New Zealand
Payroll Practitioners
Association
Developing and Supporting
Payroll Professionals
www.nzppa.co.nz

Payroll Law & Calculations

www.nzppa.co.nz

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Introduction – Payroll Law & Calculations

Payroll practitioners are multi-skilled in employment relations, accountancy and information technology. This course is for the purpose of giving new or existing payroll practitioners a solid foundation of skills to manage legislative requirements, process and procedural aspects of payroll.

This course covers the following:

IRD payroll responsibilities

- IRD Forms, record keeping and reporting
- IRD legislation (Income Tax Act 2007, Student Loan Scheme Act 1992, Tax Administration Act 1994)

Calculating ESCT for superannuation and KiwiSaver

Allowances (Taxable, Non-Taxable and reimbursement)

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- Understanding the difference between employees and Contractors and the tests that can be used (including the tests the IRD applies)
- Understanding good faith behaviour and how that can impact on payroll decisions
- Interpreting and following the rules around collective agreements
- Individual employment agreements
- What must be included in a wage and time record

Employment agreement clauses

- Clauses important to payroll activities

Minimum Wage Act

Privacy Act (the 12 principles in relation to payroll activities)

Wages Protection Act

- Payment of wages
- Employee deductions
- Overpayments to employees

Actioning attachment orders
(District Courts Act & amendments)

New Zealand's tax system

New Zealand's laws require people and organisations to pay taxes. The government uses these taxes to pay for government expenditure, including public services in New Zealand such as education, healthcare, roads and welfare.

Almost all New Zealanders make a contribution to these services through the taxes they are required to pay by law.

New Zealand residents must pay income tax in New Zealand on their worldwide income. If you're a New Zealand resident, most of the income you receive will be subject to tax. This includes income from personal effort, investments, benefits, pensions and overseas income.

Inland Revenue is the main government department that administers tax laws and collects tax payments. New Zealand Customs also collects some taxes and duties on imported goods.

New Zealand's tax system relies on people's honesty in complying with the tax laws. It's important you understand your tax responsibilities, to avoid being penalised.

Tax residence

The residence rules set out in the tax laws are different from the normal citizenship rules. Having New Zealand citizenship or permanent residence doesn't necessarily mean you're a resident for tax purposes. On the other hand, you could be a resident for tax purposes, but not hold citizenship here.

As an individual, you're a New Zealand resident for tax purposes if you meet any of these three conditions:

- The employee is in New Zealand for more than 183 days in any 12-month period.
- The employee has an "enduring relationship" with New Zealand.
- The employee is overseas in the service of the New Zealand government.

The 183-day rule

If the employee is in New Zealand for more than 183 days in any 12-month period, the employee will be considered to be a New Zealand resident from the first day they were here. The 183 days don't have to be consecutive.

For example, if the employee came to New Zealand for 10 days in April and then return for 20 days in September of the same year, that will be counted as 30 days. If the employee is in New Zealand for part of a day, this is counted as being a whole day. This means that the days the employee has to arrive or depart are treated as days present in New Zealand.

An enduring relationship with New Zealand

The Income Tax Act 2007 says that anyone who has a permanent place of abode in New Zealand will be a New Zealand resident for tax purposes. "Permanent place of abode" doesn't only mean the building the employee lives in—it covers all their links and ties with New Zealand.

These may be social, physical, economic, financial or personal links. Overall, the test could be described as whether the employee has an enduring relationship with New Zealand.

Does the employee have an enduring relationship with New Zealand?

