

The Holidays Act 2003

Employee Information Booklet

Auckland Metro HolidaysAct Programme

V1 - 06 July 2023

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| ***IMPORTANT: Following the initial printing of this document, it will be periodically updated electronically so please visit the Holidays Act intranet site to get the latest version.***  ***Version control & update date is stated at the top of every page.*** |

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# How to use this booklet

The Holidays Act 2003 sets out leave entitlements and pay for leave for employees. Since the legislation was changed in April 2004, many employers across New Zealand have found they were not compliant with the legislation and were tasked with correcting this.

This booklet explains your leave entitlements and what you get paid for each type of leave. The Holidays Act does not cover your time worked payments, the MECA or IEA does. The Holidays Act is about leave entitlements and leave payments.

This booklet will explain:

* The background to the Holidays Act
* How we were not compliant with The Act
* What we are doing to correct this: making payment and improving our processes.

### Remediation payments

As part of this correction, some employees will receive a remediation payment to compensate them for any incorrect payment when on leave and any leave entitlements they might be owed.

### Rectification processes

We will also explain some key terms that you might hear as we make the transition to becoming Holidays Act compliant. This will help you talk to your manager and understand your payslip.

### Purpose of the Holidays Act 2003

This legislation governs New Zealand’s workplaces and aims to promote a healthy work-life balance by providing minimum entitlements for:

1. **Annual leave**
2. **Bereavement leave** to assist employees who are unable to attend work because they have suffered a bereavement ​
3. **Public holidays** to observe days of national, religious, or cultural significance​, and alternative holidays
4. **Sick leave** to assist employees who are unable to attend work because they are sick or injured, or because someone who depends on them for care is sick or injured​
5. **Family violence leave** to assist employees affected by family violence.

After 12 months of continuous employment all employees are entitled to a minimum of four weeks annual leave, or more if provided for by their employment contract. This can be taken earlier if agreed with their manager.

# Background to changes

In 2015, the Labour Inspectorate audited Te Whatu Ora districts in New Zealand and discovered that 70% of them were unintentionally non-compliant with the Holidays Act (2003). This included all 20 of the historic DHBs and means that some current and former employees, have been paid incorrectly for leave.

In 2016, the Council of Trade Unions approached DHBs about this matter and in 2019 a National Taskforce outlined steps -known as the *Memorandum of Understanding-* to address the incorrect payment and remedy non-compliance.

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### Fixing non-compliance

The following table highlights the areas of non-compliance we needed to fix.

| **Area** | **How we were in breach** |
| --- | --- |
| **Annual leave**  (Holidays Act section: 14, 16, 21, 22 28A, 28B) | Annual leave was not consistently calculated across the Auckland Metro Region. Each District had their own calculation method which was non-compliant. |
| We identified instances where allowances were not included correctly in the gross earnings, which meant annual leave rates were incorrect. |
| When employees took leave without pay, the manner in which annual leave was accrued (or not accrued) was inconsistent. |
| Annual leave is currently in hours, to be compliant, it needs to be in weeks as specified by the Holidays Act. |
| We needed to be clearer on what an employee could cash up and what would be considered a non-Holidays Act cash-up. This was relevant to gross earning calculations. |
| **Bereavement, Alternative, Public Holiday, Sick and Family Violence Leave (BAPSF)**  (Holidays Act section: 50, 63) | BAPSF leave should be paid at what you would have earned on the day. This is known as Relevant Daily Pay (RDP). If RDP cannot be determined we need to pay BAPSF leave at Average Daily Pay (ADP) so no one is disadvantaged. Regionally this was done inconsistently. |
| When working a public holiday, employees should be paid a minimum of 1.5 their RDP rate and this should include allowances relating to the day. |
| Alternative Leave was managed in units of hours. Existing Statutory Time In Lieu (STIL - Alternative Leave) balances in units of hours must be converted into Alternative Leave balances in units of days. |
| **Terminations**  (Holidays Act section: 23, 24, 25, 40, 60) | Because of the above breaches, these need to be corrected so termination pays can be recalculated using the correct earnings and rates. |
| When people terminated, we should have paid Annual Leave entitlements using a compliant rate calculation and accrued Annual Leave should have been paid as a percentage of Gross Earnings since the employee’s last Leave Anniversary. |
| Alternate leave should be managed in units of days. |
| Notional Public holidays must be identified if falling in the Annual Leave entitlement period and must be paid at the higher of RDP or ADP, this has not been applied consistently. |
| **Casual employees**  (Holidays Act section: 28, 47, 50, 61) | For employees who work on a Public Holiday, they should have been given an alternative day as a credit. |
| Casual staff who work regularly need to be allocated Annual Leave entitlements rather than receive 8% each pay. |
| Casual employees should receive RDP vs ADP for BAPSF leave as they have no fixed roster and BAPSF leave has not consistently been paid |
| Some casuals who worked on Public Holidays are receiving the Alternate Leave credit as paid time, instead of receiving this as a credit, so getting triple time, instead of being paid double time and an Alternative Leave credit. |

