working day for the employee. A request to transfer can be made by either employee or employer and must be considered in good faith by the other party and any agreement must meet the minimum requirements set out in law. The agreement can't reduce the number of public holidays which an employee gets. The purpose of a transfer can't be to avoid paying the employee time and a half for working on a public holiday or giving them an alternative holiday (although this may be the effect of the transfer).

An employee is entitled to a paid day off on the day the public holiday is transferred to. The employee should be paid their relevant daily pay or average daily pay for the day (see the 'Definitions' section on page 12 and 13).

If the employee works on the day the public holiday is transferred to, then they are paid at least time and a half for the hours worked and get a whole day's alternative holiday (see 'Alternative holidays for working on public holidays'). An employer and employee must both agree that the employee will work on the day the public holiday is transferred to.

If the employee would have worked on a day that a public holiday is transferred to but can't work because they are sick, they are paid for the day as if they had a paid, unworked public holiday.

If a day that a public holiday is transferred to falls within a period that an employee is taking as annual holidays, then that day must be treated as a public holiday and not as part of the employee's annual holidays.

Transferring part of a public holiday

Employees working shifts that start and end on different days can agree with their employer to transfer the public holiday, so that it covers one whole shift. The transfer can only take place if:

- › the employee is due to work a shift in the period to which the public holiday is transferred
- › The purpose of the transfer can't be to avoid paying the employee time and a half for working on a public holiday or providing them with an alternative holiday (although this may be the effect of the transfer).

Employers may have a policy that they will not transfer public holidays. This can refer to the transfer of part or the whole of a public holiday, and can relate to the whole of a business or some parts of the business. If employees agree, this policy can be included in an employment agreement.

Employers and employees can get help from the Employment Mediation Services if any disputes arise around transferring public holidays.

Taking a public holiday

Thinking about whether a day would 'otherwise be a working day' is key to determining an employee's entitlement regarding public holidays, alternative holidays, sick leave and bereavement leave.

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

If the employer and the employee can't 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.
- › Whether, but for the day being a public holiday, an alternative holiday, or a day on which the employee was on sick leave or bereavement leave, the employee would have worked on the day
- › Whether it is during a customary closedown period
- › Any other relevant factors.

If the employer and employee can't agree, 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 would 'otherwise be a working day' for them.

Examples of 'otherwise working day'

- › If a part-time employee normally works 4 hours each day on Tuesday and Wednesday and normally works 8 hours on Friday, the employee will be given Good Friday off with 8 hours' pay, but will not be entitled to pay for Easter Monday.
- › Where an employee's roster requires 3x10-hour days on Monday to Wednesday 1 week (week 1) and the same hours on Thursday to Saturday the following week (week2), and if week 1 coincides with the week in which Good Friday falls, this employee won't get paid for Good Friday or Easter Monday (that will fall in week 2) because they wouldn't have been scheduled to work on that Friday or Monday. If, however, week 2 coincides with Good Friday, the employee will be entitled to a holiday on pay for both Good Friday and Easter Monday.

Public holidays during a close-down period

If a business has a closedown period that includes public holidays (as can happen over the Christmas and New Year period) then the employee is entitled to paid public holidays if the public holidays would otherwise be working days for them if the closedown were not in effect. Just as if a public holiday falls during a period of annual holidays, the employee is entitled to a paid public holiday if it is otherwise a working day for them.

Payment when the employee doesn't work on a public holiday

The employee is paid for the public holiday as if they had worked as normal on the day and is entitled to be paid their relevant daily pay or average daily pay. For most employees working a regular pattern of hours, the pay cycle continues unchanged.

An employee who doesn't normally work on the day of the public holiday and who doesn't work is not entitled to a payment for the day. For example, a part-time employee who never works on Friday has no entitlement to payment for Good Friday.

Payment for working on public holidays

The starting point for payment for working on a public holiday is the employee's relevant daily pay or average daily. If an employee works on any public holiday, they are paid a minimum payment of time and a half for the time they actually work on the day.

The employee is entitled to the greater of either:

- › the portion of the employee's relevant daily pay or average daily pay (if applicable) that relates to the time actually worked on the day, less any penal rates, plus half that amount again (time and a half), or
- › the portion of the employee's relevant daily pay that relates to the time actually worked on the day including any penal rates.

