



# Holidays and other leave

👉 A GUIDE FOR EMPLOYEES



## CONTENTS

Annual leave	4
Introduction	4
What are my rights?	4
Can I get more?	4
When do I get my holiday pay?	5
Can my holiday pay be included with my weekly wages?	5
How is my holiday pay worked out?	5
Ordinary weekly pay and average weekly earnings	6
Employer closedowns	6
Can I take holidays in advance?	6
Notice of holidays	7
What happens if I don't take my holidays?	7
What happens if I leave the job?	7
What if I am a fixed-term employee?	7
Holiday and leave records	7

Public (or statutory) holidays	8
Sick leave	9
Leave for injury	10
Bereavement leave	10
Parental leave	11
Employment relations education leave	11
Defence Force volunteers	11

## ANNUAL LEAVE

### **Introduction**

No matter how much you enjoy your job, you are going to want to take some time off. A holiday can benefit you and your employer. Every employee is entitled to a minimum number of holidays. This is guaranteed by law. This leaflet is designed to help you be aware of what you are entitled to.

### **What are my rights?**

The law changed on 1 April 2007, lifting minimum paid annual holiday entitlements for all employees, both full and part time, to four weeks a year.

The way this works is that you get your fourth week's holiday on your first anniversary after 1 April 2007. So, if you started work on 3 April you get your extra week's holiday on 3 April 2007, and if you started on 20 March, you get your extra week on 20 March 2008.

What constitutes a week's holiday is determined by you and your employer.

#### **For example:**

If you work three days per week, a week's holiday will usually be three days. This means you are entitled to take 12 of your working days as paid holidays per year.

### **Can I get more?**

You can get more than four weeks if your employer agrees or it is in your employment agreement.

For example, you may be entitled to an extra week's leave after a longer period of service.

But, if you were already getting four or more weeks holiday, the law change to four weeks minimum entitlement doesn't mean that you qualify for an extra week. This depends on the specific wording of your employment agreement. If this says you get "four" weeks (or "five" or another number), then the new

law doesn't give an extra week. But, if the wording talks about one or more "additional" weeks holidays, you should seek individual advice from your union or any other advisor.

There is nothing to stop your employer giving you more than four weeks holiday by agreement.

### **When do I get my holiday pay?**

You have the right to receive your holiday pay before your holiday starts, unless you and your employer agree that your normal pay cycle will keep going while you are away. Holiday pay is taxable.

### **Can my holiday pay be included with my weekly wages?**

There are only two reasons your holiday pay can be paid on a pay-as-you-go basis. Either you're on a fixed-term employment agreement for less than 12 months, or you work on a very irregular or intermittent basis.

If you agree to be paid on a pay-as-you-go basis:

- the agreement must be included in your employment agreement
- your payslip must show the holiday pay separately from your other pay
- holiday pay must be at least 8% of your gross earnings.

### **How is my holiday pay worked out?**

Payment for annual holidays is the greater of your ordinary weekly pay when you go on holiday, or your average weekly earnings over the 12-month period before your holiday.

Your employer will work out how much holiday pay you are entitled to according to the length of your working week. For example, if you work a three day week and take a week's holiday, then you will be paid for three days. Your employer must pay you the amount of holiday pay that matches how much of your holidays you're taking.

## **Ordinary weekly pay and average weekly earnings**

Ordinary weekly pay means the payment you receive for an ordinary week. This includes any productivity incentives, including commission, regularly paid overtime and the value of any board contributions from your employer. Irregular one-off payments and overtime are not included in ordinary weekly pay.

Your average weekly earnings are calculated by dividing your gross earnings by the number of weeks you have worked. If you have worked for one full year, your average weekly earnings would be your total yearly earnings divided by 52.

## **Employer closedowns**

If your employer closes down (for example, at Christmas or the end of a season) and you have an entitlement to annual holidays (because you've worked for more than a year), your employer can make you take them during the closedown, but must give you 14 days' notice.

If you started your employment less than a year before, your holiday pay is 8% of your total gross earnings to the date of the closedown. Gross earnings are the wages you receive before deductions such as tax. This includes any regularly paid overtime and productivity incentives but excludes one-off payments and irregular overtime. Your next employment year (to assess eligibility for annual holidays) begins from the closedown date.

Alternatively, your employer may agree to let you take some of your holidays in advance.

## **Can I take holidays in advance?**

Yes, but only if your employer agrees. If you do take some holidays before you have become entitled to them, your employer should still pay you either your ordinary weekly pay, or your average weekly earnings, depending on which one is higher. Your employer can ask you to agree in writing that, if you leave the job, they can make you pay back any overpayment caused by taking your holidays in advance.

## **Notice of holidays**

If you can't agree with your employer when to take your holidays, your employer can direct you to take them. Your employer must give you at least 14 days' notice of the date you have to take your annual holiday from, or any part of your annual holiday entitlement. This is the case whether or not your workplace is closing down.

## **What happens if I don't take my holidays?**

Your annual holidays remain in place until you have taken them or they have been paid to you at the end of your employment. An employer can't take them off you.

## **What happens if I leave the job?**

If you worked for less than one year, your holiday pay is calculated at 8% of your total gross earnings. If you have been employed for over a year, your holiday pay will be the greater of your average weekly earnings or your ordinary weekly pay for the holidays you have become entitled to and not taken, plus a further amount calculated at 8% of your total gross earnings since you last became entitled to annual holidays.

Any paid holidays taken in advance can be deducted from this. Holiday pay must be paid with the pay for your last period of work.

## **What if I am a fixed-term employee?**

Some people are employed temporarily, for a set period of time, for the duration of a project or for seasonal work. Fixed-term employees have the same rights as other employees, but in some cases may be paid holidays on a pay-as-you-go basis.