# Remediation payments

We are fixing the breaches to the Holidays Act by making payments to current and former employees who were incorrectly paid and where required providing leave entitlements that were not provided.

The payments are recalculated back to 1 May 2010. The reason for this date, is that the *Employment Relations Act* provides for a six-year limitation period and the Union raised this with us in May 2016.

Not all people will receive payments because some employees were paid correctly or have not taken leave. Not all payments will be large amounts – but we will pay any money owed to employees even if the amount is small.

# When will I get paid?

Where Holidays Act remediation payments are due, current employees of Auckland District will be paid in late July 2023.

Counties Manukau and Waitemata Districts and Health Alliance, Health Source, Northern Region Alliance and New Zealand Health Partnerships payments will follow in September 2023. Former employees in all Auckland Districts will be paid in 2024.

# Remediation Payments, Tax and Benefits

Remediated Holidays Act payments will be paid as a lump sum. Any employer contributions will be based on current percentages – for example, three percent in KiwiSaver, or using the current employer superannuation rate if you are a member of a legacy private superannuation fund.

### Tax obligations and the Inland Revenue

If there are questions about tax, staff are advised to speak to Inland Revenue about their remediation payment. For our employees, your earnings are ‘taxed at source’ which means that payroll deducts a percentage of your taxable earnings and pay these directly to Inland Revenue (IR). The deduction is based on guidance tables published by IR.

Generally speaking, the more you earn the more tax you will pay. As tax rates are banded, earning additional income can sometimes push you into a higher tax bracket. This means your tax obligations might change.

Inland Revenue will offer you clear guidance and can answer any tax questions you might have. You can also seek some advice from a financial advisor or accountant if you would like an independent opinion (*See Appendix 1*).

### Benefits from Inland Revenue or MSD

If you receive payments from Inland Revenue or the Ministry of Social Development (MSD), please contact them to explain you have received a remediation payment. They will be able to provide you with further information on how remediation payments are treated with respect to any MSD payment/payments you receive.

We have told MSD and IRD that the date of the payments and they are prepared to receive calls.

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# Rectification – getting our compliance right

Leave entitlements include:

* Annual Leave
* Bereavement Leave
* Alternative Leave (for Public Holidays)
* Sick Leave
* Family Violence Leave.

The Holidays Act uses seven key terms that are central to calculating payment:

**Annual leave**

* Ordinary Weekly Pay (OWP)
* Average Weekly Earnings (AWE)
* Last 4 weeks average pay (OWP2).

**Sick, Bereavement, Alternative Days, Family Violence leave**

This is calculated by considering:

* Relevant Daily Pay (RDP)
* Average Daily Pay (ADP)
* Otherwise Working Day (OWD)
* Gross earnings (GE).

The meaning and application of these terms is in *Appendix 2.*

# Leave entitlements

The below describes the minimum entitlements provided by the Holidays Act 2003 however many of our employment agreements provide enhanced entitlements.

### Annual leave

Employee balances for Annual Leave will be managed in units of weeks, not hours, as weeks is the unit which the Holidays Act 2003 uses for measuring compliance. The Act states that every employee is entitled to a minimum of four **weeks** leave.

Mahi ē Taea is to be used across all services to record attendance including, applying for leave, and approving leave. While this system will continue to display Annual Leave balances in hours, employees will see their Annual Leave balance in units of weeks on their payslips.

Gross earnings underpin the calculation of leave entitlements. Ensuring accurate payments rely on the employee’s current work schedule being correct in Mahi ē Taea. If this is not correct, payments will not be correct.

Payments are calculated at whichever is greater:

* Average Weekly Earnings (AWE)
* Ordinary Weekly Pay (OWP)
* Last 4 weeks average (OWP2).