An employer should always use relevant daily pay rather than average daily pay as the starting point for calculating an employee's pay for working on a public holiday. This is because the test for using average daily pay for the reason that it is 'not possible or practicable' to determine relevant daily pay will never be met when the employee actually works on the public holiday.

The employer must work out the portion of the employee's relevant daily pay that relates to the time actually worked on the day (minus any penal rates) and then multiply by 1.5. This figure must be compared to the employees' relevant daily pay (including any penal rates) and the employer must pay the greater amount.

If 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 minimum time and a half payment; the balance may be paid at the normal rate of pay. That is unless the employee and employer agree to transfer the public holiday so that it covers one whole shift.

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 these agreements must be paid at least time and a half for the time actually worked if they work on a public holiday.

Employment agreements can include specified penal rates for particular days worked – for example, double time for working on a Sunday. If a public holiday falls on such a day, the employee is entitled to the portion of their relevant daily pay that relates to the time actually worked on the day, including any penal rate in the Employment Agreement, or time and a half of the portion of relevant daily pay or average daily pay that relates to the time actually worked on the day excluding any penal rate, whichever is the greater. They are not entitled to time and a half on top of the penal rate in the employment agreement.

For example, an employee who works on an ANZAC Day that falls on a Sunday, and who is entitled under their employment agreement to double time rates on Sunday, gets double time, because double time is more than the time and a half provided for in the Holidays Act.

Example: using relevant daily pay to calculate payment for working on a public holiday

If a salaried employee has regular hours of work, their relevant daily pay can be calculated by dividing their annual salary by 52, and then by the number of days worked. 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 be paid \$115.39 (half of \$230.78).

Where it is difficult to tell what an employee's pay for a public holiday would be, a Labour Inspector can help determine the employee's entitlement on a public holiday.

Payment where an employee is sick or bereaved on a public holiday

If an employee was going to work on a public holiday but is sick or bereaved, the day is treated as a paid unworked public holiday. Therefore:

- › the employee would be paid their relevant daily pay or average daily pay, but wouldn't get time and a half or an alternative holiday
- › no sick or bereavement leave would be deducted.

Alternative holidays for working public holidays

If an employee works on a public holiday they are paid time and a half for the hours they work and if it is an otherwise working day for the employee they are also entitled to another day off on pay. This alternative holiday recognises that the employee has missed out on having a day off work and enables them to take a day off at another time.

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.

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 or average daily pay (where applicable) for the day taken off.

If an employer and employee can't agree when an alternative holiday is to be taken, the employer may determine the date, on a reasonable basis. The employer must give the employee at least 14 days' notice of the requirement to take the alternative holiday.

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

Alternative holiday may be exchanged for payment.

If an employee doesn't take their alternative holiday within 12 months of becoming entitled to it, the employee and employer can agree for the alternative holiday to be exchanged for payment. In this instance, the payment for the alternative holiday must be agreed between the employer and employee and must be paid as soon as practicable once the agreement has been made.

Where an alternative holiday does not apply

Where an employee:

- › works on a public holiday and that day would not otherwise be a working day, or
 - › is on call on a public holiday but is not required to restrict their activities, or
 - › is only employed to work on public holidays,
- there is no entitlement to an alternative holiday.

The requirement to work on a public holiday

An employer can 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

Employers must keep a signed copy of the Employment Agreement or the current signed terms and conditions of employment (from 1 July 2011). The employer must also keep an intended agreement even if the employee hasn't signed it. The employer must give the employee a copy of their current terms and conditions if asked to by the employee.

Employment Agreements must specifically provide that an employee will receive at least time and a half for working on a public holiday. Any such provision must be consistent with the Holidays Act 2003. An employment agreement can't state that the rate of pay already includes a component for time and a half.

In most cases, what time and a half means will be easy to identify. For example, if the employee has regular hours each week and is paid an hourly rate and no additional payments, then under relevant daily pay 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 \$16 per hour. For time worked on a public holiday, the pay rate is \$24.00 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 pay for work on a public holiday is calculated should ideally be included in the employee's employment agreement, if the person is likely to work on a public holiday.

