



annual holidays - general entitlements

Under the Holidays Act 2003, employees are entitled to a minimum of four weeks annual holidays after the first year of employment.

The minimum entitlement increased from three to four weeks annual holidays from 1 April 2007.

The key for all employers and employees is:

- working out and agreeing what the entitlement to four weeks paid annual leave means for them; and
- ensuring the employee is correctly paid when they take annual holidays or their employment ends.

All employees are entitled to four weeks paid annual holidays

On each anniversary of the date of commencing employment on or after 1 April 2007, the employee is entitled to four weeks paid annual holidays. The leave can be taken at any time agreed between the employer and the employee. Employees must be given the opportunity to take at least two of the four weeks leave in a continuous period, if they wish to do so.

Under two circumstances, the date on which the employee becomes entitled to annual holidays is adjusted:

- **When the business has an annual closedown period**
this is covered on the fact sheet titled **Annual holidays - regular annual closedowns** (http://www.ers.govt.nz/holidays_act_2003/closedown.html).
- **When an employee takes unpaid leave of more than a week during the year** : this is covered on the fact sheet titled **Annual holidays - the effect of unpaid holidays on annual leave** (http://www.ers.govt.nz/holidays_act_2003/unpaid_leave.html).

Agreement over what four weeks annual holidays means

An employer and employee may agree on what four weeks annual holidays means in their circumstances. Any agreement should ideally be recorded at the start of the employment relationship even where it is clear what four weeks means. The agreement must be a genuine reflection of the employee's working week.

Where agreement cannot be reached either party can seek the assistance of a Labour Inspector.

Where employees are permanently employed on a constant work pattern establishing their entitlement is easy.

Where an employee is employed on a work pattern that changes during the year, for example going from part-time to full-time work, the employer and the employee should agree how the entitlement to four weeks leave is provided.

Such an agreement may affect annual holiday entitlements the employee has been earning under their previous work pattern. For example the employee's entitlement could be provided as if the employee had been a full time employee for the whole period.

Alternatively the entitlement could be proportionate to the time in each form of work. Where a new agreement is reached, it is strongly advisable to record it in writing.

Payment

Payment for annual holidays is at *the greater of* the **ordinary weekly pay** at the time the holiday is taken or the employee's **average weekly earnings** over the 12-month period before the annual holiday is taken.

When an employee is to take annual holidays, the first step is to determine what portion of the entitlement is being taken, taking into account any agreement of what a week means for that employee. This portion may be a period of weeks, or a period of less than a week.

For example, an employee works 3 days per week and has agreed with their employer that their four week holiday entitlement will be 12 days. When the employee takes a day off work this will be one third of a week of annual holidays.

In this case payment would be a proportion of ordinary weekly pay or average weekly earnings based on the period of leave taken, namely, one third of the greater of those weekly amounts.

Employees during their first year of service

During the first year of employment, three circumstances can arise that require the calculation of the payment due for annual holidays:

- The employee may seek, and the employer may approve, the taking of annual holidays in advance – see the fact sheet titled **Annual holidays - employees who take annual holidays in advance of entitlement** (http://www.ers.govt.nz/holidays_act_2003/holidays_advance.html).
- The employer may have a regular annual closedown of the workplace – see the fact sheet titled **Annual holidays - regular annual closedowns** (http://www.ers.govt.nz/holidays_act_2003/closedown.html).
- The employee may resign or the employer may terminate the employment – see the fact sheet titled **Entitlements on an employee's resignation or termination** (http://www.ers.govt.nz/holidays_act_2003/resignation.html).

When should annual holiday pay be paid?

Employees are entitled to receive their pay for annual holidays before the holiday commences, unless the employer and employee agree that the normal pay cycle will continue undisturbed by the time off work.

This provision is designed to ensure that employees have money available to them to pay for the travel and accommodation expenses involved in a holiday, which often are required either at the commencement of a holiday or earlier.

If an agreement to pay the employee any annual holiday pay in their normal pay cycle is reached, it is advisable to record it either as part of the employment agreement or in writing on a case-by-case basis.

Employment agreements

The annual holiday provisions in the Holidays Act 2003 are deemed to be part of any employment agreement that is silent on the subject of leave.

Many employment agreements contain provisions that vary the provisions of the Holidays Act 2003. Such variations are often to the benefit of the employee – for example, by providing additional annual holidays, establishing a higher rate for annual holiday pay, or providing consultative arrangements about closedowns.

The Act does not prevent the employer providing the employee with enhanced entitlements. However, it is important that the employer and employee review such arrangements to ensure they are consistent with this Act.

In the past, the concept of “overall advantage” was sometimes used to establish whether variations in employment agreements were legal. This concept no longer applies. The Holidays Act 2003 makes clear that **each component** of holiday arrangements must be at least as favourable to the employees as the entitlements specified in the Act.

This means, for example, that an employer cannot provide an employee with an extra week of annual holidays in exchange for the employee giving up their public holiday entitlements.

Further information & guidance

We welcome the opportunity to help you further. If you can't find an answer to your question, or you want further clarification, more detailed information or guidance on any matter covered here, please contact us. We value your query and will respond to you as quickly as possible.

Call us free on 0800 20 90 20 or visit our website at www.ers.dol.govt.nz.

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