

CONSOLIDATED SUPPORTING BASELINE DOCUMENT INFORMATION

CTU, HEALTH UNIONS, DHBs & NZ BLOOD SERVICE

HOLIDAYS ACT COMPLIANCE PROJECT

2017 - 2019

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NB. Where we have referred to MBIE Guidance please see this document:

Employment New Zealand, *Holidays Act 2003, Guidance on annual holidays, bereavement leave, alternative holidays, public holidays and sick leave*. September 2017 (second edition).

CALCULATION OF AVERAGE WEEKLY EARNINGS

Average Weekly Earnings (AWE) is used as part of determining annual holiday pay when leave is taken, or the value to be paid out for entitlement annual leave when employment comes to an end.

AWE is defined as “1/52 of an employee’s gross earnings” (s.5).

The AWE calculation is based on a numerator of Gross Earnings over the relevant 12-month period, which is then divided by 52 (the divisor s.5(1)).

Section 5 of the Holidays Act (the Act) means 1/52 of an employee’s gross earnings. As such the Labour Inspectorate accepts, 52 weeks of gross earnings / 52.

The labour Inspectorate would also accept 52 weeks + 1 day (or 2 days in a leap year) earnings as long as the divisor was 52 as per the Act.

Provided agreement with the employee exists to do so, if periods of unpaid leave of greater than 1 week (other than unpaid sick or bereavement leave) are included as part of the employee’s 12 months continuous service to be entitled to annual holidays, the 52 week divisor for establishing AWE should be reduced by the number of whole or part weeks greater than 1 on which the employee was on unpaid leave (s.16(3)).

Note for Remediation: Payroll processes using an hourly rate divisor (2080 or 2086) methodology to calculate AWE should be reconfigured according to the advice above, going forward. Compliance testing should compare existing AWE calculations against the minimum of 52 weeks of gross earnings / 52.

CALCULATION OF ORDINARY WEEKLY PAY

Ordinary Weekly Pay (OWP) is used as part of determining annual holiday pay when leave is taken, cashed-up, or the value to be paid out as annual holiday entitlement when employment comes to an end.

The Act provides two ways of establishing OWP.

The default approach is set out in s.8(1) and “means the amount of pay that the employee receives under his or her employment agreement for an ordinary working week” – with a list of specified inclusions and exclusions. In applying the default calculation using s.8(1) the amount of ordinary weekly pay will be apparent from the existing employment arrangements already in place for that employee that describe an ordinary working week.

If it is not possible to determine an employee’s OWP pay under 8(1), then s8(2) provides a formula to establish OWP based on a four-week average of gross earnings.

The determination of OWP will depend on an individual’s specific employment arrangements and when annual holidays are taken, as per the Act, the calculation is done at the beginning of the annual holidays.

It is important to note that annual holidays are calculated before the holiday is taken. For overtime to be included in OWP(1) and (2), it must be regular. To test for regularity, as in frequency, such as how often does the employee do overtime, not consistency of time or payment amount.

To better ensure compliance, OWP will be calculated according to s.8(1) and s.8(2), and the higher will then be compared to AWE. The Labour Inspectorate accepts this approach as it will ensure the employee receives at least the minimum under the Act.

It should be noted that the DHBs will first ensure all appropriate payments are configured to be included in the OWP calculation.

To the extent that this is able to be systematised – the following table provides an overview of types and recommended treatment:

Table: Types of Employees and Recommended Ordinary Weekly Pay Treatment

Employees who work a consistent ordinary weekly work pattern and receive a consistent ordinary weekly pay <i>(ord. weekly hours fixed/ord. weekly pay fixed)</i>	8(1)	Non-rostered administration and clerical staff Fixed shifts Nursing or Allied staff Management Salaried staff
Employees who may work variable hours (in terms of number of hours and/or when their hours are worked) but receive a standard weekly salary payment (although they may receive additional allowances in certain instances) <i>(ord. weekly hours variable/ord. weekly pay fixed)</i>	8(1)	Management staff SMOs and RMOs Mental Health staff on the Alternative Penal System (APS) in the Auckland DHBs

<p>Employees who work a variable weekly pattern (in terms of number of hours and/or when their hours are worked) and who's ordinary weekly pay varies based on their work patterns <i>(ord. weekly hours variable/ord. weekly pay variable)</i></p>	<p>8(2)</p>	<p>Variable shifts Nursing, Allied and support staff Rostered/rotating Nursing and Allied staff Variable hours staff</p>
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Table: Components of Ordinary Weekly Pay

PAYMENT	OWP	COMMENTS
Salary & Wage Payments		
Salary & wages [s.8(1)(a)]	Include	
Penal rates	Include	<p>Included in 8(1) if the employee’s ordinary working week includes fixed shifts that attract penal rates</p> <p>Included in 8(2) as not specifically excluded from the gross earnings calculation in 8(1)(c)(i) to (iii)</p>
Rostered overtime [s.8(b)(ii)]	Include	<p>Included in 8(1) or 8(2) in situations where the employee’s ordinary working week includes rostered overtime – will be an issue of fact depending on the requirements of the roster patterns worked by employee. This is likely to be uncommon. As per the process outlined in the framework, if an employee believes regular overtime has not been included in OWP they can raise this with their employer who will consider in good faith.</p> <p>The Labour Inspector accepts this approach. Rostered overtime because it is known (the amount of time) prior to holiday is included under s8(1), unrostered overtime is not known prior to the holiday and subsequently could be a trigger of s8(2).</p>
Unrostered overtime [s.8(c)(ii)]	Include	<p>All overtime is included in OWP 8(2) This may include overtime as part of on-call/call back rosters.</p> <p>The Labour Inspector accepts this approach as regularly doing overtime triggers the use of s8(2).</p>
Cash value of board & lodgings [s.8(b)(iii)]	Include*	The cash value of board and lodging needs to be included where there is a deduction from the employee’s remuneration.
Allowances		
On call allowances	Include	Include in 8(1) if the employee’s ordinary working week includes fixed on call payments