Where an employee's pay varies within the pay period, an employer may use the employee's average daily pay to calculate the payment for working on a public holiday.

The effect of various work patterns

The Holidays Act 2003 covers public holiday entitlements for employees in a number of work patterns where entitlements are unclear, including:

- › employees working shifts
- › employees on call
- › where the parties dispute whether a day is an otherwise working day.

Employees working shifts are entitled to no less than:

- › their relevant daily pay (or average daily pay if applicable) for their normal rostered shift when they take a public holiday as a day off work
- › the greater of time and a half or relevant daily pay including penal rates in their Employment Agreement for hours worked on the public holiday, plus, if the day would otherwise be a working day, an alternative holiday for each public holiday or part of a public holiday the shift covers.

Examples:



1. An employee starts at 10pm on Christmas Day and finishes work at 6am on Boxing Day. The employee is entitled to 8 hours' pay of at least time and a half and 2 alternative holidays (1 each for Christmas and Boxing Day).
2. An employee works from 10pm on Christmas Eve until 6am on Christmas morning. The employee works the same shift beginning on Christmas Day night, finishing on the morning of Boxing Day. The employee is entitled to 2 hours' pay at ordinary time and 6 hours' pay of at least time and a half for the first shift, and to 8 hours' pay of at least time and a half for the second shift, and to two alternative holidays (one each for Christmas Day and Boxing Day).
3. An employee working an 8-hour shift starting on ANZAC Day at 10pm is entitled to two hours' pay of at least time and a half, six hours' pay at the normal hourly rate, plus a full day's alternative holiday.



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

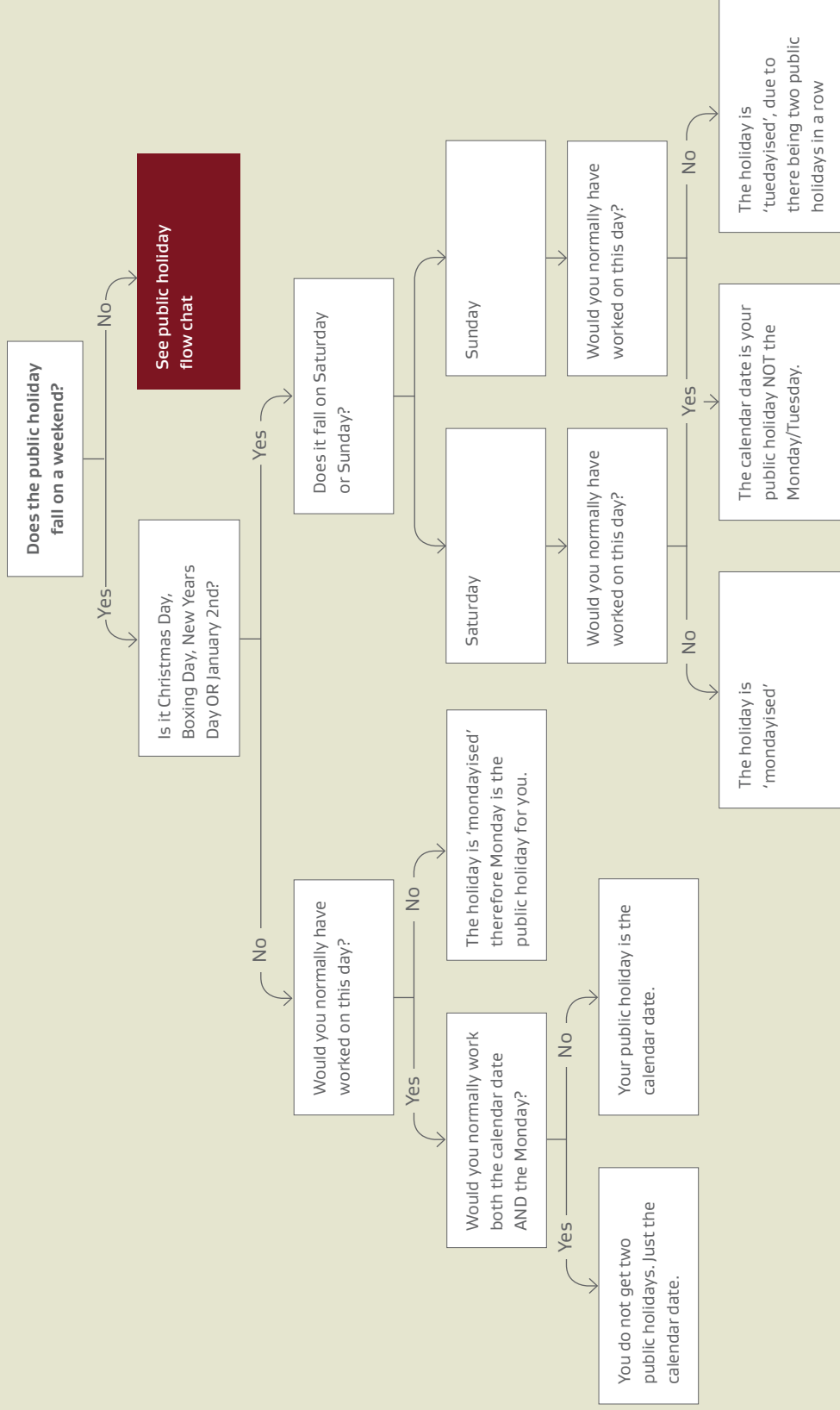
- › If the employee is called out, they are entitled to at least time and a half for the time worked, plus a full day's paid alternative holiday if the day would otherwise be a working day for them
- › If the employee is required to restrict activities on the day to the extent that they have not enjoyed 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 if the day would otherwise be a working day for them
- › 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 an alternative holiday would arise only if the employee accepts a call-out and the day would otherwise have been a working day for the employee.

