

Improvements to the Holidays Act

The Government has accepted the Holidays Act Taskforce's recommendations to make the Holidays Act clearer and provide more certainty for employers and employees.

The Government established the Taskforce to help address challenges with the Holidays Act, following a joint request from Business NZ and the Council of Trade Unions.

The Taskforce made 22 recommendations which were jointly agreed to by union and business representatives. The recommendations will improve the current Act by providing a clear and transparent set of rules for providing entitlements to, and payments for, holidays and leave.

The Taskforce's changes will address the high degree of ambiguity that has made the Holidays Act difficult to understand and implement for employers. Employees will find it easier to understand their entitlements and will also benefit from some changes to leave entitlements.

THE CHANGES WILL INTRODUCE MORE TRANSPARENCY AND CLARITY:

- › There will be new clear and transparent rules and definitions for determining, calculating and paying leave entitlements so that employers can have greater confidence that they are meeting their obligations under the Act and their employees are receiving their correct entitlements.
- › The greater clarity around calculating and paying leave will support employees to better understand what their entitlements are.
- › Employers and employees will benefit from greater transparency, with payslips required for each pay period, detailing used and remaining leave entitlements and how these are calculated.

THE CHANGES WILL INCREASE ACCESS TO SOME LEAVE ENTITLEMENTS:

- › From their first day of employment eligible employees will be entitled to bereavement leave and family violence leave, and will begin accruing sick leave.
- › Bereavement leave will be expanded so that employees can access three days leave for more family members, including cultural family groups and more modern family structures.
- › The parental leave override will be removed, meaning that employees returning from parental leave will be paid at their full rate for all their annual holidays.

The Holidays Act is highly complex, and affects all employees and employers across the country. We have begun further detailed policy design work to implement these changes. The Government expects to have introduced legislation by early 2022, which will go through the full parliamentary process. Businesses and employers will be given plenty of time and guidance to prepare for these changes.

For more information visit mbie.govt.nz/holidays-act-review

HIGHLIGHT OF THE PROPOSED CHANGES

THEME/PROVISION		CURRENT ACT	PROPOSED CHANGES
How holiday and leave payments 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 ¹ 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 entitlement 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>	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.
Pay-as-you-go (PAYG)		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).	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.

¹ Family violence leave, Bereavement leave, Alternative holidays, Public holidays, Sick leave.