		Include in 8(2) as not specifically excluded from the gross earnings calculation in 8(1)(c)(i) to (iii)
Responsibility allowances (e.g. higher duties allowance, DAO allowances, Clinical Director allowance)	Include	Include in 8(1) if (and when) the employee receives the allowance as part of their salary for their ordinary working week Include in 8(2) as not specifically excluded from the gross earnings calculation in 8(1)(c)(i) to (iii)
Qualification allowances (e.g. PDRP allowance, QLP allowance))	Include	Include in 8(1) if the employee receives the allowance as part of their salary for their ordinary working week Include in 8(2) as not specifically excluded from the gross earnings calculation in 8(1)(c)(i) to (iii) PSE group - This is related to page 6 - OWP where it states allowances are on a case by case basis the example used was to include clothing if paid daily to say mental health nurses
Reimbursing-type allowances (e.g. meals, clothing allowances, etc)	Case-by-case	Likely to be included under 8(1) if paid weekly based on general qualification with no weekly test of eligibility (e.g. Mental Health Nurse clothing & laundry allowances) Likely to be excluded under 8(1) if triggered/paid on an event-based basis (e.g. standard meal allowance) Excluded in 8(2) based on general exclusion of reimbursing-type allowances from the gross earnings calculation (s.14(c)(i) and (ii))
<p>NB A number of allowances are contractually required to continue to be paid during periods of annual holidays – if s.8(2) is used as the basis of establishing OWP then there is a need to ensure the allowances is not double-paid. Decision is needed as to the approach to take – if paid separately (to ensure visibility on employee pay slips) then should be excluded from s8(2) (Gross Earnings for paid leave - though requires subsequent adjustment on termination of employment). Preference is to include in s8(2) Gross Earnings and cease separate payment which raises a communication issue.</p>		
Bonuses and commissions		
Productivity or incentive-based payments	Case-by-case	Correct treatment will be dependent on how the bonus/commission scheme is devised and specified. In DHB context these types of payments are not common and where applicable, are likely to be excluded from an employee’s OWP (i.e. an annual bonus) under 8(1) or 8(2)
Other Benefits		
Employer contribution to superannuation scheme [s.8(c)(v)]	Exclude	

For the purposes of remediation, the calculation used to determine annual holiday pay will be as follows:

OWP (as per s8(1)) will be compared to the last 4 calendar weeks (or longer if the period contains unpaid leave) as per (s8(2)) and Average Weekly Earnings. The highest of the three will be paid.

CALCULATION OF RELEVANT DAILY PAY

Relevant Daily Pay (RDP) is used as part of determining payment for a public holiday, an alternative holiday, sick leave and bereavement leave (BAPs).

RDP means “the amount of pay that the employee would have received had the employee worked on the day concerned”. It should be noted that an employer may use average daily pay (ADP) to calculate BAPS if it is not possible or practicable to calculate RDP or the employee’s daily pay varies within the pay period when the holiday or leave falls.

RDP can be established based on the known (rostered) expectations of the day(s) on which the employee is absent if the roster is a fair representation of what the employee would have worked. However, when overtime is done by others on the same shift consideration needs to be given whether the employee absent would have worked that overtime. Employees should be made aware that ADP may result in the employee receiving less than what the employee would have received had they worked the day.

To better ensure compliance, a comparison will be undertaken between RDP and ADP and the higher will be paid. It should be noted that the DHBs will first undertake a piece of work to ensure all relevant payments are being included in both RDP and ADP before doing the comparison of the two payments.

Because the Act allows the employer to use ADP when the employees pay varies in the pay period the Labour Inspector accepts the process will ensure employees receive at least the minimum payment required under the Act. Employees will receive at minimum what they would have been rostered for the day of leave even if the ADP calculation would have resulted in a lesser payment.

It is important to note that RDP prior to 1 April 2011 is to be calculated based on the four week divisor calculation.

PAYMENT	RDP	COMMENTS
Salary & Wage Payments		
Salary & wages [s.9(1)(a)]	Include	
Penal rates	Include*	Included if, on the relevant day(s) the employee would have worked a duty that attracted penal rate payments.

		Except that, in applying RDP for the purpose of the minimum payment for working on a public holiday, “penal rates” are excluded (refer s.50(2)).
Rostered overtime [s.9(1)(b)(ii)]	Include*	Section 9(1)(b)(ii) confirms that payments for overtime are included in RDP if those payments would have otherwise been received had the employee worked on the day concerned. Included in situations where the employee’s duties for the day in question include rostered overtime will be an issue of fact depending on the requirements of the roster patterns worked by employee.
Unrostered overtime [s.9(1)(b)(ii)]	Exclude	The Labour Inspectorate accepts where the roster is a fair representation of what the employee would have worked, i.e. if the rosters are adhered to and rarely have variations they can be used to determine RDP, rostered overtime would appear on the roster and subsequently be included. When overtime is done by others on the same shift consideration needs to be given if the employee absent would have worked that overtime. This situation would trigger the employers ability to use ADP under the Act. Employees should be made aware that ADP may result in the employee receiving less than what the employee would have received had they worked the day.
Cash value of board & lodgings [s.9(1)(b)(iii)]	Include*	The cash value of board and lodging needs to be included where there is a deduction from the employee’s remuneration.
Allowances		
On call allowances	Include	Include where the employee was rostered on call for some or all of the day in question
Responsibility allowances (e.g. higher duties allowance, DAO allowances, Clinical Director allowance)	Include	Include where the employee receives the allowance as part of their regular salary
Qualification allowances (e.g. PDRP allowance, QLP allowance))	Include	Include where the employee receives the allowance as part of their regular salary
Reimbursing-type allowances (e.g. meals, clothing allowances, etc)	Case-by-case	Include if calculated daily based on general qualification with no test of eligibility (e.g. Mental Health Nurse clothing & laundry allowances)

		Exclude if triggered/paid on an event-based basis (e.g. standard meal allowance)
Bonuses and commissions		
Productivity or incentive-based payments	Case-by-case	Correct treatment will be dependent on how the bonus scheme is devised and specified. In DHB context these types of payments are not common and, where applicable, are likely to be excluded from an employee's RDP
Other Benefits		
Employer contribution to superannuation scheme [s.9(c)]	Exclude	

For the purposes of remediation, the calculation used to determine payment for BAPS will be as follows: A comparison between RDP and ADP will be taken and the higher paid. As per the Act allows, where RDP cannot be determined, for example where an employee takes extended sick leave prior to rosters being released, ADP will be used.

CALCULATION OF AVERAGE DAILY PAY

Average Daily Pay (ADP) may be used as an alternative to Relevant Daily Pay (RDP) to calculate payment for sick and bereavement leave, and for public and alternative holidays.

While it is discretionary, ADP may only be used where either

- It is not possible or practicable to determine an employee's RDP (s.9A(1)(a)); or
- The employee's daily pay varies within the pay period when the holiday or leave falls (s.9A(1)(b))

ADP is established by dividing

- a. Gross earnings for the previous 52 calendar weeks before the end of the pay period immediately before the calculation is made,

by

- b. The number of whole or part days during which the employee earned those gross earnings
 - Including any day on which the employee was on a paid holiday or paid leave
 - Excluding any other day on which the employee did not actually work

A day where the employee was on call, but did not otherwise work, is NOT included in the count of whole or part days.

Where ADP is used to establish the minimum payment for working on a public holiday, then the premium for working on a public holiday itself is excluded and paid separately (s.9A(3)).