### Agreeing your working week

Your agreed working week is documented in your existing agreement. Where an employee consistently works more hours than their contracted hours there is a pattern of change, or a permanent change, the manager will agree with the employee on what constitutes their ‘working week.’ Any agreed change will be recorded in writing, signed by both parties, and Payroll notified to update the system.

Leave conversion – hours to weeks - The conversion is based on contracted hours only.

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| **An employee who works** **5 days a week, 40 hours per week**, so the conversion is straightforward. | The entitled and accrued balance is divided by 40. For example, the employee has a total balance of 232 hours, so the conversion is:  **232 hours / 40 = 5.8 weeks.** |
| **An employee who works** **less than 40 hours per week and the same number of days and hours every week** (say 3 days and 24 hours. The conversion uses standard hours worked - in this case it’s 24 hours). | The employee has entitled and accrued 232 hours of Annual Leave. The **standard hours** worked is 24, so the conversion is:  **232/24 = 9.6667 weeks.** |
| **An employee who works** **a 9-day fortnight**. This could be 40 hours one week, and 32 hours in the other week. | The entitled and accrued Annual Leave balance of 232 hours is divided by their **average fortnightly hours,** so the conversion is: (40+32/2 = 36 hours)  Annual Leave balance in hours divided by average fortnightly hours: **232/36 = 6.4444 weeks.** |

Casual staff

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| **Pay As You Go (PAYG) employees – also known as Casual Employees?** | Casual employees with irregular work patterns are paid 8% PAYG with their pay each fortnight. There is no change for this group. |

# What is a working week?

Under the Holidays Act 2003, employees are entitled to a minimum of four weeks’ annual leave. Below explains how leave will be deducted based on your working week.

Applying for Annual Leave: When an employee applies for Annual Leave, the proportion of the week deducted is based on contracted hours for full-time employees.

Parttime employees will be calculated at the greater of contracted hours and the average ordinary hours worked for the 14 weeks priorto the leave being taken.

*For example: you are a part-time employee and your weekly contracted hours are 24, but in the 14 weeks prior to taking Annual Leave you worked on average 30 hours per week. Your week is based on 30 hours. So, an application for one ten-hour day Annual Leave in the week, will have 0.33 of a week deducted from your balance (10/30 hours = 0.33).*

Casual employees who have a leave entitlement will have a week determined by the greater of the average ordinary hours worked over the last 52 weeks or the last 14 weeks.

In all cases where a comparison is made and the employee has taken Annual Leave in a period where they have been employed less than 14 weeks then the average will be determined by the ordinary hours worked over the number of weeks worked.

### Bereavement/tangihana leave

After six months’ continuous employment you may take three days bereavement leave for close family as defined in the Holidays Act. You can also take one day on the death of someone outside your immediate family with your manager’s agreement.

If an employee suffers a bereavement while on Annual Leave, theemployer will allow the person to take any period related to bereavement that they would be an otherwise working day, to take as an Annual holiday, as bereavement leave *(Holidays Act Section 37).*

### Public Holidays and Alternative holidays

There are 12 Public Holidays each year. If a Public Holiday falls during an employee’s Annual Leave it is treated as a Public Holiday, and not as part of the employee’s Annual Leave.

Employees are entitled to be paid notional Public Holidays when they have an Annual Leave entitlement balance on termination (this excludes accrued Annual Leave). This means that any Annual Leave entitlement is added to the employees working days following their last day of employment and any Public Holidays that fall within this period are paid as part of the termination payment.

An employee is entitled to be paid for a Public Holiday if the holiday would have been an otherwise working day**.** If an employee does not work on a Public Holiday and the day would otherwise be a working day for the employee, the employer must pay the employee not less than the employee’s relevant daily pay or average daily pay for that day**.** The employee receives at least time and a half for working on a public holiday *(Holidays Act Sections 49 and 50).*

If an employee works on a Public Holiday, the employee an Alternative holiday on a different day. This applies if the Public Holiday falls on a day that would otherwise be a working day for the employee. The alternative holiday remains in a leave balance until it is taken *(Holidays Act Section 56).*

### Sick Leave

All employees are entitled to a minimum of ten days Sick Leave per annum. If an employee becomes sick during their Annual Leave, or has a spouse or partner or dependant, who becomes sick or injured, the employee may take any period of sickness or injury that the employee would otherwise take as Annual Leave, as Sick Leave. (*Holidays Act Section 36).*

