

Holidays Act 2003

This Act came into force on 1st April 2004.

This newsletter highlights the changes and what they mean to you as an Employer. Any leave entitlement owing to an employee as at 1st April 2004 is automatically carried forward even though there is a new Act.

Public Holidays

The first public holiday affected is Good Friday, 9 April 2004.

Keypoints

- If employee works on a public holiday they must be paid a **minimum of time and a half** for the time they work on that day.
- If employee works on a public holiday and this is their 'normal' day of work they are also entitled to a whole day **alternative** holiday.
- If employee works on a public holiday and this is not a **normal** day of work, they will be paid at a minimum of time and a half but are **not** entitled to an alternative holiday.

Alternative Holidays

From the 1st April 2004 days in lieu will become known as alternative holidays.

Keypoints

- Taken at a time agreeable to both parties.
- Is paid at the relevant daily pay rate.
- If the holiday is not taken within 12 months of receiving it, the employer can direct the employee to take the day and at this point the employee may ask for payment instead. The payment can be a negotiated amount between the employer and the employee.

Annual Holidays

The increase from 3 to 4 weeks minimum annual holidays does not come into force until 1st April 2007.

Continuous Employment

The entitlement to 3 weeks paid annual holidays is based on the completion of 12 months continuous employment each year.

The concept of "continuous employment" is new in respect of Annual Holidays. Should an employee

take unpaid leave of more than 1 week for any reason apart from sick, injury or bereavements (in agreement with the employer), then the date on which the employee is next entitled to more annual leave, will be more than 12 months after the last date on which they were due holidays. This is because the employee will not have completed 12 months continuous employment. This concept creates the possibility of moving entitlement dates for holidays for employees. This is a very complex area and we have only touched on this briefly to make you aware of it.

Payment of Annual Holiday pay

In calculating payment for annual holidays this must be the **greater** of

- *Ordinary Weekly Pay*, which means everything an employee is normally paid; or
- *Average Weekly Earnings*, which means the gross earnings over the 12 months prior to the end of the last pay period before the holiday is taken, divided by 52.

Payment of holiday pay with employee's pay – pay as you go

The Holidays Act 2003 permits **pay as you go holiday pay** but only in specified (and narrow) circumstances. We recommend not to use "pay as you go" to avoid any conflicts, but you can if:

- Employees are on a genuine fixed term agreement of less than 12 months.
- Employees have a work pattern that is intermittent or irregular (genuine casual work).

Payslips must clearly show the hourly rate and the holiday pay separately.

Sick Leave

Under the previous Holidays Act sick leave was incorporated under the special leave provisions. The special leave provisions have now been separated out into two different provisions, one for sick leave and the other bereavement leave.

Keypoints

- 5 days every year, after 6 months continuous employment for new employees.
- both parties can agree to increase the entitlement but they cannot decrease it.
- any special leave owing as at 1st April 2004 will automatically become sick leave.
- any unused sick leave can now be carried over from one entitlement period to the next for up to 15 days to create a maximum of 20 days.
- Sick leave entitlement dates will remain the same.
- Unused sick leave does not have to be paid out on termination of employment.

Bereavement Leave

Under the new Act, from the 1st April 2004, there are two types of bereavement leave entitlements;

1. Up to 3 days paid leave on the death of an immediate family member, after 6 months continuous employment for new employees.
 - immediate family includes: employee's spouse, parent, child, sibling, grandparent, grandchild or the spouse's parent.
 - where there is a multiple fatality, the employee is entitled to three days bereavement in respect of *each death*.
 - Approval is mandatory.
2. Up to 1 day paid leave in the event of a death *outside* the immediate family, after 6 months continuous employment for new employees.

The employer has control over approval, so it is not mandatory and the following factors should be considered;

- how close was the association between the employee and the other person
- whether the employee is responsible for any aspect of the ceremonies or has any cultural responsibilities to fulfil in respect of the death.

Both types of bereavement leave can be taken at any time and for any purpose genuinely related to the death. They do not need to be taken immediately or on consecutive days. There is no maximum or cumulative entitlement.

Examples of Bereavement Leave

Rose is entitled to 3 days paid bereavement leave when her brother dies. She takes 2 days immediately for the funeral. A month later she takes 2 more $\frac{1}{2}$ days leave to discuss with the solicitor details of the estate, as she is co-executor of the will.

Jack is entitled to 3 days paid leave when his grandfather dies. He takes 2 days immediately to attend the tangi. A year later he takes 1 day to attend the unveiling of his grandfather's headstone.

Employment Agreements

All *new* Employment Agreements from 1st April 2004 must contain the mandatory provisions relating to public, alternative, sick and bereavement holidays. If it is anticipated that the employee works public holidays, the 'remuneration' clause in the Employment Agreement has to state the time and a half hourly rate.

You and your employees can choose to renegotiate any existing agreements however we suggest that this may become a lengthy process. An alternative is to incorporate the changes by way of a written variation

Failure to make the necessary changes to leave entitlements, could create additional leave entitlements that were not intended.

Record Keeping

The new Act extends the record keeping required to be kept by you as an employer.

The requirements are to maintain a holiday and leave record as well as maintaining a wage and time record. These can be written or electronic.

If you currently use a computerised payroll system your software provider should have sent you an update to incorporate the new requirements. If you have not received an update, contact your payroll provider.

Help Available

If you are not sure, don't take chances. You can get help from:

- Employment Relations Service web site (www.ers.dol.govt.nz)
- The Employment Relations Infoline (0800 800 863)
- Your local employers' organisations, EMA or Employers Assistance
- Call us at Cuff Booth-Ross Limited

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