CALCULATION OF GROSS EARNINGS

Gross Earning (GE) is an input into calculating:

- Average Weekly Earnings (AWE) for the purposes of paying Annual Holidays
- The basis of Ordinary Weekly Pay under s8(2) where it is not possible to determine this under s.8(1) (NB specific additional exclusions apply)
- Average Daily Pay (ADP) for the purposes of paying Sick and Bereavement Leave, and Public and Alternative Holidays
- Annual Holiday Pay when employment comes to an end

Gross Earnings needs to be determined over different time periods depending on the calculation it is an input into:

- For calculating AWE or ADP, Gross Earnings is considered over 52 weeks.
- Unless the employee is taking leave in advance and has less than 12 months service
- For calculating OWP under the 8(2) methodology, Gross Earnings is considered over 4 weeks.
- For calculating Annual Holiday Pay when employment comes to an end, Gross Earnings is considered over the period since the employee's last entitlement to annual holidays arose or since employment commenced if employed for less than 12 months (typically their anniversary of service but this may be impacted by periods of unpaid leave)
- For calculating holiday pay on a pay-as-you-go basis (s.28), Gross earnings is calculated on a pay-by-pay basis.

PAYMENT	GROSS EARNINGS	COMMENTS
Salary & Wage Payments		
Salary & wages [s.14(a)(i)]	Include	NB includes payment for “keeping in touch” days under s.71CE of the Parental Leave & Employment Protection Act
Penal rates	Include	
Overtime [s.14(a)(v)]	Include	The term overtime is used, but not defined in the Act – in common usage it refers to time worked in excess of ordinary daily or weekly hours, including time when the employee is called back to work (call backs). Overtime is defined in most if not all DHB collective agreements. All payments for overtime and call backs are included in gross earnings.
Cash value of board & lodgings [s.14(a)(vi)]	Include*	NB s.10 defines how and under what circumstances this factor is established. Cash value is established: <ul style="list-style-type: none"> • as agreed by employer & employee; or • as determined by a Labour Inspector Cash value of board and Lodgings are not included where: <ul style="list-style-type: none"> • work done requires employee to stay overnight in a residence other than their usual place of residence • special circumstances apply

		Board and lodgings needs to be included where there is a deduction from the employee's remuneration.
Statutory "travel between clients" payments under s.14 of the Home & Community Support (Payment for Travel Between Clients) Settlement Act [s.10A]	Include	Payments here are for the <i>time spent travelling</i> between clients as specified in the In-between travel settlement.
Statutory "travel between clients" payment under s.19 of the Home & Community Support (Payment for Travel Between Clients) Settlement Act [s.10A]	Exclude	Payments here are for reimbursement of the <i>costs of travelling</i> between clients as specified in the In-between travel settlement (e.g. mileage)
Allowances		
Taxable non-reimbursing allowances [s.14(a)(ii)]	Include	Covers payments of 'salary-like' allowances such as: <ul style="list-style-type: none"> • on call allowances (either 'as rostered' or as a salary component e.g. SMO availability payments) • responsibility allowances (e.g. higher-duties allowance, DAO allowance, Clinical Director allowance) • qualification allowances (e.g. PDRP allowance, QLP allowance) NB A number of allowances are contractually required to continue to be paid during periods of paid leave and there is a need to ensure the allowance are not double-paid. If paid separately (e.g. to ensure visibility on employee pay slips) then should be excluded from Gross Earnings for paid leave (though requires subsequent adjustment on termination of employment.). Preference is to include in Gross Earnings and cease separate payment which raises a communication issue.
Payment for actual costs incurred by the employee related to the employee's employment [s.14(c)(i)]	Exclude	Covers reimbursing payments such as: <ul style="list-style-type: none"> • Professional development payments (e.g. CME reimbursements, Professional Association memberships) • APC reimbursement
Payment of a reasonably assessed amount to reimburse for costs incurred by the employee related to the employee's employment [s.14(c)(ii)]	Exclude	Covers reimbursing-style allowances such as: <ul style="list-style-type: none"> • Meal allowances [<i>taxable/non-taxable?</i>] • Clothing allowances [<i>taxable/non-taxable?</i>] • Incidentals allowances Generally, PAYE taxable allowances are more likely to fall for inclusion into GE, unless they are reasonably assessed amounts to reimburse for costs incurred related to employment, as per collective agreement.
Leave payments		
Payments for statutory and/or contractual annual holidays or BAPS (Bereavement, Alternative	Include	Covers payment for both the minimum statutory entitlement and any additional contractually specified

holidays, Public holidays, Sick) leave taken [s.14(a)(iii)]		annual, bereavement, sick leave or payments for public or alternative holidays
Payments for other contractual leave taken	Include	Covers payment for contractual leave types such as: <ul style="list-style-type: none"> • Long service leave • Professional development leave • Shift leave
Volunteer's leave payments under the Volunteers Employment Protection Act 1973 [s.14(b)(iii)]	Exclude	
Cashed up alternative holidays	Include	NB value of alternative holiday when cashed up is only allowed if that holiday arose 12 months or more prior, and is at a rate that is agreed between the employer and employee [s.61]
Cashed up statutory annual holidays payments [s.14(c)(iv)]	Exclude	NB Only the fourth week of an employee's statutory annual holiday entitlement may be cashed up [s.28A]
Cashed up annual holiday payments for extra holidays beyond the statutory minimum	Include	
Cashed up forms of other contractual leave	Include	Covers payment for cashing up contractual leave types such as: <ul style="list-style-type: none"> • Long service leave • Shift leave
Cashed up contractual time-off-in-lieu (TOIL)	Include	
Bonuses and commissions		
Contractual incentive or productivity payments (whether included in the IEA/CEA, or as part of the remuneration package, agreed verbally or set out in another document) [s.14(a)(iv)]	Include	
Contractual commission payments (whether included in the IEA/CEA, or as part of the remuneration package, agreed verbally or set out in another document [s.14(a)(iv)]	Include	
Truly discretionary payments (where there is no contractual basis to the payment), including discretionary leave [s.14(b)(i)]	Exclude	NB the definition of discretionary payment refers to a payment that the employer is not required to make under the employment agreement [s.5]. An assessment needs to be made as to whether or not the bonus is truly discretionary or is performance based.

		NB Discretionary Sick Leave provided under an Employment Agreement is a contractually based provision therefore included.
Other Benefits		
Employer contribution to superannuation scheme [s.14(c)(iii)]	Exclude	
Employer ACC payments (not payments made by the Commission)		
First week of ACC compensation paid by the employer under s 97 of the IPR&C Act 2001 [s.14(a)(vii)]	Include	IPR&C Act = Injury Prevention, Rehabilitation & Compensation Act 2001
Payment for sick leave that is used to top up the first week or other ACC compensation	Include	NB for completeness – situation covered as part of treatment of sick leave above
Weekly ACC compensation beyond the first week of compensation [s.14(b)(ii)]	Exclude	Some DHBs make payments on behalf of ACC through a Partnership Agreement with ACC. These payments are treated as if they are made by ACC. If the payment top-up is provided to the employee eg for work-related accidents, but not deducted from Sick Leave – and this is contractually based, then it would be included
Termination Payments		
Payment in lieu of <u>contractual</u> notice	Include	NB: contractual notice periods do not extend an employee's employment. Ensure you are using the correct termination date (i.e. last day of employment) and providing the correct public holidays as per section 40(3) of the Act.
Payment of the employee's outstanding annual holidays entitlement	Include	Required to include as per s.26(a)
Payment of public holidays occurring after termination but during the period of the employee's remaining annual holidays entitlement	Include	Required to include per s40(3)
Payment of annual holidays where a further entitlement has not arisen (including part year or where employment of less than 12 months)	Exclude	Payment of these holidays is based on Gross Earnings, calculation would become circular if required to include [cf.s.26(a)]
Contractual retirement payments (covers "gratuities" payments – eg. retirement gratuity, service payment)	Include	See MBIE Guidance, Appendix 1 Gross Earnings, page 82. Contractual retirement payments are included in the definition of gross earnings in s.14.
Contractual payment in lieu of long service leave	Include	

Contractual redundancy compensation	Seek Advice	<p>The DHBs have sought advice and will not be including contractual redundancy compensation for remediation purposes however if case law was to occur this will be revisited.</p> <p>The Labour Inspectorate accepts this approach - see MBIE Guidance, Appendix 1 Gross Earnings, page 82.</p>
Non-contractual redundancy or retirement/service payments	Exclude	NB the definition of discretionary payment refers to a payment that the employer is not required to make under the employment agreement [s.5]
Contractual payment of bonus or commission (whether on a pro-rated basis or otherwise) [s.14(a)(iv)]	Include	
Payment in settlement agreement reflecting contractual entitlements	Include*	The inclusion of such payment in Gross Earnings is likely to need to be determined on a case-by-case depending on detail of settlement (see MBIE Guidance page 83).
Additional monetary payment in settlement agreement not included in employment agreement	Exclude	
Compensation pursuant to s123(1)(c)(i) of the Employment Relations Act 2000	Exclude	Refers to payment made for 'hurt and humiliation' – are not a contractual payment

ENTITLEMENT TO ANNUAL HOLIDAYS

The Holidays Act provides that employees are entitled to a minimum of four weeks' paid annual holidays after each completed 12 months of continuous employment (s.16).

The employer and employee may agree on how this entitlement is met based on what genuinely constitutes a working week for the employee (s.17).

If an agreement is reached between an employer and employee as to how annual holidays is to be provided as per section 17, the employer needs to ensure when annual holidays are taken what was agreed is still what genuinely constitutes a working week for the employee

The statutory unit of annual holidays is "weeks".

The parties have agreed that while the aspiration is to move to weeks, the current practices across all DHBs to manage annual holidays on the basis of hours will necessarily continue until there is the capacity to change. It is also acknowledged that any change away from management of annual holidays in hours will involve significant communication activity to explain the change and its consequences to staff. This communication should occur before any change is made.

It is agreed that annual holidays entitlements in hours should be based on what genuinely constitutes a working week for employees and that this is best expressed as their contracted hours of work.

If an alternative method to the Act is to be used the employer must ensure the method provides the same or greater than the Act in all instances. NB: contracted hours do not always = actual hours, especially over time if not monitored.

For a full-time (40 hour) employee, the four week annual leave entitlement would be expressed as 160 hours.

The information in this text box is included in the Framework for Local DHB Holidays Act Review.

Treatment of Annual Leave Going Forward When Employee’s FTE Changes

Using contracted hours as the basis on which annual leave entitlements are established means that – going forward – leave balances (covering both entitlement leave and ‘accrued’ leave) should be amended to reflect any permanent changes to an employees contracted hours of work.

The formula for establishing the new balance is

$$\text{Current leave balance} \div \text{current contracted weekly hours [gives leave balance in weeks]} \times \text{the new contracted weekly hours}$$

This would need to be effected in the payroll system by an adjustment line.

Appropriate education should be provided to employees around change of practice to be compliant with the Act.

Scenario – Employee reduces from full-time to part-time

Employee’s contract hours when employed	40/week
Annual leave balance at 6 months	80 hours (4 wks @ 40 hrs/wk) x 6/12 mths
Permanent change in hours after 6 months	20/week
Adjustment of A/L balance at 6 months to	40 hours (80 hrs/40 hrs/wk) x 20 hrs/wk (Adjustment of -40 hours)
Annual leave entitlement at 12 months	80 hours = 4 weeks @ 20 hrs/wk

If in the above scenario the employee had taken 1 week’s A/L in advance in first 6 months then:

Employee’s contract hours when employed	40/week
Annual leave balance at 6 months	40 hours (4 wks @ 40 hrs/wk) x 6/12 mths less 40 hours leave taken in advance
Permanent change in hours after 6 months	20/week
Adjustment of A/L balance at 6 months to	20 hours (40 hrs/40 hrs/wk) x 20 hrs/wk (Adjustment of -20 hours)
Annual leave entitlement at 12 months	60 hours = 3 weeks @ 20 hrs/wk

If in the above scenario the employee had taken 1 day’s A/L in advance in first 6 months then:

Employee’s contract hours when employed	40/week
Annual leave balance at 6 months	72 hours (4 wks @ 40 hrs/wk) x 6/12 mths less 8 hours leave taken in advance
Permanent change in hours after 6 months	20/week

Adjustment of A/L balance at 6 months to	36 hours (72 hrs/40 hrs/wk) x 20 hrs/wk (Adjustment of -36 hours)
Annual leave entitlement at 12 months	76 hours = 3.8 weeks @ 20 hrs/wk

Scenario – Employee increase from part-time to full-time

Employee’s contract hours when employed	24/week (0.6 FTE)
Annual leave balance at 6 months	48 hours (4 wks @ 24 hrs/wk) x 6/12 mths
Permanent change in hours after 6 months	40/week
Adjustment of A/L balance at 6 months to	80 hours (48 hrs/24 hrs/wk) x 40 hrs/wk (Adjustment of +32 hours)
Annual leave entitlement at 12 months	160 hours = 4 weeks @ 40 hrs/wk

If in the above scenario the employee had taken 1 week’s A/L in advance in first 6 months then:

Employee’s contract hours when employed	24/week
Annual leave balance at 6 months	24 hours (4 wks @ 24 hrs/wk) x 6/12 mths less 24 hours leave taken in advance
Permanent change in hours after 6 months	40/week
Adjustment of A/L balance at 6 months to	40 hours (24 hrs/24 hrs/wk) x 40 hrs/wk (Adjustment of +16 hours)
Annual leave entitlement at 12 months	120 hours = 3 weeks @ 40 hrs/wk

If in the above scenario the employee had taken 1 day’s A/L in advance in first 6 months then:

Employee’s contract hours when employed	24/week
Annual leave balance at 6 months	40 hours (4 wks @ 24 hrs/wk) x 6/12 mths less 8 hours leave taken in advance
Permanent change in hours after 6 months	40/week
Adjustment of A/L balance at 6 months to	72 hours (40 hrs/24 hrs/wk) x 40 hrs/wk (Adjustment of +32 hours)
Annual leave entitlement at 12 months	152 hours = 3.8 weeks @ 40 hrs/wk

If in the above scenario the employee had taken 3 weeks’ A/L in advance in first 6 months then:

Employee’s contract hours when employed	24/week
Annual leave balance at 6 months	-24 hours (4 wks @ 24 hrs/wk) x 6/12 mths less 72 hours leave taken in advance
Permanent change in hours after 6 months	40/week
Adjustment of A/L balance at 6 months to	-40 hours (-24 hrs/24 hrs/wk) x 40 hrs/wk (Adjustment of -16 hours)
Annual leave entitlement at 12 months	40 hours = 1 week @ 40 hrs/wk

Scenario – Employee changes proportion of part time

Employee’s contract hours when employed	24/week (0.6 FTE)
Annual leave balance at 6 months	48 hours (4 wks @ 24 hrs/wk) x 6/12 mths
Permanent change in hours after 6 months	32/week (0.8 FTE)

Adjustment of A/L balance at 6 months to

64 hours (48 hrs/24 hrs/wk) x 32 hrs/wk
(Adjustment of +16 hours)

Annual leave entitlement at 12 months

128 hours = 4 weeks @ 32 hrs/wk

PAYMENT OF ANNUAL HOLIDAYS

Where annual holidays are taken once the employee's entitlement has arisen, payment must be made:

- For the agreed portion of the annual holiday entitlement (s.21(2)(a))
- At the greater of:
 - The employee's ordinary weekly pay (OWP) at the beginning of the annual holiday (s.21(2)(b)(i)) or
 - The employee's average weekly earnings for the 12 months immediately before the end of the last pay period before the annual holiday (s.21(2)(b)(ii))
- OWP (as per s8(1)) will be compared to the last 4 calendar weeks (or longer if the period contains unpaid leave) as per (s8(2)) and Average Weekly Earnings. The highest of the three will be paid.

Annual holidays may be taken in advance of the entitlement arising. Where this occurs, payment must be made:

- For the agreed portion of the annual holiday entitlement (s.22(2)(a))
- At the greater of:
 - The employee's ordinary weekly pay (OWP) at the beginning of the annual holiday (s.22(2)(b)(i)) or
 - The employee's average weekly earnings for:
 - the 12 months immediately before the end of the last pay period before the annual holiday if the employee has worked for the not less than 12 months (s.22(2)(b)(ii)(A)) or
 - the period of employment before the end of the last pay period before the annual holiday if the employee has worked for the employer for less than 12 months (s.22(2)(b)(ii)(B)) – in which case the divisor for gross earnings is reduced to represent the number of whole or part weeks that the employee has worked for the employer (s.22(3))

If the system is using hours, when an employee changes standard hours, the system needs to change at the time to ensure the divisor in hours/days is equivalent to 52.

Interaction Annual Leave and Parental Leave

Different rules may apply where an employee becomes entitled to annual holidays during

- a period of Parental Leave under the Parental Leave and Employment Protection Act
- a period of preference in obtaining employment
- the year in which the employee returns to work after a period of Parental Leave under the Parental Leave and Employment Protection Act or period of preference in obtaining employment

In these cases, payment for these annual holidays (the holidays that the employee became entitled to during parental leave) are only required to be made at the rate of the employee's AWE for the 12 months immediately before the end of the last pay period before the annual holiday [s.42(2) Parental Leave & Employment Protection Act]. This is unless the employee has contracted out of the

lower rate in accordance with s 72 of the Parental Leave and Employment Protection Act. The main groups who have done so are SMOs and RMOs via their respective MECAs.

PAYMENT OF ANNUAL HOLIDAYS ON TERMINATION WHERE ENTITLEMENT HAS NOT ARISEN

When employment comes to an end, the employer is required to pay the employee annual holiday pay where the entitlement has not arisen. This can occur where:

- The employee's employment comes to an end within 12 months (s.23); or
- The employee's employment comes to an end before a further entitlement to annual holidays has arisen (s.25)

Where the employee's employment comes to an end within 12 months, payment must be made:

- At 8% of the employee's gross earnings since the commencement of employment (s.23(2)). Note that gross earnings for the purpose of the 8% includes payment for entitled leave under s.24 (see s.26)

Less

- Any amount paid to the employee for annual holidays taken in advance (s.23(2)(a)); or
- Paid in accordance with s.28 (s.23(2)(b)).

Where the employee's employment comes to an end before a further entitlement to annual holidays has arisen, payment must be made:

- At 8% of the employee's gross earnings since the employee last became entitled to annual holidays – i.e. typically the employee's anniversary of service(s.25(2))

Less

- Any amount paid to the employee for annual holidays taken in advance (s.25(2)(a)); or
- Paid in accordance with s.28 (s.25(2)(b)).

PAYMENT OF ANNUAL HOLIDAY ENTITLEMENT ON TERMINATION

When employment comes to an end, the employer is required to pay the employee for their unused annual holiday entitlement. Payment must be made:

- For the portion of their annual holiday entitlement that is untaken at the end of employment (s.24(2))
- At the greater of:
 - The employee's ordinary weekly pay (OWP) at the date of the end of the employee's employment (s.24(2)(a)) or
 - The employee's average weekly earnings for the 12 months immediately before the end of the last pay period before the end of the employee's employment (s.24(2)(b))

This amount is included in the employee's gross earnings for the purpose of determining the payment of annual holiday pay where the entitlement has not arisen (s.26)

The employee must also be paid for any public holidays that would:

- Otherwise have been a working day for the employee (s.40(3)(a)) and
- Occur during the period covered by the employee's annual holiday entitlement had s/he taken their entitlement immediately after the date on which their employment ends (s.40(3)(b))

PAYMENT OF ANNUAL HOLIDAYS WITH THE EMPLOYEE'S PAY ('PAY AS YOU GO')

Annual holiday pay may be paid with the employee's pay (pay-as-you-go) in two scenarios:

- The employee is employed on a fixed-term agreement to work for less than 12 months (s.28(1)(a)(i)) including where the employee is engaged on a series of fixed term agreements of less than 12 months that in combination are beyond 12 months (s.28(2)); or
- Where the employee works for the employer on a basis that is so intermittent or irregular that is impracticable for the employer to provide the employee with 4 weeks' annual holidays.

While the MBIE guidance does not provide a definitive test on how to determine whether an employee's work is so intermittent or irregular that it is impracticable for the employer to provide public holidays, assessment must be made whether an employee satisfies the criteria in section 28 to receive annual holiday pay regularly with the employees pay. See MBIE guidance pages 45-47.

There are two aspects to any question around this:

- Whether there is an identifiable 'regular' pattern in the employee's work for the employer (essentially to proxy for contracted hours on which the leave entitlement is established – i.e. what is a week). The Labour Inspectorate note that days may indicate if a regular pattern is occurring, if the hours do not.
- Whether there is any certainty on future employment at the point(s) at which they intend to take annual holidays – e.g. if the employee was to take annual holidays in a week they had no rostered hours, how would this be paid?

See MBIE guidance on pages 35-38 for determining annual holiday entitlements for employees with unpredictable work patterns. Also, employment agreements cannot contract out of the Holidays Act, if the criteria in section 28 is not satisfied, an employee cannot be paid pay-as-you-go.

DHBs need to be clear that the basis on which they elect to pay-as-you-go for those employees with whom this is used will stand up to scrutiny when viewed against the statutory criteria. If a DHB has paid 8% to employees in a case where the Inspector determines leave should be entitled, the DHB may be liable to reinstate the leave and cannot recoup the 8%.

The Framework document provides the agreed approach to assess remediation for employees receiving PAYG.

As per the Act where annual holidays may be paid on a pay-as-you-go basis:

- The arrangement must be agreed in the employee's employment agreement (s.28(1)(b))
- It must be a separately identifiable component of the employee's pay (s.28(1)(c))
- The payment must be made at not less than 8% of the employee's gross earnings (s.28(1)(d))

Approach to PAYG Leave as per Framework

The following is the agreed approach between the CTU, Unions and DHBs to apply to remediate employees being paid PAYG leave, or who have been paid PAYG in the past:

Principles:

1. The assessment and analysis for remediation of employees being paid PAYG leave, or who have paid PAYG leave in the past, will be conducted in a transparent and bipartite nature.

2. Individual employees are entitled to request a detailed assessment of their situation should they disagree with the outcome of the applied steps below.

Steps:

3. Identify the employees who received PAYG currently, or in the past;
4. Remove from that pool fixed term employees or those engaged for less than 12 months;
5. Identify employees receiving PAYG more than 12 months. This is an automatic trigger to undertake further investigation as per step 7 below;
6. Conduct an analysis of the gaps in engagements of employment as per the following:
 - Identify commencement date;
 - Determine gaps in service;
 - Conduct a gaps test:
 - Add up all annual leave, BAPs leave = maximum gap
 - Determine how many pay periods within the maximum gap;
 - if the gap in engagement is so large that it could not have been covered by annual leave, sick leave or bereavement leave, then the gap can be treated as a break in employment for remediation purposes.
7. Identify work patterns - The assessment is to be conducted on an individualised basis because the outcomes will be different for each employee / type of employee.
8. Once assessments have been carried out, the DHB to provide a list of employees receiving PAYG to the relevant union representatives (personal information can be redacted such as providing employee number instead of employee name)
9. The union is to undertake its assessment of a random sample.
10. The unions and DHBs will consult and agree on whether the sampling is sufficient to apply to groups of employee, or an individual employee-by-employee analysis needs to be conducted.
11. Outcomes of assessment:
 - For employees still engaged, those not eligible to receive PAYG are to be provided with annual holidays and provided with an updated or amended annual holiday entitlement.
 - For employees who have been terminated, the employee is to be paid their annual holiday entitlement. OWP for these employees will be what is a week at the time of termination.

Regarding compliance moving forward, the employer needs to ensure they have processes in place to ensure employees receiving pay-as-you-go regularly with their pay continue to satisfy the criteria in section 28.

In addition to the above, employees are to be assessed to determine eligibility for public holidays and to be paid accordingly.

ANNUAL HOLIDAYS PAID OUT

Employees may request a maximum of 1 week of their statutory annual holiday entitlement is paid out in each 12-month period (s.28A(2)(b)).

Where the employer agrees to the request to pay out the 4th week of annual holidays, payment must be made in accordance with s.21(2) (s.28B(1)(a)). This requires payment is made at the greater of:

- The employee's ordinary weekly pay (OWP) at the beginning of the annual holiday (s.21(2)(b)(i)) or
- The employee's average weekly earnings for the 12 months immediately before the end of the last pay period before the annual holiday (s.21(2)(b)(ii))

NB Annual holidays paid out in accordance with 28B are not included in Gross Earnings. However, any annual holiday entitlement provided that is greater than the Act, for example a fifth week of annual holidays, if paid out is included in gross earnings.

ENTITLEMENT TO PUBLIC HOLIDAYS

Employees are entitled to 11 public holidays per annum if they fall on days that would “otherwise be a working day” for the employee (s.43(a)).

The key issue to establish is how the payroll system determines the issue of whether a public holiday would otherwise be a working day for the employee.

For staff groups that work fixed hours this should be unproblematic.

For groups that work variable hours, but are on a roster, then it should also be a simple matter to establish whether the day would otherwise be a working day – noting that many collective agreements provide rules for determining such matters.

For some groups that work irregular hours, such as casuals, an otherwise working day is not clear and accordingly the employer and employee are required to reach agreement on the matter and must take into account:

- The employee’s employment agreement (s.12(3)(a))
- The employee’s work patterns (s.12(3)(b)); and
- Any other relevant factors including
 - Whether the employee works for the employer only when work is available (s.12(3)(c)(i))
 - The employer’s rosters or other similar systems (s.12(3)(c)(ii))
 - The reasonable expectations of the employer and employee that the employee would work on the day concerned (s.12(3)(c)(iii))
- Whether, but for the day being a public holiday...the employee would have worked on the day (s.12(3)(d))

The Labour Inspectorate have provided guidance on determining what would otherwise be a working day for an employee. See MBIE guidance pages 13-15.

“Determining whether a day is an otherwise working day is very much a practical exercise. Each case needs to be determined with reference to the particular nature of the employee’s work pattern. When it is not clear, employers and employees must engage with each other in good faith to reach an agreement, taking account of all the relevant factors, including those above.” MBIE guidance page 14.

The MBIE guidance also notes that the prevailing case law has indicated that factors listed in s.12(3) are not the only ones that can be taken into account and “are very open-ended and flexible” Court of Appeal in *New Zealand Fire Service Commission v New Zealand Professional Firefighters Union* [2007] 2 NZLR 356 (CA) at [12].

It is not possible to establish, and the guidance does not support, an ex ante formula or set of rules to determine this matter systematically, as stated in *Wendco (NZ) Limited v A Labour Inspector* [2017] NZERA Christchurch. However that case did provide guidance. In determining what is otherwise a working day, the Authority found that the period for the assessment should be “at least three months”

and up to six months. In relation to the appropriate percentage to be applied, the Authority stated that a “one size fits all answer” cannot be given, but that “for some employees the answer may be that it is clear that they worked more than 50% of the same day of the week in the preceding three to six months and so should be entitled to an alternative holiday.” Working out whether the day is an ‘otherwise working day’ is a practical task, and each situation needs to be considered based on the employee’s specific situation and work pattern, where employers consider and apply all of the factors of s12 of the Holidays Act where they are relevant.

All assessment of the criteria in section 12 must be considered if the public holiday was an otherwise working day for all employees.

The auditing process will also need to determine whether employees, including casual employees, have received their correct entitlement to public holidays.

NB Some DHB’s may have been applying a blanket rule of not providing public holiday entitlements to casual employees. It is important for the reviews to check that DHB’s have systems for correctly determining whether casual employees receive public holiday entitlements. The MBIE guidance includes specific guidance for assessing casual employees’ public holiday entitlements on pages 14-15.

For remediation purposes, the Labour Inspectorate suggests that an assessment can be made of the working pattern prior to the day of the public holiday as well as after the day of the public holiday. This may provide more certainty about the working arrangements or the working pattern.

PAYMENT OF UNWORKED PUBLIC HOLIDAYS

In accordance with s.49, if an employee

- does not work on a public holiday and
- that day would otherwise be a working day for the employee

then the employer must pay the employee for the day at not less than the employee’s:

- relevant daily pay, or
- average daily pay

If the public holiday falls on a day that is not an otherwise working day for the employee, and the employee does not work, then there is no payment required to be made.

PAYMENT WHERE EMPLOYEE WORKS ON A PUBLIC HOLIDAY

Where an employee works on any part of a public holiday then the employer must pay the employee the greater of:

- The portion of the employee's relevant daily pay or average daily pay (less any penal rates) that relates to the time actually worked on the day *plus* half that amount again; (s.50(1)(a))
or
- The portion of the employee's relevant daily pay that relates to the time actually worked on the day (s.50(1)(b))

Penal rates are excluded (principle of not paying a penalty on a penalty) for the purposes of s.50, penal rates are described as payments for particular days of the week and include 'night rates' – s.50(2).

ENTITLEMENT TO ALTERNATIVE HOLIDAYS FOR WORKING ON A PUBLIC HOLIDAY

An employee is entitled to an alternative holiday where:

- The public holiday falls on a day that would otherwise be a working day for the employee (s.56(1)(a)); and
- The employee works on any part of that day (s.56(1)(b))

When taken the alternative holiday must be a whole working day off – regardless of the amount of time the employee actually worked on the public holiday (s.57(1)(c)) – on a day agreed between the employer and employee (s.57(1)(a)) that would otherwise be a working day for the employee (s.57(1)(b)) and cannot be a public holiday (s.57(1)(d)).

Where agreement can't be reached, then the employer may determine on a "reasonable basis" the date on which the alternative holiday is to be taken (s.57(2)) and must provide the employee with at least 14 days' notice of the requirement to take the alternative holidays (s.57(3)).

NB some employment agreements – e.g. the RMO MECA – set out different requirements around taking of an alternative holiday.

Refer to s.61A for entitlements when sick on a Public Holiday which would otherwise be a working day.

ENTITLEMENT TO AN ALTERNATIVE HOLIDAY FOR ON CALL ON A PUBLIC HOLIDAY

An employee is entitled to an alternative holiday where:

- The employee is on call on a public holiday that would otherwise be a working day for the employee (s.59(1)(a)) except if the employee works or is on call for the employer only on public holidays (s.59(1)(b);
AND
- Is called in to work on that day (s.59(2));
OR
- “If the nature of the restriction imposed by the on call condition on the employee’s freedom of action is such that, for all practical purposes, the employee has not had a whole holiday” (s.59(3))

NB a number of DHB collective agreements specifically provide an alternative holiday where an employee is on call on a public holiday but is not called back.

Alternative holidays are credited in Days.

PAYMENT FOR ALTERNATIVE HOLIDAYS

When an alternative holiday is taken, payment must be not less than the employee's relevant daily pay or average daily pay for the day (s.60(1)).

If an employee has not taken their alternative holiday(s) when employment ends, then their final pay must include payment for the alternative holiday at the rate of the employee's relevant daily pay or average daily pay for their last day of employment (s.60(2)).

Alternative holidays may be cashed up if 12 months have passed since the entitlement arose by agreement between the employer and employee (s.61(1)-(2)). The rate of payment is as agreed between the employer and employee (s.61(3)).

ENTITLEMENT TO SICK AND BEREAVEMENT LEAVE

The employee's sick leave entitlement under the Act is 5 days for each 12 month period following qualification – i.e. 5 days for the period of employment from 6 to 18 months (s.65(2)).

The employee's bereavement leave entitlement under the Act is:

- 3 days in cases where the bereavement is of the employee's
 - Spouse or partner
 - Parent
 - Child
 - Brother or sister
 - Grandparent
 - Grandchild
 - Spouse's or partner's parent (69(2)(a))
- 1 day in the case of any other person if the employer accepts the employee has suffered a bereavement, having regard to relevant factor such as:
 - The closeness of the association between the employee and the deceased person
 - Whether the employee has to take significant responsibility for all or any of the arrangements for the ceremonies relating to the death
 - Any cultural responsibilities of the employee in relation to the death (s.69(2)(b)-(3))

NB Sick leave entitlements under the Act are provided in days. Some DHB's hold sick leave balances in hours. Where balances are held in hours employers need to ensure employees are provided with enough hours to enable them to take their entitlement in days. This is particularly important for employees who work longer shifts e.g. 10 and 12 hours shifts. Using hours becomes problematic when employees work multiple shift lengths e.g. the employee works a mixture of 8 and 10 hour shifts. To avoid these difficulties employers should move to holding sick leave balances in days.

Eligibility to sick leave under the Act

Permanent and fixed-term employees are entitled to sick and bereavement leave after they have completed 6 months' current continuous employment with the employer (s.63(1)(a))

Employees who do not have current continuous employment (deemed "casual") with the employer are entitled to sick leave if they have worked for the employer for a period of 6 months for:

- At least an average of 10 hours a week during that period (s.63(1)(b)(i));
- AND
- No less than 1 hour in every week during that period;
- OR
- No less than 40 hours in every month during that period (s.63(1)(b)(ii))

If an employee who does not have current continuous service meets the test of entitlement after 6 months employment, they receive a sick/bereavement leave entitlement for the next twelve months. Eligibility is tested again under 63(1)(b)(i)-(ii) at the end of this period.