Criteria IRD will consider:

Presence in New Zealand	whether the employee are here continuously or from time to time
Accommodation	whether the employee own, lease or have access to property in New Zealand
Social ties	where the employees immediate family lives, if the employee has children being educated here, if the employee belong to any New Zealand clubs, associations or organisations
Economic ties	if the employee has bank accounts, credit cards, investments, life insurance or superannuation funds here
Employment	if the employee is employed, if they have employment to return to, the terms of any employment contract
Personal property	if the employee has any vehicles, clothing, furniture or other property or possessions kept here permanently
Intentions	whether the employee intends to live in New Zealand or return overseas after a time
Benefits, pensions and other payments	whether the employee receives any welfare benefits, pensions or other payments from New Zealand

This list is a guide only—it's necessary to consider the employees **overall** situation when working out whether they are a New Zealand tax resident.IRD has created a questionnaire to help individual on determining if they are a tax resident in New Zealand. This questionnaire can be obtained from the IRD website search for: **New Zealand tax residence questionnaire, IR886**

Please note: that even if the employee maintain ties (or even a physical home) in other countries, they still be a New Zealand tax resident. As long as the employee has an enduring relationship with New Zealand they will always be a resident. This test overrides any rules about the number of days the employee is here.

If you're a New Zealand tax resident and also a tax resident of another country under that country's tax laws, it's possible that you could be taxed twice on the same income. To avoid this, New Zealand has double tax agreements with many other countries.

End of Year and New Zealand Balance dates

New Zealand's tax year runs from 1 April to 31 March.

Some individuals, all self-employed people and businesses have to fill in a tax return after 31 March each year to declare all their income and tax paid.

Some self-employed people and businesses have a balance date other than 31 March, e.g., some farmers have a 30 June balance date. Depending on the circumstances, IRD may give approval for other self-employed people and businesses to have a different balance date.

Employee End of Year Earnings Certificates

Employers do not need to provide an end of year earnings certificate to their employees. The information on employee's taxable earnings is sent through via payday reporting (when the employee is paid) to IRD as part of the overall earnings record for the employee.

Employees can logon to their own personal tax account on the IRD website. With pay day filing the majority of employees do not have to file an annual return as all of their earnings are automatically filed with IRD.

Income tax

In New Zealand, these types of income are subject to income tax:

- salary and wages
- business and self-employed income
- most social security benefits
- income from investments
- rental income
- profit from selling capital assets, in some circumstances (this doesn't usually apply to personal assets sold)
- income that a New Zealand resident earns from overseas.

The level of the employee's total gross income will determine what tax rates they should use.

Graduated Tax System

Income tax for an employee is not set at one rate (except if defined in an IR23). Income tax rates are applied to the income range so what this means if the employees wage or salary goes over a number of taxable income ranges they are taxed at the rate for each income range.

Current Tax **Rates for tax year 2020-2021:**

Taxable income	**Income tax rates for every $1 of taxable income (excl ACC earners' levy)**	**PAYE rates for every $1 of taxable income (incl ACC earners' levy)**
up to $14,000	10.5 cents	11.89 cents
from $14,001 to $48,000	17.5 cents	18.89 cents
from $48,001 to $70,000	30 cents	31.39 cents
$70,001 and over	33 cents	34.39 cents
No-notification	45 cents	46.39 cents

Overview of Employer responsibilities (IRD)

Introduction

As well as a brief description of the main tasks you will have to do once you've registered as an employer, there is a link to the section that covers the topics in more detail.

Make sure new employees fill in a *Tax code declaration (IR330)*

This will tell you:

- the tax code to use, and
- the rate of tax to take out of their wage.

If any employees don't fill in an IR330, you must deduct tax from their wages at a higher rate (called the no-declaration rate).

Deduct PAYE from your employees' wages

You pay this to IRD either once or twice a month, depending on the total amount of wages you pay.

PAYE includes the ACC earners' levy, to cover the cost of employees' non-work injuries.

Employers that electronically file with IRD using payday filing can offer their employees payroll giving. This scheme gives employees the opportunity to donate to approved donee organisations from their pay and receive an immediate tax credit.

Note

If you have a self-employed contractor working for you, you will not need to deduct PAYE but may need to deduct withholding tax.

Complete employer returns

- Once the employer has set up an employer account through myIR they can payday file sending employee earnings information two days from when the employee as paid
- Employer deductions can be paid either once or twice monthly depending on the employer being a small or large employer.