## **HOLIDAY AND LEAVE RECORDS**

All employers must keep holiday and leave records for six years, which you or your representative are entitled to look at on request.

## PUBLIC (OR STATUTORY) HOLIDAYS

These are paid holidays, and are on top of annual holidays:

- Christmas Day and Boxing Day
- New Year's Day and 2 January
- Waitangi Day
- Good Friday and Easter Monday
- Anzac Day
- Queen's Birthday
- Labour Day
- the anniversary of the province where you work.

You are entitled to these 11 public holidays off work on full pay if they're days when you would normally work. If you do agree to work on a public holiday, you're entitled to be paid at least time-and-a-half.

The rules are slightly different if Christmas Day, Boxing Day, New Year's Day or 2 January fall on a Saturday or Sunday. If you normally work on the Saturday or Sunday, those will be the days that are the public holiday for you. If you don't normally work on the Saturday or Sunday, the public holiday will be on the following Monday or Tuesday for you.

For further information on entitlements when Christmas and New Year fall on a Saturday or Sunday, please phone the Department of Labour freephone on **0800 20 90 20** or visit the Department of Labour website **[www.dol.govt.nz](http://www.dol.govt.nz)**

If the public holiday you worked is a normal working day for you, you are also entitled to an alternative paid day's holiday.

Your alternative paid day's holiday can be taken at any time agreed between yourself and your employer. If you have not taken the alternative day off after 12 months, you and your employer can agree to exchange the holiday for cash.

The Department of Labour's Holidays Online Tool can help you work out your public holiday entitlements. Visit **[www.dol.govt.nz/onlinetools](http://www.dol.govt.nz/onlinetools)**

## SICK LEAVE

After six months working for an employer, you're allowed five days sick leave on full pay. You are entitled to five days of sick leave for every 12 months of employment after that. If you need to take sick leave, you must tell your employer as soon as possible.

Your employer will pay you what you would have been paid had you actually worked on the day and were not sick. You can carry over up to 15 days unused sick leave.

You can take sick leave if:

- you are sick or injured
- your spouse is sick or injured
- someone who depends on you for care is sick or injured.

If you are away for three or more consecutive days, your employer can ask for proof, such as a medical certificate, that you or your dependant was ill. The three days can include days you wouldn't normally work. Any costs involved are your responsibility.

If your employer suspects, on reasonable grounds, that the sick leave is not genuine, your employer has the right to request proof of illness or injury for sick leave within the three days. If this happens, your employer must inform you as early as possible that they require the proof and agree to meet your reasonable expenses in obtaining the proof.

In both cases, the choice of medical advice rests with you. Your employer cannot insist you visit a particular medical practitioner.

The Department of Labour's Holidays Online Tool can help you work out your sick leave entitlements. Visit [www.dol.govt.nz/onlinetools](http://www.dol.govt.nz/onlinetools)

## LEAVE FOR INJURY

If you are injured at work and need time off, your employer must pay 80% of your pay for the first week. After that, ACC pays you and will help you to get back to work as soon as possible. If you are injured away from work, you are still entitled to ACC payments after the first week, but your employer doesn't have to pay you for the first week.

You can ask the nearest ACC office for more information about what you are eligible for after an injury. See the blue pages in the front of the telephone book, or call ACC Claims Enquiries on **0800 101 996**.

## BEREAVEMENT LEAVE

After six months working for an employer, you're allowed leave if you suffer a bereavement, i.e. when someone close to you dies.

You are allowed up to three days' paid leave if someone in your immediate family – your spouse or partner, parent, child, brother or sister, grandparent, grandchild, or your spouse or partner's parent – dies.

You don't have to take this leave straight away, and you don't have to take it all at the same time. You are also allowed up to one day's paid leave if someone else dies (e.g. a friend), and your employer agrees that you have suffered a bereavement.

Your employer should take into account how close the person was to you, whether you have any responsibilities for the ceremonies, and whether you have any cultural responsibilities connected with the death.

The Department of Labour's Holidays Online Tool can help you work out your bereavement leave entitlements. Visit [www.dol.govt.nz/onlinetools](http://www.dol.govt.nz/onlinetools)

## PARENTAL LEAVE

If you or your partner are having a baby or are going to adopt a child under six, and you have worked for your current employer for at least six months, you may be eligible for paid parental leave of 14 weeks. You may also be entitled to unpaid parental leave before and after the birth or adoption.

The Department of Labour can give you further information and assistance on parental leave and payments – contact us on freephone **0800 20 90 20** or visit [www.dol.govt.nz](http://www.dol.govt.nz)

## EMPLOYMENT RELATIONS EDUCATION LEAVE

If you are a union member, your union may nominate you to take employment relations education leave. This is leave to do training on employment relationship issues. Your union will be able to tell you more about this.

## DEFENCE FORCE VOLUNTEERS

Under the Volunteers Employment Protection Act, if you do full-time voluntary training in any of the armed forces for periods adding up to three months or less, your job is protected. Part-time training is also covered if it adds up to no more than three weeks in each year from 1 July to 30 June. Your employer has to let you take unpaid leave for your training.

Your employer also has to allow you to take leave and hold your job open for you if you take unpaid leave to go on active service, either when you are called up or when you volunteer in a “situation of national interest”. There are some eligibility criteria before you can take this leave and, if you volunteer in a situation of national interest, you may only take up to 12 months leave.



FOR FURTHER INFORMATION ON EMPLOYMENT RELATIONS VISIT [WWW.DOL.GOVT.NZ](http://WWW.DOL.GOVT.NZ) OR PHONE **0800 20 90 20**

DOL10699 MAY 07

Department of Labour  
TE TARI MAHI