If the employee is not called out but the day would otherwise be a working day, they would be entitled to their relevant daily pay or average daily pay, where applicable. Any payment for being on call would be as included in the employee's employment agreement or as negotiated by the parties.

Entitlements to an alternative holiday do not apply where the person called out is only employed to work on public holidays.

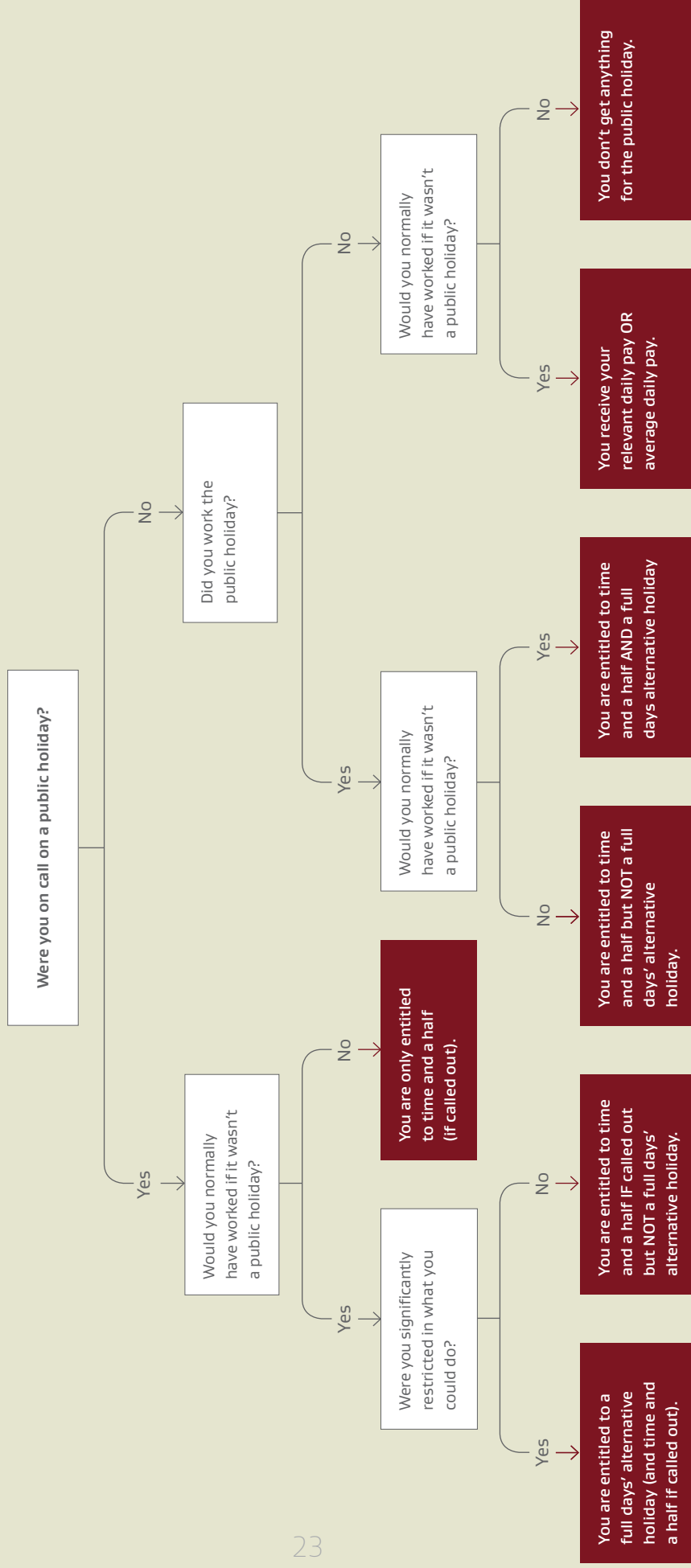


Mondayisation of Public Holiday's Flow Chart





Public Holidays Flow Chart



If you are confused about “mondaysation” of public holidays. Please see the Mondayisation of public holidays flow chart.



Sick leave

Entitlements

Most employees get a minimum of 5 days' paid sick leave a year after the first 6 months of continuous employment and another 5 days' sick leave for each 12-month period after that.

Exceptions are covered under 'The effect of various work patterns' section. Sick leave can be used when an employee is sick or injured, or when the employee's spouse or partner or a person who depends on the employee for care (such as a child or elderly parent) is sick or injured.

At any time when the employee isn't entitled to sick leave (including during the first 6 months of employment), the employer and employee can agree to the employee anticipating the sick leave entitlement. Any sick leave anticipated can be deducted from their next entitlement.

Unused sick leave is automatically carried over to a maximum of 20 days' leave, unless more is provided for in the Employment Agreement. For example, if someone uses only 1 day's sick leave from the 5-day entitlement in a 12-month period, they can carry over the other 4 days, so in the next 12-month period, their total entitlement is 9 days' sick leave.

Accumulated sick leave can't normally be exchanged for cash, or form part of any final payment to the employee on resignation or termination, unless this is in the employment agreement.

Sick leave entitlements are not pro-rated in any way. For example, if a part-time employee works 3 days a week, they become entitled to 5 days' sick leave a year after being in employment for 6 months. Sick leave also accumulates to up to 20 days for part-time employees.

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 can't make the employee take the time off as sick leave.
- › If an employee is getting 'first week compensation' for a work-related accident, an employer and employee can agree that the employer will top up the 'first week compensation' payment from 80% to 100% by deducting 1 day of sick leave for each 5 days' I taken off work.
- › If an employee has a work-related or non-work-related accident and stays on weekly compensation, the employer can't make the employee to take time off as sick leave.
- › If an employee is receiving weekly compensation from ACC, the employer doesn't have to pay the employee.
- › If the employee is on ACC for more than 5 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 deducting 1 day of sick leave for each 5 days taken off work.

For information about ACC entitlements see www.acc.co.nz

Payment for sick leave

Payment for sick leave should be at the rate of relevant daily pay (or average daily pay where applicable). For example, if an employee who normally works 8 hours Tuesday to Friday is sick on Tuesday, they would receive a payment of 8 hours pay under relevant daily pay.

Where relevant daily pay is used as the basis of calculation (see the 'Definitions' section on page 11 and 12) 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 and works the extra hour, the employee's sick leave payment would include the extra half hour they are normally paid.

If the employee normally works 8 hours Tuesday to Friday and 4 hours on Saturday but is sick on Saturday, the employer can choose to pay the employee their relevant daily pay or average daily pay for the sick day.

Where the employee would have been working on a public holiday but is sick, the day would be treated as a paid, unworked public holiday. Therefore:

- › the employee would be entitled to their relevant daily pay or average daily pay but would not be entitled to time and a half or an alternative holiday, and
- › no sick leave would be deducted.

Where the employee works continuously but to an irregular pattern, sick leave could be taken if the employee was rostered to work on the particular day they are sick, or could have expected to be rostered. The sick leave would be paid at the employee's relevant daily pay or average daily pay. Payment for sick leave is made in the normal pay cycle.

Informing the employer and proof of illness

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

Employers are able to ask for proof of sickness or injury at any time once an employee takes sick leave.

Special rules apply if the employer asks for proof within 3 consecutive calendar days of the employee becoming sick or injured. The employer must inform the employee as early as possible that the proof is required, and pay the reasonable expenses in getting proof. Employers are not required to have reasonable grounds to suspect that the sick leave isn't genuine before asking for proof within these first 3 consecutive calendar days.

The 3 consecutive days aren't interrupted by a scheduled break. For example, if an employee takes 1 day's sick leave on a Tuesday, then has a 1-day scheduled break on the Wednesday and another day's sick leave on Thursday; the employee can be asked to provide proof of the sickness or injury even though the Thursday is only the second day of sick leave.

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 illness or injury for that person.

The employer can't make the employee visit a particular doctor, i.e. the employee has the right to choose their own doctor.

If an employee fails, without reasonable excuse, to provide proof of illness or injury when required by the employer to do so, the employer doesn't have to pay the employee for their time off work until proof is provided.

If the employer thinks that the employee has misused their sick leave, this issue can be dealt with as an employment relationship problem under the Employment Relations Act 2000. If the employer didn't request proof of illness or injury at the time, they could still use the normal processes for dealing with problems of employee performance, and Employment Mediation Services.

The effect of various patterns

Most employees are entitled to sick leave whether they are full or part-time, permanent or fixed-term employees, providing that they have worked for their employer for 6 months:

- › continuously, or
- › for an average of at least 10 hours per week, including 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 is made where it is a day that the employee would otherwise have worked and is made at the employee's relevant daily pay or average daily pay (if it is not practicable or possible to work out the employee's relevant daily pay, or if the employee's pay varies within the pay period). 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 no new sick leave entitlement arises. The employee may requalify for sick leave at any time they have met the 6 months' test.



Bereavement leave

Entitlements

There are two separate entitlements to bereavement leave after 6 months' employment:

- › On the death of an immediate family member, the employee can take up to 3 days' paid leave. This can be taken at any time and for any purpose relating to the death. Immediate family members are the employee's spouse or partner, parent, child, sibling, grandparent, grandchild or the spouse's or partner's parent. If there is more than one bereavement, the employee is entitled to 3 days' bereavement leave for each death.
- › If an employee suffers a bereavement outside the immediate family they can take up to 1 day's paid leave. In considering whether the employee has suffered a bereavement, the employer should take into consideration:
 - how close the employee's association with the other person was
 - whether the employee is responsible for aspects of the ceremonies around the death
 - whether the employee has cultural responsibilities they must fulfil in respect of the death.

Using bereavement leave

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

- › Bob is entitled to 3 days' paid bereavement leave when his brother Jack is killed in an accident while living overseas. The funeral is in Sydney. Bob uses 2 days of paid bereavement leave to attend the funeral. 6 months later, Bob takes another day of bereavement leave to attend a local memorial service.
- › Rangi is entitled to 3 days' paid bereavement leave when his grandmother dies. He takes 2 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 2 days' paid bereavement leave when her sister dies after a long illness. Over the next several weeks, she takes 2 more half days of paid leave to talk to the lawyer about settling the details of her sister's will.

Employment New Zealand can be contacted by calling us free on [0800 20 90 20](tel:0800209020) to provide information on managing bereavement leave.

Payment for bereavement leave

Payment for bereavement leave should be at the rate of their relevant daily pay, or their average daily pay (where applicable). Payment is made in the normal pay cycle.

If the employee would have been working on a public holiday but suffers bereavement, the day would be treated as a paid, unworked public holiday. Therefore:

- › the employee would be paid relevant daily pay or average daily pay (where applicable) but wouldn't get time and a half or an alternative holiday, and
- › no bereavement leave would be deducted.

The effect of various work patterns

Most employees are entitled to bereavement leave whether they are full or part-time, permanent or fixed-term employees, providing that they have worked for their employer for 6 months:

- › continuously, or
- › for an average of at least 10 hours per week, including at least one hour per week or 40 hours per month.

If in any year the work pattern does not meet the above test, then no new bereavement leave entitlement arises. The employee may requalify for bereavement leave at any time they have met the 6 months' test.

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 is made where it is a day that the employee would otherwise have worked and is made at the employee's relevant daily pay or average daily pay (if it is not practicable or possible to work out the employee's relevant daily pay, or if the employee's pay varies within the pay period). The entitlement to bereavement leave is subject to the same test each 12 months.

Employment Agreements

When renegotiating employment agreements, any reference to each form of leave in the agreement (such as domestic leave, special leave or family leave) should maintain the minimum bereavement leave entitlement while also reflecting any special arrangements.

Be sure that any negotiated changes are in writing, as 'custom and practice' may not be enough if there is a dispute. The Employment Agreement Builder (at: <https://eab.business.govt.nz>) can help you put together a draft employment agreement.



Entitlements on leaving employment

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

Annual holidays

Any annual holidays that the employee has not taken must be paid out on termination of employment.

Public holidays

On resignation or termination of employment, 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 finishes work 4 days before a public holiday and has more than four days left from their annual holiday entitlement, the annual leave entitlement notionally extends their employment by the length of the annual leave so the employee is entitled to a day's payment at their relevant daily pay or average daily pay (if applicable) 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.

Alternative holidays

If an employee has alternative holidays earned 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 their relevant daily pay or average daily pay for the last day of the employee's work.

Outstanding 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 get any payment for unused sick leave on termination of employment.

Example: 'Calculation on termination of employment'



Jason resigns and finishes work on Friday, 16 October. Jason has been paid up to Tuesday 9 October. He has 3 days' alternative holidays earned and is entitled to 4 weeks' paid annual holidays. He last became entitled to annual holidays on 25 June.

His final payment is made up of:

- › payment for his work since the last pay period – that is, 8 days' pay for Wednesday, 10 October through to Friday 16 October
- › payment for his 3 days alternative holidays earned at the relevant daily pay rate or at his average daily pay rate (if applicable) for working on Friday 16 October
- › payment of 4 weeks' annual holiday pay calculated at the rate of the greater of ordinary weekly pay or average weekly earnings.
- › an additional day's payment for Labour Day at relevant daily pay or average daily pay (if applicable), because it falls during the four weeks' notional annual holidays added to the end of his employment
- › an additional 8 per cent of his gross earnings since 25 June.

These gross earnings include:

- › the 4 weeks' annual holidays paid out
- › payment for the alternative holidays
- › payment for the public holiday.



Recording Requirements

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

Legislation requires the employer to keep wages and time and holidays and leave records for each employee. This record can be electronic as long as it can be accessed easily and converted to written form.

The following information must be recorded in a manner that enables the employee to verify entitlements:

- › the employee's name, postal address, age (if under 20 years) and the date they started working for you
- › If they're on an individual employment agreement or a collective agreement (and the title and expiry date of the agreement and the employee's classification), and a copy of the agreement.
- › The kind of work they are employed for.
- › The number of hours worked each day in a pay period and the pay for those hours. If these are agreed and they work them as usual hours then a statement of those usual hours and pay will be enough. This can be recorded in:
 - the wages and time record
 - employment agreement
 - a roster, or
 - any other document or record normally used during employment.

- › For an employee on a salary, usual hours include any additional hours worked that are consistent with the employment agreement. However, an employer must record additional hours if they're required to have records in enough detail to show that they're complying with minimum entitlements.
- › Details of any employment relations education leave taken.
- › The wages paid in each pay period and how these have been calculated.
- › The dates they last became entitled to annual holidays and sick leave and their current entitlement to annual holidays and sick leave.
- › The dates of leave taken, including annual holidays, sick leave and bereavement, and payment received for each.
- › Any annual leave cashed up as well as the date and amount paid for each entitlement year.
- › The dates and number of hours worked on public holidays and the payment for these; the date (or 24-hour period) the public holiday or any part of it has been transferred to, and the date the employee became entitled to any alternative holiday.
- › The dates of, and payments for, any public holiday or alternative holiday they didn't work but were entitled to holiday pay.
- › The cash value of any alternative holidays they gave up for payment.
- › The cash value for any board and lodgings provided.
- › The date when employment ended, and the amount of holiday pay they received at the end of employment.
- › A copy of their tax code declaration (IR330).
- › Employers should also keep copies of any agreements to transfer holidays or any requests regarding alternative holidays or requests to cash up annual holidays even if they were not agreed to.

Employment Agreements

Under the Employment Relations Act 2000, every employee has a written Employment Agreement, which can be individual or collective. Where current Employment Agreements do not specifically outline holiday and leave provisions, or if they refer to leave in general terms, the entitlements under the Holidays Act 2003 apply.

To assist employers, employees and unions in reviewing Employment Agreements, Business.govt.nz has an on-line individual Employment Agreement builder containing the minimum conditions required and other entitlements that are frequently included in agreements. This can be customised for the needs of each workplace.

For access to the Employment Agreement Builder, visit <https://eab.business.govt.nz>.



Parental leave

Under the Parental Leave and Employment Protection Act 1987, if an employee (and/or their partner) are having a baby or are going to take the permanent primary responsibility for a child under 6 years, and the employee has worked for at least 10 hours a week for any 26 of the 52 weeks just before the child's arrival, she or he may be eligible for a parental leave payment of up to 18 weeks while they care for their child. They may also be entitled to unpaid parental leave before and after the child's arrival if they have worked for the same employer for at least an average of 10 hours a week for the 6 or 12 months just before the child's arrival.

If the employee becomes entitled to annual holidays during parental leave or in the following year, that holiday pay is paid at the rate of their average weekly earnings over the 12 months just before taking the annual holidays. (If the employee has previous annual holidays entitlements they haven't taken, then the normal calculation for annual holidays applies to that leave.)

The employee may either take the holidays or cash-up a maximum of one week of the annual holidays they become entitled to while on parental leave.

Employment New Zealand can provide further information and assistance on parental leave and payments – visit www.employment.govt.nz or call us free on [0800 20 90 20](tel:0800209020).

Employment relations education leave

Under the Employment Relations Act 2000, if an employee is a union member, their union may nominate them to take employment relations education leave. This is leave for training about employment relationship issues.

An employee attending employment relations leave is paid either their relevant daily pay or average daily pay (if applicable).

Defence force volunteers

Under the Volunteers Employment Protection Act 1973, if an employee does full-time or part-time voluntary training in any of the armed forces the employer has to let the employee take unpaid leave for training.

The employer also has to allow the employee to take leave and hold their job open if the employee takes unpaid leave to go on active service, either in time of war or emergency or in a situation of 'national interest'. There are some eligibility criteria that need to be satisfied before the employee can take this leave or their job is kept open, and if the employee volunteers in a situation of national interest, they may only take up to 12 months' leave.

Employment New Zealand can give you further information, visit www.employment.govt.nz or call us free on [0800 20 90 20](tel:0800209020).

Resolving problems



If employment relationship problems arise as a result of holiday and leave issues, both sides should try to solve the problems in good faith.

They should:

- › be clear about the facts
- › talk to the other party
- › deal with issues promptly but allow enough time for both parties to seek advice and think through the issues
- › make sure everyone follows the process for issue resolution outlined in the employee's employment agreement
- › call Employment New Zealand to clarify your obligations ([0800 20 90 20](tel:0800209020)).

If you can't resolve the problem yourself, you can participate in mediation, either through the Employment Mediation Services or through independent mediators.

If the problem is still not resolved, you can go to the Employment Relations Authority for a determination.

If either you or the other party are dissatisfied with the determination of the Employment Relations Authority, the issue can be taken to the Employment Court.

If a problem is a personal grievance, the employee must raise it with the employer within 90 days of the action complained of, or after they became aware of it, unless the employer agrees to the personal grievance being raised late (employer doesn't agree the employee can apply to the Employment Relations Authority).

For more detailed information about problem resolution see: www.employment.govt.nz

