

**FACT SHEET**Department of Labour  
TE TARI MAHI

# sick leave – general entitlements

## Entitlements

For most employees there is a minimum provision of five days' paid sick leave a year after the first six months of continuous employment and an additional five days' paid sick leave after each subsequent 12 month period.

Employees who do not meet these eligibility requirements can, however, access sick leave in some circumstances. These are covered later in this fact sheet under "The effect of various work patterns".

Our **Holidays Online Tool** (<http://www.ers.govt.nz/holidays-online-tool/default.aspx>) makes it easy to work out what sickness and bereavement leave an employee is entitled to. It also calculates public holiday entitlements. Make sure you have payroll information or a payslip handy when you use the tool.

## When can sick leave be taken

Sick leave can be used when an employee is sick or injured, or when the employee's spouse or a dependent person (such as a child or elderly parent) is sick or injured and needs care.

At any time where the employee does not have a sick leave entitlement (including during the first six months of employment), the employer and employee can agree to the employee anticipating the sick leave entitlement. In this case, any sick leave taken can be deducted from the next entitlement that arises.

## Accumulation of sick leave

Unused sick leave under the Holidays Act 2003 is automatically carried over. For example, if someone uses only one day's sick leave from the five-day entitlement in a 12-month period, he or she may carry over the other four days, so in the next 12-month period the total entitlement is nine days' sick leave. The maximum accumulation under the Act is 20 days' leave, although employment agreements can provide either or both more generous sick leave and accumulation.

Accumulated sick leave cannot normally be exchanged for cash, nor form part of any final payment to the employee on resignation or termination, unless the employment agreement requires this.

Sick leave entitlements are not pro-rated in any way. For example, even if a part-time employee works three days a week, she or he becomes entitled to five days' sick leave a year after being in employment for six months. Sick leave can also accumulate to up to 20 days for part-time employees.

## Payment for sick leave

Payment for sick leave taken should be the amount the employee would ordinarily be paid if they

had been at work on the day leave is taken (that is their relevant daily pay). For example, where an employee who normally works eight hours Tuesday to Friday and four hours Saturday is sick on Saturday, a payment of four hours is due.

The payment can include overtime when overtime would have been worked on the day. For example, if the employment agreement specifies an hour for lunch but the employee at the employer's request usually takes only half an hour for lunch, then the employee's sick leave payment would include the extra half hour normally paid for.

For further information see the fact sheet titled "Calculating payment for sick and bereavement leave – "relevant daily pay"".

## **Employee sick on a public holiday**

Where the employee would have been working on a public holiday but cannot work due to sickness, the payment for the day is as if they had a paid unworked public holiday. Therefore:

- the employee would not be entitled to the minimum time and a half payment for working on a public holiday or to an alternative holiday
- no sick leave would be deducted.

## **Informing the employer and proof of illness**

Employees are required to inform the employer at the earliest opportunity of the intention to take sick leave – preferably before they are due to start work, but otherwise as early as possible after falling sick.

The employer has the right where the employee is sick or injured for three or more calendar days to require the employee to provide proof, such as a medical certificate, of the injury or illness.

The three calendar days are not interrupted by a scheduled break. Therefore, an employee taking a day's sick leave on a Friday, then a two-day scheduled weekend break, can be asked to provide proof of the illness or injury if they take another day's sick leave on the Monday, even if that day is only the second day of sick leave.

The employer can ask for proof of illness within three calendar days if they have reasonable grounds to suspect the sick leave is not genuine, they inform the employee as soon as possible, and they agree to meet the employee's reasonable expenses in getting this proof.

If the employee does not provide proof when requested without reasonable excuse, the employer has the right to withhold the payment for the sick leave period until it is provided.

Where the employee is using sick leave to care for another person, such as a spouse or child, the employer can similarly require proof of sickness for that person as above.

Where the employer believes that the employee has misused a sick-leave entitlement, this issue can be dealt with as an employment relationship problem under the Employment Relations Act. The normal processes for raising, progressing and determining problems of employee performance should be followed, and the Mediation Service of the Department of Labour can be asked to help resolve the dispute.

## **The effect of various work patterns**

Most people are entitled to sick leave whether they are full- or part-time, permanent or fixed-term employees, providing that they have completed six months' continuous service.

The Act also provides sick leave entitlements after six months to employees whose employment is

not continuous if, during those six months, they have worked for the employer for:

- an average of at least 10 hours per week, including
- at least one hour per week or 40 hours per month.

Employees on a series of fixed term agreements, or employees sometimes described as "casual", would become entitled to sick leave if they met this test.

The payment for sick leave would be made where it is a day that the employee would otherwise have worked, and would be made at the employee's relevant rate of pay for the day – see the factsheet titled Calculating payment for sick and bereavement leave "relevant daily pay".

The entitlement to sick leave for these employees is subject to the same test each 12 months. If in any year the work pattern does not meet the above test, then no new entitlement arises. However, they may requalify on the basis of the previous six months service.

Transitional arrangements: moving from special leave to sick leave

Any special leave that an employee was entitled to under the Holidays Act 1981 automatically became sick leave on 1 April 2004. For example, if an employee had three days' special leave left on 1 April 2004 this became three days' sick leave.

## Managing changes to employment agreements

The previous Holidays Act provided a joint sick leave and bereavement leave entitlement called "special leave". Many existing employment agreements use the language of that Act to express employee's conditions for leave.

If your agreement is framed in this way, even if its provisions in some way exceed the minimum established under the Holidays Act 2003, the employer and employee should consider renegotiating the employment agreement to reflect the provisions and language of the Holidays Act 2003.

Failure to make needed changes may create additional leave entitlements that were not intended.

When you are renegotiating, make sure that any reference to each form of leave in the agreement (such as domestic leave, special leave or family leave) maintains the minimum sick leave entitlement of five days a year while also reflecting the special arrangement between the employer and their employees.

If the existing agreement has sick leave, accumulation or other provisions that are more favourable than the Holidays Act 2003, the relationship between the Act and those provisions should be clearly expressed.

Be sure that any negotiated changes are in writing, as "custom and practice" may not be sufficient if there is a dispute.

## 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](http://www.ers.dol.govt.nz).

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