

Holidays Act 2003

Information for Employees

What leave entitlements am I legally entitled too?

The Holidays Act (the Act) set out the minimum leave you must be provided if you are an employee. There are four types of leave covered under the Act:

- Annual Holidays – after twelve months continuous employment you are entitled to four weeks annual leave per annum.
- Sick leave – after six months continuous employment you are entitled to five days sick leave.
- Bereavement Leave – after six months continuous employment you are entitled to three day's paid leave on the death of a spouse, parent, parent-in-law, child, sibling, grandparent or grandchild. You are also entitled to an additional one day's leave on any other occasion the employer accepts you have suffered a bereavement.
- Public Holidays – you are entitled to eleven public holidays per year. If a public holiday falls on a day that you would normally be working, then you are entitled to be paid for the day.

These entitlements are minimum entitlements. Your employer may offer additional entitlements. Always consult your employment agreement for your specific entitlements.

If you are working as an independent contact the Act does not apply.

ANNUAL HOLIDAYS

I'm a part time employee – how is my annual leave calculated?

You are still entitled to four weeks leave, however this would equate to four weeks of your part time hours. For example, if you worked three days per week, you would be entitled to four weeks leave of three days per week. So your annual leave entitlement would be twelve days.

If your hours and pay varies from week to week, you would still be entitled to four weeks leave but the payment for that leave would be an average of your weekly earnings over the twelve month period before the leave was taken.

I would like to take my annual entitlement in one block – can my employer stop me?

Any annual leave taken has to be agreed by the employer. An employer can decline leave if the timing does not suit the needs of the practice.

However you are entitled to take two week's annual leave in an uninterrupted block if you wish, and that leave must be allowed within twelve months of the entitlement being earned.

My employer is asking me to take leave, but I don't want too – do I have to?

Your employer can manage your annual leave by making you take it. This would normally happen if you have a large leave balance owing. Your employer should consult with you and try and agree on a suitable time for you to take the leave. If you do not agree to take leave, your employer can give you fourteen days written notice of the date your holiday is to begin and end.

What happens if I get sick while I'm on annual leave – does this become sick leave?

If you fall sick immediately before a period of annual leave, you are entitled to take any scheduled annual holidays as sick leave, for the period of sickness.

If you fall sick during a period of annual leave, there is no legal requirement for your employer to give you sick leave rather than annual leave.

Can I cash up any of my annual leave instead of taking a holiday?

One week of annual leave can be cashed up per year providing your employer agrees to it. You are not able to cash up more than one week per year.

My employer wants to pay my annual leave out as 8% of my pay each pay period – can they do this?

8% of your pay equates to the same dollar value as four weeks paid leave. Paying an employee 8% in addition to wages can only be used in the following two circumstances:

- If you are on a genuine fixed term agreement of less than twelve months. During your employment you will not reach the date on which you would qualify for annual holidays.
- If your work is genuine casual work. This would mean that your work pattern is intermittent or irregular. In this situation it would not be meaningful or practicable to attempt to provide you with four week's paid annual holidays.

Can I carry my annual leave entitlement over into the next period of entitlement?

Yes, annual leave can be carried over until it is used up. However, as mentioned earlier, your employer can make you take your leave if your entitlement is getting too large.

SICK LEAVE

I'm a part time employee – how is my sick leave calculated?

The legal five day entitlement cannot be pro-rated if you are a part time employee. This means that you will receive a minimum of five days' sick leave per year, regardless of how many days per week you work.

Can I take sick leave to look after others that are sick?

Sick leave may also be used if you are looking after a sick or injured spouse or anyone else who is sick or injured and depends on you for their care.

Can I take sick leave for elective surgery?

Yes. However, if you have any say in when the surgery is performed, try to work in with your employer to find a time that suits you both best.

Can I carry my sick leave entitlement over into the next period of entitlement?

Yes, you can carry up to 15 days' sick leave into the next 12-month period of entitlement. This means you may accrue a maximum entitlement of 20 day's sick leave.

I have been asked to supply a medical certificate for some leave I have taken – do I have to?

Your employer can ask for a medical certificate for any sick leave taken. However, if they are asking after less than three days of sick leave, the employer has to meet the cost of obtaining the certificate. For more than three days, the cost will be your expense.

What happens if I am sick but have run out of sick leave?

Your employer can agree that you can use your annual leave entitlement, if you are happy to do so. If you do not want to use your annual leave you would be required to take leave without pay. Your employer may let you anticipate future sick leave, but they are not required to do this.

I have been injured, what are my sick leave and ACC entitlements?

If ACC has agreed to pay weekly compensation for your injury your payments will start after your first week off work.

If your injury is a work related injury, your employer must pay your first week's compensation without deduction of sick leave. If the injury is not work related, your employer may agree to pay you sick leave for the first week.

ACC compensation is up to 80% of your earnings. Your employer may, but is not obliged to, agree to top-up your payment the additional 20% by using your sick leave. This would mean that a full time employee would be paid one day of sick leave per week (20% per day).

More information can be found on ACC's website: <http://www.acc.co.nz/for-individuals/employees>

BEREAVEMENT LEAVE**Is there a maximum limit of bereavement leave I can take?**

No, you are entitled to bereavement leave for every bereavement you suffer.

How does my employer decide if I have suffered a bereavement?

Your employer is entitled to make this judgement taking into account:

- *The closeness of your association with the person who had died*
- *Your responsibility for the ceremonies*
- *Cultural responsibilities*

What happens if I suffer a bereavement while I'm on annual leave or sick leave?

You will be entitled to receive the statutory maximum (1 day or 3 days) of leave to be treated as bereavement leave instead of annual or sick leave.

What if I need to take a longer period of leave for a bereavement due to travel or family arrangements?

You can choose to either use annual leave or leave without pay.

PUBLIC HOLIDAYS**I've been asked to work on a public holiday, what do I get paid?**

If the day was a day you would normally have worked if it hadn't been a public holiday then you will be entitled to time and a half for the hours you worked, plus a full day paid alternative holiday to be taken at another date.

If it was not a normal working day for you then you would only be entitled to the time and a half, not the alternative holiday.

Your employment agreement may have provision for more superior entitlements.

When can I take my alternative holiday?

You need to agree with your employer when you will take your alternative holiday. Your employer can not unreasonably withhold agreement.

If your alternative holiday has not been taken within a year, you are able to request it is cashed up. However if your employer wants you to take your alternative holiday they can direct you to by giving you 14 days notice.

June 2014

**Need more help?**

Contact the NZMA:

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