



OVERVIEW OF HOLIDAYS AND LEAVE

the easy complete guide for employers

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CHAPTER 1 – PAPERWORK, PAPERWORK

INTRODUCTION

Holiday and sick pay calculations are the bane (it rhymes with pain) of employers' lives. The rules are complicated and full of exceptions. We have tried to simplify and present it in plain language, with examples where necessary.

THE HOLIDAYS ACT 2003

The purpose of the Act is to "promote balance between work and other aspects of employees' lives" and, to that end, to provide employees with minimum benefits for –

- Annual holidays to provide the opportunity for rest and recreation
- Public holidays for the observance of days of national, religious, or cultural significance
- Sick leave to assist employees who are unable to attend work because they are sick or injured, or because someone who depends on the employee for care is sick or injured
- Bereavement leave to assist employees who are unable to attend work because they have suffered bereavement.

MINIMUM BENEFITS

The Holidays Act 2003 sets the minimum paid annual and public holidays and sick and bereavement leave that employers must grant to employees.

You can provide more holidays or leave than the Act prescribes. If you provide for less in your employment agreements, your employees are still entitled to what the Act says.

ALL EMPLOYEES ARE COVERED

The Act applies to **all** employees –

- fixed term
- permanent full- or part-time and
- casual.

The **only** qualifiers are –

- the length of service
- (for sick and bereavement leave) the number of hours the employee has worked.

HOLIDAYS/LEAVE BOOK

By law you must keep a holiday and leave record for each employee, for a period of six years. Failure to do so could cost you a maximum penalty of \$10,000 if you are an individual and \$20,000 if you are a company.

Details To Keep

For each employee, record ALL of the following information –

- name
- date employed
- normal work days, e.g. Monday, Wednesday, Thursday
- date on which employee last became entitled to annual holidays
- days annual holiday due each year
- days sick leave due each year
- dates of, and pay received for, annual holidays, sick and bereavement leave
- dates of, and pay received for, public holidays worked

- hours worked on any public holiday
- date on which employee become entitled to alternative holiday for public holiday worked
- dates of, and pay received for, any public holiday or alternative holiday on which employee did not work, but was entitled to
- cash value of board and lodgings
- cash value of alternative holidays "sold"
- date employment terminated
- holiday pay received on termination
- date of, period for, and copy of written request and agreement to annual holiday cash up

We suggest that you **also** record the date on which an employee becomes entitled to sick and bereavement leave - their anniversary date.

If the information is kept on computer, it must be secure and, we suggest, backed up regularly.

Employees, their representatives or union, and a labour inspector can ask to see the record at any time. The record must therefore be easy to copy or print.

You must also keep a Wages and Time Record (a wages book) in terms of the Employment Relations Act 2000.

KEY POINTS

- The law sets minimum annual and public holidays, and sick and bereavement leave, as well as what you must pay for it
- All employees are covered, depending on length of service and (for sick and bereavement leave) hours worked
- You must keep Holidays and Leave and Wages and Time records for 6 years
- There are severe penalties for non-compliance, including interest on arrears

CHAPTER 2 – EMPLOYMENT AGREEMENTS

WHAT GOES INTO AN INDIVIDUAL EMPLOYMENT AGREEMENT?

Every employment agreement is a contract in law, and therefore must contain certain details. The Courts (especially the Employment Court) have ruled that employment contracts are of a special type, and should contain certain extra details, which are not normally required in commercial contracts. It is also wise to add certain clauses for your protection. All these clauses together should prudently be considered compulsory, because you should not employ anyone without having clarity about these points.

The Employment Relations Act 2000 refers to employment contracts as “employment agreements”, to indicate that the employment relationship is not based solely on the principles of contract law, but also on principles of equity (fairness) and agreement.

One is free to add other clauses to employment agreements, to customise it to your needs. To ensure that agreements comply with the law, AdviceWise People Ltd provides easy-to-use software that fully covers the compulsory clauses and gives choices on optional clauses. Contact 0800 MY ADVICE or go to www.advicewise.co.nz

Compulsory clauses

- Names of employer and employee
- Fact that it is an employment agreement, and how to vary it
- Start date of employee, duration of agreement, and termination arrangements (notice period)
- Work to be done (job or position description) and place of work
- Hours and days of work, and what “normal” working days are
- Salary or wage, when it is paid, and how
- Whether employee works overtime and if so, at what pay
- Benefits provided by law
 - Annual holidays
 - Public holidays
 - Sick leave
 - Bereavement leave
 - Parental leave
- Other benefits, like car, mobile, long service leave
- The employer’s grievance procedure, disciplinary code and procedure and house rules
- Acknowledgement that employee understands what is being signed
- Date and place of signature
- Signatures

Other clauses

- Confidentiality
- Restraint of trade
- Non-solicitation
- Etc

TYPES OF EMPLOYEE

- Permanent
- Fixed term or temporary
- Casual

Permanent

Permanent employees can work either –

- Full time or
- Part time

A **full time** employee works 5 days a week, generally 8 hours per day or 40 hours per week.

Part time employees work less than a full week, either by not working on all 5 days or by working fewer hours each day, or both. Part time employees in particular, should have their normal days of work spelled out in their agreements, because their annual and public holidays and sick and bereavement leave are based on that.

Fixed Term or Temporary

Fixed term employees can also work either full or part time.