If at six months that employee does not meet the eligibility requirements a rolling six month period is monitored until the test is met, and a further entitlement provided at that point for the next twelve months.

The proposed DHB treatment, in this situation, is that the employee’s eligibility is tested again after a further 6 months (i.e. after 12 months). This is set out diagrammatically below.

DHBs need to have systems in place to inform workers who meet the eligibility test that they have an entitlement to sick leave.

MBIE have provided guidance on how to determine current continuous employment and eligibility to sick leave. The following section has been taken from the MBIE guidance on pages 65-66.

Current continuous employment and eligibility to sick leave

Continuous employment is typically characterised by a regular work pattern and expectation of ongoing employment. However, if employment has not been continuous for a period of six months the employee may still get sick leave, if during those six months, they worked for the employer for an average of at least 10 hours per week over the six months, including:

- at least one hour per week, or
- 40 hours a month.

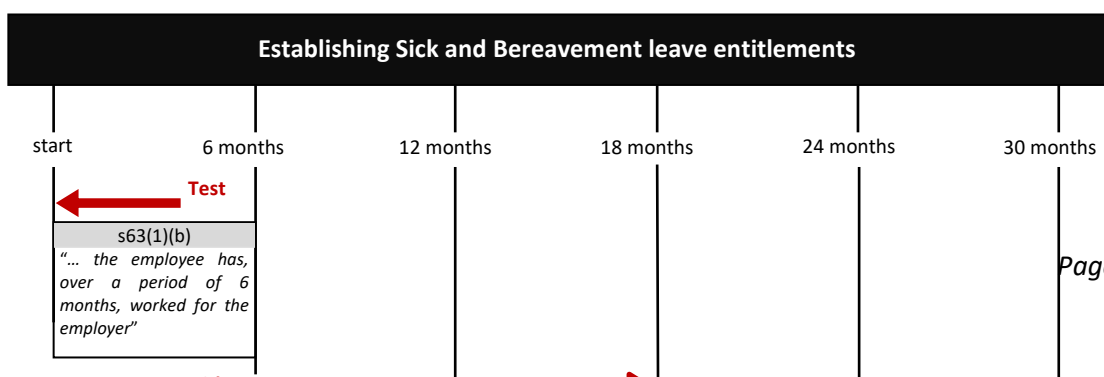
An employee is entitled to five days’ sick leave for every 12 month period of employment once the six-month qualifying criteria have been met. At this point, the employee gets an entitlement to five days sick leave, which is retained for the next 12-month period, regardless of whether or not the employee continues to meet the qualifying criteria over that period.

If the employee does not qualify for an entitlement at this point, then the six-month qualifying period keeps rolling. For example, if the employee has met the qualifying criteria for the previous four months, they would be eligible for sick leave if they continue to meet the criteria for the next two months.

The same applies when determining if an employee is eligible for a further entitlement of five days sick leave at the end of the 12-month period after which an employee has first qualified for sick leave. At this point, an employer should look back six months to see if the employee has met the qualifying criteria over that period. If they do, then the employee is eligible for a new entitlement of five days for the next 12 months.

The entitlement to sick leave applies to all employees, whether they work on a full-time, part-time, permanent or fixed-term basis. It is important to note that the five-day annual entitlement to sick leave may not be pro-rated. The entitlement remains at five days, regardless whether the employee works, for example, six days a week or one day a week.

A common misunderstanding is that the sick leave ‘year’ must apply from the employee’s commencement date and include the six-month qualifying period. However, the sick leave year does not have to include the six-month qualifying period, which may mean that the sick leave year and the employee’s anniversary do not coincide.



Entitlement



S63(2)(b)

"... the 12 month period of employment beginning at the end of the six-month period specified in that subsection"

'Casual' employees – a word of caution

The term 'casual' does not appear anywhere in the Act. All employees, regardless of employment status, are entitled to receive sick leave and bereavement leave if they meet the required criteria.

Just because an employer refers to an employee as 'casual' does not mean that they are not entitled to leave under the Act. Employees referred to as 'casual' will often have sufficiently regular work hours to entitle them to receive all types of leave under the Act. Even if an employee has signed an employment agreement that designates them as 'casual', it may still be possible to argue that such employment is in fact permanent.

With regard to sick and bereavement leave, employees designated as 'casual' should be regularly assessed against the qualifying criteria to ascertain their leave entitlements.

PAYMENT FOR SICK AND BEREAVEMENT LEAVE

When sick or bereavement leave is taken, payment must be not less than the employee's relevant daily pay or average daily pay for the day for each day that would otherwise be a working day for the employee (s.71(1)).

The employer is not required by the Holidays Act to pay for any time for which the employee is paid weekly compensation under the Injury Prevention, Rehabilitation, and Compensation Act.

NB. Employment Agreements may provide for additional benefits – e.g. top up of ACC compensation.

HOLIDAY AND LEAVE RECORD

An employer must keep holiday and leave record for each employee showing the following information (s.81(2)(a)-(q)):

- the name of the employee:
- the date on which the employee's employment commenced:
- the number of hours worked each day in a pay period and the pay for those hours:
- the employee's current entitlement to annual holidays:
- the date on which the employee last became entitled to annual holidays:
- the employee's current entitlement to sick leave:
- the dates on which any annual holiday, sick leave, or bereavement leave has been taken:
- the amount of payment for any annual holiday, sick leave, or bereavement leave that has been taken:
- the portion of any annual holidays that have been paid out in each entitlement year (if applicable):
- the date and amount of payment, in each entitlement year, for any annual holidays paid out under section 28B (if applicable):
- the dates of, and payments for, any public holiday on which the employee worked:
- the number of hours that the employee worked on any public holiday:
- the day or part of any public holiday specified in section 44(1) agreed to be transferred under section 44A or 44B and the calendar day or period of 24 hours to which it has been transferred (if applicable):
- the date on which the employee became entitled to any alternative holiday:
- the details of the dates of, and payments for, any public holiday or alternative holiday on which the employee did not work, but for which the employee had an entitlement to holiday pay:
- the cash value of any board or lodgings, as agreed or determined under section 10:
- the details of any payment to which the employee is entitled under section 61(3) (which relates to payment in exchange for an alternative holiday):
- the date of the termination of the employee's employment (if applicable):
- the amount paid to the employee as holiday pay upon the termination of the employee's employment (if applicable):
- any other particulars that may be prescribed.

The holiday and leave record must be kept (s.81(3)(a)-(b))

- in written form; or
- in a form or in a manner that allows the information in the record to be easily accessed and converted into written form.