Pay fringe benefit tax if required (this is not covered in this course as it is not a core function of payroll)

If you supply fringe benefits (perks) to your employees, you will need to send IRD a fringe benefit tax payment by the due date and either a:

- *Fringe benefit tax quarterly return (IR420),* or
- *Fringe benefit tax income year return (IR421),* or
- *Fringe benefit tax annual return (IR422).*

You can either download these forms or complete them online.

Make any further deductions from employees' wages if required

Other deductions may be child support, student loan, ESCT, or KiwiSaver contributions.

Registering as an employer

Once it has been identified by the employer that employee/s will be employed, the employer will need to register with the IRD as an employer.

The form to use to register as an employer is the employer registration (IR334) form. Registration can be done by filling in the form and sending it in or by doing it online.

Once your employer registration has been received and accepted by IRD the employer will receive an employer's information pack that includes:

- Employers Guide IR335
- PAYE deduction tables
- Tax code declaration (IR330)
- You will receive a Fringe Benefit Tax Guide (IR409) if you answer "**Yes**" to Question 13 on the employer registration form

Notes

Inland Revenue
Te Tari Taake

Employer registration

IR334
June 2016

- **You can register online through our website www.ird.govt.nz and go to "Get it done Online" then "Employers" then "register as an employer"**
- **Please answer all questions, sign the declaration and submit the registration after you have begun employing.**

1. IRD number (8 digit numbers start in the second box. 1 2 3 4 5 6 7 8)

If the person or the entity registering doesn't have an IRD number, complete and attach an *IRD number application form (IR595)* or *(IR596)* with this registration.

2. Print the full name of the person or entity, eg, partnership, trust or society, or the registered name of the company (don't show a trade name).

3. If the trade name is different from the name shown above, print it here.

4. Employer's place of business (don't show a box number).

Street address

Suburb or RD Town or city

5. Print the employer's usual postal address if it is different from the street address.

Street address or PO Box number

Suburb, box lobby or RD Town or city

If you use a tax agent to prepare your employer returns, don't show their address here. Please ask your agent to link you as a client and give us the address for your employer mail.

6. Print contact telephone number(s).

( ) Business ( ) Mobile phone or after hours ( ) Fax

7. Your email address

We'll use this to automatically register you for our online updates and newsletter. You can opt out at any time.

○ Please tick here to authorise us to update your records if the details you have supplied are different to what we currently have recorded.

8. When will you start employing?

Day Month Year

This is the date when you will be registered as an employer and will need to complete an *Employer Deduction Form (IR345)* and *Employer Monthly Schedule (IR348)* for that month.

If this is a future date, please submit this after you have begun employing.

You can view a copy of the PAYE deduction tables at **www.ird.govt.nz** or use the online PAYE calculators.

9. BIC (business industry classification) code

Please supply a business description and number

If you do not have your number you can get it from the Business Industry Description and Code website.

10. Print the number of your employees, including contractors who receive schedular payments.

11. Will any of your employees have a student loan? ○ Yes ○ No

12. Will you be providing fringe benefits to your employees? See the note below for more information on fringe benefits. ○ Yes - go to Question 13. ○ No - go to Question 14.

Note: Most benefits given to employees in addition to their salary or wages are fringe benefits. These include motor vehicles, low-interest loans, free, subsidised or discounted goods and services, and employer contributions to sick or death benefit funds, superannuation schemes (other than employer's superannuation contributions), specified insurance policies and some accident insurance schemes. If a benefit you give an employee is a fringe benefit, you will generally be liable for FBT (fringe benefit tax). If you ticked "Yes" at Question 12 read our *Fringe benefit tax guide (IR409)*. You can view this at **www.ird.govt.nz**

Starting and ending employment

These are your responsibilities as an employer when an employee starts or stops working for you or transfers to another branch of a company.

When an employee...	**they must...**	**and you must...**
1. starts working for you	• fully complete a *Tax code declaration (IR330)* or *Tax rate notification for contractors (IR330C)* • complete a *KiwiSaver deduction form (KS2)* if they're a KiwiSaver member • provide a Savings suspension letter, if applicable.	• show their employment start details: • using the **New/departing employees** service in myIR, or on your *Employment information* schedule • give them a *KiwiSaver information pack (KS3)* if they're eligible • automatically enrol them in KiwiSaver if they're eligible.
2. stops working for you		When an employee stops working for you, you must show their employment finish details on your *Employment information* schedule.

3. stops working for you and you rehire them:
  • in the same year, or
  • in a future year
		If you rehire an employee after they stopped working for you, you must treat them as a new employee. The above requirements will apply under (1).

Transferring to another branch

If an employee...	then...	and...
4. transfers from one branch of a company to another and is paid by the new branch office on a separate payroll (different legal entity).	• the old branch treats the transfer as if the employee has stopped work, and • the new branch treats the transfer as if the employee is new.	• Follow the requirements under (1)
5. transfers from one branch of a company to another and is paid from a central or head office (same legal entity).	that office continues deducting PAYE from the employee's earnings.	the employee does not need to complete a: • new tax code declaration, or • KiwiSaver deduction form. • You don't need to automatically enrol the employee in KiwiSaver.

Skill Check – Starting New Employees

1. What form registers a new employer with the IRD?

2. When a new employee starts what are the IRD requirements?

3. If you cease employing any staff do you need to contact IRD?

4. If an employer purchases an existing company (and payroll will be centralised) do you need to treat the employees of the other company as new employees? If not why?

5. If an employer is purchasing a company and all employees will move across and be given an employee employment agreements under the existing company do you need to treat them as new employees? If Yes why?

Defining what is Salary or Wages

Under the Income Tax Act 2007 salary and wages is defined as:

RD5 Salary or wages

Meaning

Salary or wages—

(a) means a payment of salary, wages, or allowances made to a person in connection with their employment; and

(b) includes—

(i) a bonus, commission, gratuity, overtime pay, or other pay of any kind; and

(ii) a payment described in subsections (2) to (8); and

(iii) an accident compensation earnings-related payment; and

(c) does not include—

(i) an amount of exempt income:

(ii) an extra pay:

(iii) a schedular payment:

(iv) an amount of income described in section RD 3(3) and (4):

(v) an employer's superannuation contribution other than a contribution referred to in subsection (9):

(vi) a payment excluded by regulations made under this Act; and

Employee responsibilities

All employees and contractors must complete an **IR330** as soon as they start doing work for you.

Things to check on your IR330

The **IR330** is not sent to IRD but retained in your records (for seven years from the last salary/wage payment made to the employee).

Ensure the employee completes the **IR330** form including their:

- Name,
- IRD number,
- Tax Code.
- Signed and dated.

Failure to complete any of these fields is considered an invalid form.

If you have a “new starters” pack, always ensure that the IR330 form in the pack is the current form and up to date. IRD do make changes and update the IR330 form from time to time so it is important to have a process to ensure employees’ are given the appropriate up to date form.

Inland Revenue
Te Tari Taake

Tax code declaration

IR330
April 2019

Use this form if you're receiving salary or wages as an employee.
If you're a contractor or use a WT tax code, you'll need to use the *Tax rate notification for contractors (IR330C)* form.

Once completed:

Employee **Give this form to your employer.**
If you receive a payment such as a benefit or superannuation, **return this form to Work and Income.**

Employer **Do not send this form to Inland Revenue.** You must keep this completed IR330 with your business records for seven years following the last wage payment you make to the employee.
When an employee gives you this form you must change their tax code, even if you have received different advice in the past.

1 Your details

First name/s (in full) | Family name

IRD number (8 digit numbers start in the second box. 1 2 3 4 5 6 7 8)

2 Your tax code

You must complete a separate *Tax code declaration (IR330)* for each source of income
Choose only ONE tax code **Refer to the flowchart on page 2 and then enter a tax code here.**

Tax code

If you're a **casual agricultural worker, shearer, shearing shed-hand, recognised seasonal worker, election day worker** or have a **tailored tax code** refer to "Other tax code options" at the bottom of page 2, choose your tax code and enter it in the tax code circle.

3 Declaration

Signature

Day Month Year 2 0

Give this completed form to your employer. If you don't complete Questions 1, 2 and 3, your employer must deduct tax from your pay at the non-notified rate of 45 cents (plus earners' levy).

Privacy
Meeting your tax obligations means giving us accurate information so we can assess your liabilities or your entitlements under the Acts we administer. We may charge penalties if you don't.
We may also exchange information about you with:

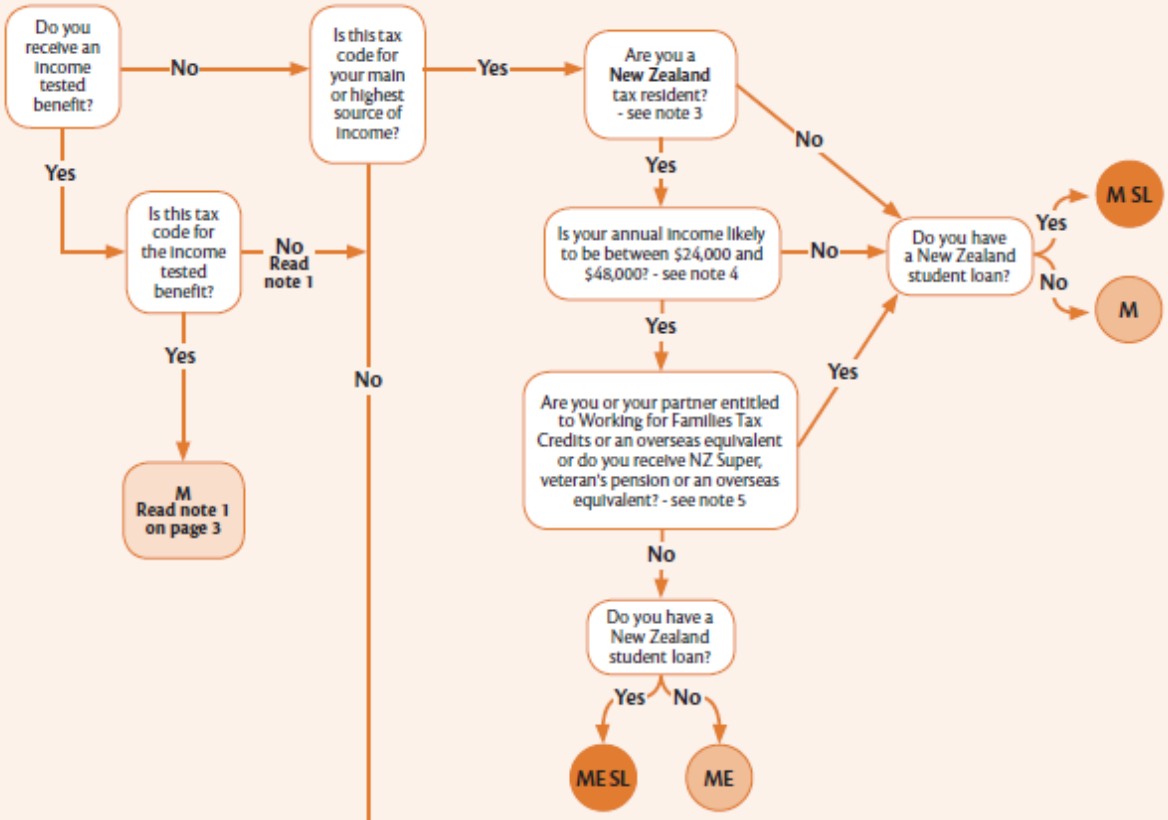
- some government agencies
- another country, if we have an information supply agreement with them
- Statistics New Zealand (for statistical purposes only).

RESET FORM

If you ask to see the personal information we hold about you, we'll show you and correct any errors, unless we have a lawful reason not to. Contact us on 0800 377 774 for more information. For full details of our privacy policy go to **www.ird.govt.nz** (keyword: privacy).

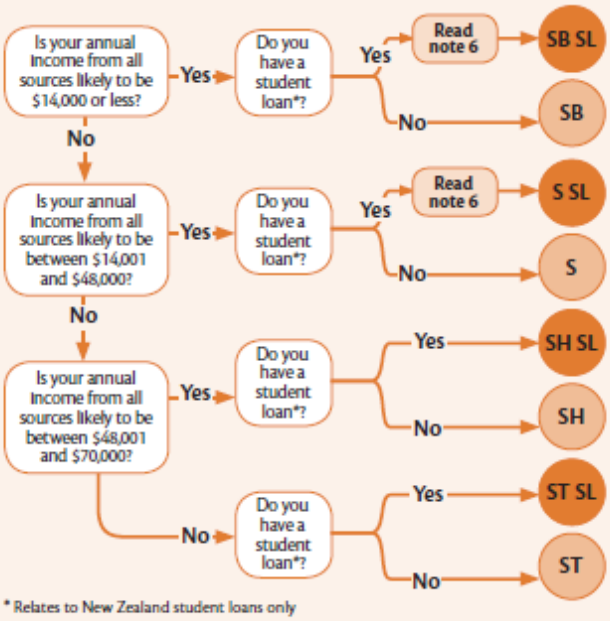
Salary and wages – main or highest source of income

Choose your tax code here if you receive salary or wages. See secondary income and other tax code options below for secondary jobs or income from other sources



Secondary income

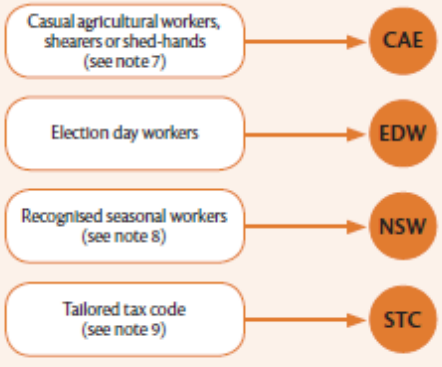
Use this flow chart for your secondary income source



* Relates to New Zealand student loans only

Other tax code options:

Use the tax code shown if you receive any of the following types of income or you have a tailored tax code



2 **When you've worked out your tax code, enter it in the tax code circle at Question 2 on page 1.**

Important: You may need to change your tax code if your circumstances change during the year. For example:

- **you take out a student loan or pay it off**
- **start or stop being eligible to use ME or ME SL (see note 5 below)**
- **you have a second job and your income decreases or increases, changing the code you should be using.**

Notes to help you complete this form

1. If you receive a **benefit from Work and Income** (other than a student allowance, NZ Super or Veteran's Pension) you must use the "**M**" tax code for this income. **You must use the secondary income section on page 2 to work out your tax code for any other taxable income**.

   If you choose a secondary tax code of "**S**" or "**S SL**" and you'll earn more from your secondary job than your benefit, you may pay more tax than you're required to for that job. You can apply for **a tailored tax code** so that the right amount of tax is deducted - see note 9 for more information about tailored tax codes.
2. **Source of income** means income such as salary, wages, weekly accident compensation payments, NZ Super, Veteran's weekly compensation, Veteran's Pension or student allowance.
3. You are a New Zealand tax resident in any of these situations:
   - You've been in New Zealand for more than 183 days in any 12-month period and haven't become a non-resident.
   - You have a permanent place of abode in New Zealand.
   - You're away from New Zealand in the service of the New Zealand Government.
4. Your **annual income** is your total income (before tax is deducted) from all sources, from 1 April to 31 March, excluding losses carried forward from a previous year.
5. If you or your partner are entitled to receive Working for Families Tax Credits (WfFTC) or an overseas equivalent, or if you receive NZ Super, Veteran's Pension or an overseas equivalent of any of these, your tax code is "M" (or "M SL" if you have a student loan). You're not eligible to use "ME" or "ME SL".

   For more information about WfFTC go to **www.ird.govt.nz**
6. You may be eligible for a repayment deduction exemption on your salary and wage income if you:
   - have a student loan
   - are studying full-time in New Zealand
   - expect to earn below the annual repayment threshold from all sources
   - earn above the pay-period repayment threshold.

   If you have a student loan and you choose "**SB SL**" or "**S SL**" for your tax code, you may pay more towards your student loan than you need to. If you earn under the pay period repayment threshold from your main job, you can apply for a special deduction rate to reduce your student loan repayment deductions on your secondary earnings.

   For more information about repayment deduction exemptions and special deduction rates go to **www.ird.govt.nz/studentloans**

   If you already have a repayment deduction exemption or special deduction rate for your student loan but your circumstances have changed, you'll need to update your details so we can check you're still eligible. You can do this at **www.ird.govt.nz** or by calling 0800 227 774.
7. **Casual agricultural workers** are people engaged in casual seasonal work on a day-to-day basis, for up to three months. This includes shearers and shearing shed-hands.
8. If you are a recognised seasonal worker or hold a work visa as foreign crew of a vessel fishing New Zealand waters, you will use the "**NSW**" code. **Recognised seasonal workers** must be employed by a registered employer under the Recognised Seasonal Employers' Scheme and are employed in the horticulture or viticulture industries. You must have a Recognised Seasonal Employer Limited Visa/Permit. See **www.immigration.govt.nz** (search keyword: seasonal).
9. If you have a current **tailored tax code** certificate, enter "**STC**" as your tax code on page 1 and show your original tailored tax code certificate to your employer.

   A tailored tax code is a tax deduction rate worked out to suit your individual circumstances. You may want one if the regular tax codes will result in you not paying enough tax or paying too much. For more information go to **www.ird.govt.nz** or contact us on **0800 227 774**. You can apply for a tailored tax code in myIR or complete a *Tailored tax code application (IR23BS)* form. Go to **www.ird.govt.nz** (search keyword: IR23BS).
10. If you need help choosing your tax code go to **www.ird.govt.nz** or contact us on **0800 227 774**.

Skill Check – IR330 Tax Code

1. Whose responsibility is it to fill out an IR330?

2. Can you accept an emailed change of tax code without an IR330 if the employee gives permission?

3. Should a payroll practitioner provide advice to an employee on what tax code they should use?

4. What happens if no IR330 is received from a new employee?

5. If an employee provides an IR330 and then you get a letter from IRD to change the tax code to another code which do you act on?

Schedular Payments (Contractors)

Schedular payments are payments made to people who are not employees but are contractors. This includes independent contractors, labour only contractors and self-employed contractors. The old name for this was called withholding tax.

The types of occupations that require the employer to deduct a schedular payment is defined on the IR330c form (last page).

Please Note:	If a withholding tax code is used you do not deduct ACC or student loan repayments; they are the contractor's responsibility.

Example:

If Jeff is a model and declared a tax code of "**WT**" on the IR330c form this is how he would be taxed:

Invoice for $1000 plus GST. Tax is only taken out of the $1000, nothing to do with GST. Gross earnings: $1000.00. PAYE to pay: $1000.00 * $0.20 = $200.00

Tax code to use for a schedular payment

- The code to use is WT.

Inland Revenue
Te Tari Taake

Tax rate notification for contractors

IR330C
April 2019

Use this form if you're a contractor receiving schedular payments.

If you're receiving salary or wages as an employee, you'll need to use the *Tax code declaration (IR330)* form.

If you receive schedular payments you will receive an invoice for your ACC levies directly from ACC.

Once completed:

Contractor **Give this form to the person paying you.**

Payer **Don't send this form to Inland Revenue.** You must keep this completed IR330C with your business records for seven years following the last schedular payment you make to the person or entity.

1. Your details

Full Name

IRD number (8 digit numbers start in the second box. 1 2 3 4 5 6 7 8)

If you don't have:

- your IRD number you can find it in myIR or on letters or statements from us.
- an IRD number go to **www.ird.govt.nz** (search keywords: IRD number) to find out how to apply for one.