### Family Violence Leave

An employee may take up to 10 days’ Family Violence Leave in each 12-month period. If an employee is taking Annual Leave and becomes entitled to Family Violence Leave, the Annual Leave can be changed to Family Violence Leave (*Holidays Act Sections* 72C, 72D, 72H *and 37A).*

### Parental leave

Annual Leave you become entitled to while on Parental Leave, or in the 12 months following an employee’s return, will be paid at an average rate and not compared to your Ordinary Weekly Pay. It will be maintained as a separate balance called ‘Annual Leave earned on Parental Leave (ALP)’.

Annual Leave which you become entitled to during Parental Leave or within the 12 months following return from Parental Leave, is paid at 52-week Average Weekly Earnings, regardless of when it is taken.

### Appendix 1 - Tax Treatment of Remedial Holiday Pay

From a tax perspective, your payment will be taxed as extra pay, with Pay as You Earn (PAYE) income tax and any other deductions (including Student Loan and KiwiSaver obligations) being deducted at the time of payment.

Your tax will be calculated by annualising your prior 4 weeks taxable earnings at the time payment is made. Accordingly, the payment of lump sum amounts may cause individuals to move into higher tax brackets for the tax year in which the payment is made. Similarly, such payments may also have an impact on working for family thresholds and other social benefits.

You can elect to have your Holidays Act remediation payment taxed at a higher rate, but not lower. If this is required, you will need to advise Payroll before the Remediation Payment is made. Inland Revenue will give you a refund for any excess tax paid after 01 April.

As lump-sum remediated holiday payments will likely affect employees’ entitlements, impacted individuals should contact the relevant department to declare this income after they have received their payment.

Inland Revenue and the Ministry of Social Development are aware that remediation payments are being made. You should contact them after you have received your payment and they will offer guidance on what happens next.

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### Appendix 2 - Holidays Act 2003 – Common Terms

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| **Term** | **Holidays Act** | **Meaning of Terms** | **Used for calculating:** |
| **ADP** | **Average Daily Pay** – section 9A (1) and (2) | ADP may be used if it is not possible or practical to determine an employee’s RDP under section 9(1) or the employee’s daily pay varies within the pay period when the holiday or leave falls. | Compared to RDP for BAPSF leave when it is not possible to work out RDP and an ADP top-up allowance will be generated if ADP is higher.  The formula is: Gross taxable earnings for 52 calendar weeks before the end of the pay period immediately before the calculation is made, divided by number of days or part days worked. |
| **RDP** | **Relevant Daily Pay** – section 9 [[1]](#endnote-1)(1) | The amount of pay the employee would have received had the employee worked on the day concerned. | BAPSF Leave. |
| **AWE** | **Average Weekly Earnings**  Section 21 (2) | This is the average pay you have received over the previous 52 weeks. | Used to calculate your average weekly earnings over 12 months. |
| **OWD** | **Otherwise working day** Section 12 | When determining what is an OWD consideration is given to the employee agreement, work patterns and other relevant factors | Bereavement leave, alternative holidays, public holidays, sick and family violence leave (BAPSF) |
| **OWP**  **OWP2** | **Ordinary Weekly Pay** section 8 (1)  **Ordinary Weekly Pay –** section 8 (2) | The amount of pay an employee receives under their employment agreement includes regular overtime and allowances. | Where it is not possible to determine an employee’s OWP – OWP2 is used:  Gross taxable earnings over the last 4 weeks, divided by 4. |
| **GE** | **Gross Earnings (GE)** Section 14 | Includes all taxable payments: Salary/wages, allowances, leave, incentive-based payments, overtime, board, or lodgings, and first week ACC compensation payable by the employer. | Used for 4-week average (OWP2) and 52-weeks average (AWE).  Average Daily Pay (ADP), Termination pays. Includes all payments except those excluded by the Act in Section 14(b) and (c). |

# Useful sources

Holidays Act 2003 No 129 (as at 15 June 2023), Public Act Contents – New Zealand Legislation

[*https://www.legislation.govt.nz/act/public/2003/0129/latest/DLM236387.html*](https://www.legislation.govt.nz/act/public/2003/0129/latest/DLM236387.html)

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1. [↑](#endnote-ref-1)