

Employment – Holidays Act 2003

Employees have certain rights to holidays and leave. Most of these entitlements are covered by the Holidays Act 2003, which came into force on 1 April 2004. The Act also tells you how and when employees must be paid when they take their leave. It's important to understand your responsibilities – and your employees' rights – under the Act.

Annual leave

Employees are entitled to three weeks of paid annual leave after each year of service.

In 2003, holidays law changed, and the Government decided to increase the minimum annual leave entitlement to four weeks a year from 1 April 2007.

Employees have the right to take at least two weeks of their annual leave in one continuous period, within a year of the date on which they qualify for annual leave.

If employees leave before they become entitled to annual leave (ie within 12 months of being employed by you), you have to give them 6% holiday pay in their final pay (unless they have taken annual leave in advance or have already been paid their holiday pay).

When should annual leave be taken?

Employees remain entitled to annual leave until they have actually taken it.

It's up to you and the employee to agree when the annual leave will be taken.

You must not unreasonably withhold consent to a request to take annual leave.

If you're unable to agree which days the employee will take as leave, you can make the final decision, so long as you give them at least 14 days' notice before the day on which their leave will start.

If you have an annual closedown, you can require your employees to use annual leave during that period.

When do I pay holiday pay?

Employees are entitled to be paid holiday pay before commencing a period of annual leave, unless:

- ✦ You both agree that the employee will be paid in the pay that relates to the period during which the leave is taken; or
- ✦ The employee's employment has come to an end.

For employees that are paid weekly, this usually poses no problems. However, the same rule applies to employees who have their wages direct-credited each month. All employees are entitled to be paid before taking their annual leave – despite the difficulties this may cause with the direct credit system.

Sick leave

Employees who have been working for you for six months or more are entitled to five days of paid sick leave a year. Unused sick days can be accumulated, up to a maximum of 20 days' entitlement in one year.

Sick leave can be taken when the employee is ill or injured. It can also be taken if the employee's spouse, or someone who depends on the employee for care, is sick or injured.

Bereavement leave

Employees who have worked for you for at least six months are entitled to take:

- ✦ Three days of paid bereavement leave on the death of their spouse/partner, parent, child, sibling, grandparent, grandchild, or spouse's/partner's parent; and
- ✦ One day of paid bereavement leave on the death of anyone else who you accept, in good faith, the employee had a close association with.

Public holidays

All employees, regardless of how long they've worked for you, have a right to 11 public holidays a year.

You can only require an employee to work on a public holiday if it's on a day they would normally work and their employment agreement requires them to work on public holidays.

If your employees work on a public holiday, you must pay them at the rate of at least time and a half of their relevant daily pay. If the public holiday falls on a normal working day for them, you must also allow them to take an alternative holiday.

Holiday and leave record

You must make a holiday and leave record, which may be included in your payroll software. This record must include the following for each employee:

- ✦ Employee's name;
- ✦ Date on which they started working for you;
- ✦ Which days the employee works on;
- ✦ Their current entitlement to annual leave;
- ✦ The date on which the employee last became entitled to annual leave;
- ✦ How much sick leave they are currently entitled to;
- ✦ The dates on which they took annual, sick, or bereavement leave;

- ✦ How much they were paid for any annual, sick, or bereavement leave taken;
- ✦ The dates of, and payments for, any public holidays that they worked;
- ✦ The number of hours that they worked on a public holiday;
- ✦ The date that they became entitled to an alternative holiday (in lieu of working on a public holiday);
- ✦ The dates of, and payments for, any public holidays (or alternative holidays in lieu of working on a public holiday) when they didn't work but were entitled to be paid;
- ✦ The cash value of any board or lodgings which form part of the employee's 'gross earnings';
- ✦ Any payment made if they chose to be paid in exchange for an alternative holiday;
- ✦ The date on which they stopped working for the employer (if applicable); and
- ✦ How much holiday pay they were paid when they stopped working for you (if applicable).

Payroll software

The Holidays Act 2003 introduced major changes that affected most payroll software.

Payroll systems need to meet the current requirements, for example they should:

- ✦ Calculate 'ordinary weekly pay', 'average weekly earnings', and 'relevant daily pay';
- ✦ Pay employees at the rate of time and a half for hours worked on a public holiday;
- ✦ Be able to deal with alternative holidays; and
- ✦ Provide for the information required for holiday and leave records.

If you use payroll software, we suggest you check with the provider if you're not sure if it meets the requirements.

Note that the law can and does change quickly. The latest on holidays legislation can be found on www.ers.govt.nz.

Disclaimer

Important: This is not advice. Clients should not act solely on the basis of the material contained in this fact sheet. Items herein are general comments only and do not constitute or convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. We believe the contents to be true and accurate as at the date of writing but can give no assurances or warranty regarding the accuracy, currency or applicability of any of the contents. This fact sheet is made available to our clients as a helpful guide for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval.