

Improvements to the Holiday Act coming

The Government has accepted all of the Holidays Act Taskforce's recommended changes, which will provide certainty to employers and help employees receive their leave entitlements, Workplace Relations and Safety Minister Michael Wood has announced.

Michael Wood said the Government established the Holidays Act Taskforce to help address challenges with the Holidays Act after a joint request from Business NZ and the Council of Trade Unions.

"The Holidays Act 2003 encourages a healthy work-life balance by setting out minimum holiday and leave entitlements for employees. However, employers have found the legislative requirements hard to administer, which has meant costly fixes and employees missing out on their entitlements.

"The changes put forward by the Holidays Act Taskforce will make it easier to calculate entitlements and pay, giving employees and employers certainty and transparency. Business and union representatives reached consensus on these changes and we are delivering on our election commitment to implement them.

"I would like to thank the members of the Taskforce and Chair Gordon Anderson for their work. Their recommendations include:

- Entitling eligible employees to bereavement leave and family violence leave from their first day of employment.
- Giving eligible employees one day's sick leave from their first day of employment, with an additional day given per month until the minimum entitlement is reached.
- Extending bereavement leave to include more family members, including cultural family groups and more modern family structures.
- Removing the current parental leave 'override' to address discrimination against parents who take time off to care for their young children. Removing this provision will mean that employees returning to work following parental leave will be paid at their full rate for annual holidays.
- Requiring payslips, so employees know what their used and remaining leave entitlements are, and how these were calculated.

"I also want to especially acknowledge the CTU and BusinessNZ. This has been another example of the value in taking a balanced approach and working with both unions and business in a tripartite way.

"Officials have begun further detailed policy design work on these changes and will involve a range of payroll experts to make sure we get it right. I expect to introduce

legislation in early 2022 and give businesses plenty of time to prepare for the changes,” Michael Wood said.

Source: Beehive.govt.nz

The following extract from the [Taskforce’s Report](#) shows the major issues addressed and the changes proposed. Please note that the changes are PROPOSED and not yet in effect.

THEME/PROVISION		CURRENT ACT	PROPOSED CHANGES
How holiday & leave <u>payments</u> are calculated	Annual holidays payments	<p>Paid at the greater of:</p> <ul style="list-style-type: none"> • Ordinary Weekly Pay (or average weekly earnings over last four weeks if this cannot be calculated) • Average weekly earnings over last 12 months <p>For employees that have been on parental leave, only the average weekly earnings over last 12 months is used.</p>	<p>Paid at the greater of:</p> <ul style="list-style-type: none"> • Ordinary Leave Pay • Average weekly earnings over last 13 weeks • Average weekly earnings over last 52 weeks <p>The above calculation is also used for those who have been on parental leave.</p> <p>Ordinary leave pay is what the employee would have earned if they had been at work on the day(s) in question.</p>
	FBAPS leave payments	Relevant Daily Pay (RDP), or Average Daily Pay over last 52 weeks (if not possible to calculate RDP or if pay varies within pay period).	<p>Paid at the greater of:</p> <ul style="list-style-type: none"> • Ordinary Leave Pay • Average Daily Pay over the last 13 weeks
	‘Gross earnings’ definition	Lack of clarity around what payments are included in ‘gross earnings’ (e.g. what a discretionary payment is).	Clarifies that ‘gross earnings’ means all cash payments received, except direct reimbursements for costs incurred.
How deduction of <u>entitlement</u> is calculated	Period of annual holidays	Annual holidays entitlement of four weeks, but lack of detail about how to determine what a week is, where it is not obvious (e.g. for an employee with variable hours and/ or pay). Employee and employer agreement about what genuinely constitutes a working week for the employee.	<p>Annual holidays entitlements are calculated, taken, paid and held in weeks or portions of weeks.</p> <p>Use hours from employment agreement or roster. If no hours are set out in employment agreement or roster, then use average hours worked over corresponding days over the previous 13 weeks.</p>
	Day of FBAPS leave	Deductions in days (but lack of certainty about how to determine if a day is an Otherwise Working Day).	Deductions in days or part-days (sick and family violence leave can be taken in units of less than a day, at a minimum of a ¼ of a day). Detailed formula for determining an Otherwise Working Day.
Taking annual holidays in advance		Employees become entitled to four weeks’ holidays after 12 months continuous employment. The Act does not specifically provide for leave in advance (i.e. it is at the discretion of the employer).	Employees become entitled to four weeks’ holidays after 12 months continuous employment, but can take leave in advance on a pro-rata basis (e.g. could take two weeks’ leave after working for six months).

Eligibility for FBAPS	<p>Employees are eligible for sick, bereavement and family violence leave after six months' continuous employment or if they meet an hours test after six months.</p> <p>Employees can get three days bereavement leave if their spouse or partner, parent, child, sibling, grandparent, grandchild, or spouse or partner's parent dies.</p>	<p>Bereavement leave and family violence leave are available from day one, and three days bereavement leave is available to cover more family members. One day's sick leave is available from the first day of employment, with an additional day per month of employment until the full five-day entitlement is reached. The Select Committee is currently considering legislation to extend sick leave to from five to 10 days per year.</p>
Pay-as-you-go (PAYG)	<p>There is confusion as to what 'intermittent or irregular' means in relation to employees being eligible to receive annual holiday pay with their pay (instead of being entitled to take paid time off).</p>	<p>Clearer definition of what 'intermittent or irregular' means, and employers required to review PAYG employees every 13 weeks to check eligibility for PAYG. Also removes the ability to pay PAYG for employees on fixed-term contracts of less than 12 months.</p>

FBAPS Family violence-, bereavement-, alternate leave, public holidays, sick leave.

Source MBIE.

Over the next few months we will be highlighting interesting and important portions of the Report.

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