If a temporary employee works beyond the agreed period, they automatically become permanent. It is therefore important to keep an eye on temporary agreements – there is no excuse if employment extends beyond the agreed period.

A fixed term agreement can be turned into a permanent one (but it cannot be used as a form of trial employment - **beware**).

Casual Employees

The Holidays Act 2003 effectively defines a casual employee as someone who works “intermittent or irregular” hours.

Casuals become entitled to sick and bereavement leave if, during any 6-month period, they work –

- at least an average of 10 hours per week; and
- at least 1 hour in every week during the period or
- at least 40 hours during every month during the period.

As soon as their hours drop below this level, they lose sick and bereavement leave benefits, but not annual and public holidays.

TRIAL OR PROBATIONARY AGREEMENTS

A trial agreement is simply a permanent or fixed term agreement with a trial or probationary clause, usually three or six months. There is no “trial agreement” as such. See the Employment Basics guide.

KEY POINTS

- Employment agreements are legal contracts
- They must, by law contain certain information
- Other information can be added
- 3 types of employee: permanent, fixed term (temporary) and casual
- Permanent and fixed term employees can work full or part time
- Fixed term and casual employees are defined by law, for the purposes of calculating their holidays and leave
- Trial appointments are a good option for employers, provided that they are actively managed

CHAPTER 3 - OTHER TYPES OF LEAVE

INTRODUCTION

The Holidays Act only mentions annual and public holidays, and sickness and bereavement as acceptable reasons for paid leave. The Parental Leave and Employment Protection Act 1987 provides for parental leave.

Any other leave is unpaid at your absolute discretion.

Certain leave, like jury leave or volunteer defence force leave under other Acts, has to be granted, but you do not have to pay for it (except for Employment Relations Education Leave. The ACC payment included in the table is a top-up payment, not the first week payment).

The following table is a guide to other kinds of leave. Please note that these are terms commonly used, and have no fixed legal meaning.

EXAMPLE CLAUSES FOR YOUR USE

<i>Common names for other types of leave</i>	<i>Clauses to use if you want to provide such leave</i>
Accident Compensation Leave	<i>ACC top- up payment</i> If you are absent from work as a result of a work related injury or accident, you will continue to be paid your normal wages/salary for _____weeks/months, at the sole discretion of the company. In return, any accident compensation based on earnings paid to you must be paid over to the company.
Tangihanga Leave	The company will grant up to _____days of paid/unpaid leave for the purpose of attending a tangi, provided that you obtain approval first.
Birthday Leave	The company will grant up to _____days of paid/unpaid leave in recognition of your birthday, to be taken at a mutually agreed time.
Shopping Leave	The company will grant up to _____ days of paid/unpaid leave in each year, to be taken in the week before Christmas Day, for shopping.
Court Duty	<i>Top up payment</i> When you are called to appear before court your salary will be paid during the absence. In return, you must refund to the company any fee you receive for your attendance at court. The duration of payment for this leave is at the sole discretion of the company.
Jury Service	<i>Top up payment</i> When you are called to do jury service your salary will be paid during the absence. In return, you must refund to the company any fee you receive for the jury service. The duration of payment for this leave is at the sole discretion of the company.

Cultural, Community and Sporting Leave	The company may in its sole discretion grant paid/unpaid leave to participate in cultural, community or sporting activities, provided that you obtain approval first.
Employment Relations Education Leave	Eligible employees are entitled to employment relations education leave in accordance with the provisions of Part 7 of the Employment Relations Act 2000.
Long Service Leave	In recognition of long service with the company, you will be entitled to paid long service holidays on the following scale: After completion of 6 years service, _____ week(s) once only. After completion of 10 years service, _____ week(s) once only. (and so on.) From and inclusive of the tenth year, long service holidays accrue at the rate of one week each year.
Marriage Leave	With the prior approval and at the sole discretion of the company, you may be granted _____ days leave on pay on the occasion of your marriage.
Sabbatical Leave	After _____ years of continuous service you will be entitled to _____ weeks of paid/unpaid sabbatical leave to attend an approved course, conference or educational programme. In accordance with company policy educational expenses for which prior approval has been obtained will be reimbursed.
Study Leave	The company may in its sole discretion grant paid/unpaid leave to attend training or educational courses relevant to the company's business, study for any approved examination or to research an approved topic provided you obtain approval first.
Garden Leave ON PAY	If you have been given notice of termination of your employment, the company may, in its sole discretion, direct that you not attend work at the company's premises but make yourself available for work from home. You are not allowed to take up other employment during such period of garden leave without the prior permission of the company.
Leave without pay	In circumstances where you have no paid leave due to you, the company may grant unpaid leave, for which prior consent is required.
Maternity, Paternity, Parental Leave	See Parental Leave Guide.
Defence Force Volunteers	Under the Defence Force Volunteers Protection Act, if employees do full-time voluntary training in any of the armed forces for periods adding up to 3 months or less, their job is protected. Part-time training is also covered if it adds up to no more than 3 weeks in each year from 1 April to 31 March, based on the employee's normal working week. The employer is required to allow unpaid leave for volunteer Defence Force training.

KEY POINTS

The law provides for paid –

- Annual and public holidays
- Sick and bereavement leave
- Parental leave
- First week of work-related ACC leave
- All other leave is unpaid and at your discretion
- If you allow other kinds of leave, put the details into your employment agreements or house rules, for clarity