2. Your tax rate

You must complete a separate *Tax rate notification for contractors (IR330C)* for each source of contracting income.

Refer to the flowchart on page 2 and enter your tax rate to one decimal point here. %

Refer to the table on page 3 and enter your schedular payment activity number here.

Your tax code will always be: WT

3. Declaration

Name

Designation or title (if applicable)

For example, director, partner, executive office holder, manager, duly authorised person

Signature

Day Month Year 2 0

Give this completed form to your payer. If you don't complete sections 1 and 3 your payer must deduct tax from your pay at the no-notification rate of 45%, except for non-resident contractor companies where it's 20%.

RESET FORM

Privacy

Meeting your tax obligations means giving us accurate information so we can assess your liabilities or your entitlements under the Acts we administer. We may charge penalties if you don't.

We may also exchange information about you with:

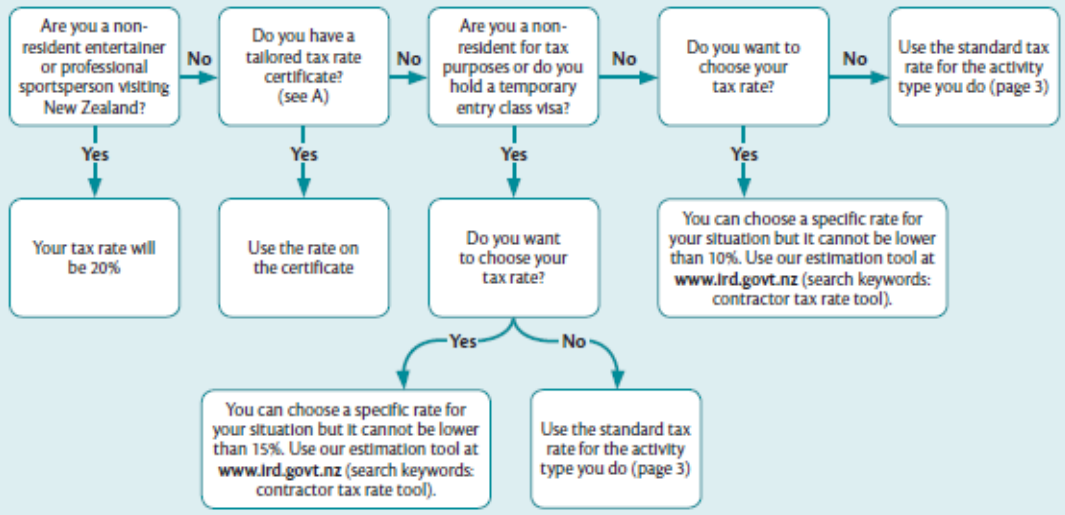
- some government agencies
- another country, if we have an information supply agreement with them
- Statistics New Zealand (for statistical purposes only).

If you ask to see the personal information we hold about you, we'll show you and correct any errors, unless we have a lawful reason not to. Contact us on 0800 377 774 for more information. For full details of our privacy policy go to **www.ird.govt.nz** (search keyword: privacy).

Schedular payments are payments made to people who are not employees but are contractors. This includes independent contractors, labour-only contractors and self-employed contractors. You're receiving schedular payments if you're not an employee and the type of work you're receiving a payment for is an activity listed on page 3.

If you aren't ordinarily required to have tax deducted from payments you receive you can choose to have tax deducted. This will be treated as schedular payments, if the person paying you agrees. You will need to get their agreement in writing.

Use the flow chart below to work out what tax rate to use



A If you have a tailored tax rate (TTR) enter this on page 1 and show your original TTR certificate to your payer.

A TTR is a tax rate worked out to suit your individual circumstances. You may want a TTR if the minimum tax rate that applies to you will result in you paying too much tax. For example, if you have business expenses that will lower the amount of tax you need to pay on your income. You can apply for a tailored tax rate in myIR or by completing a *Tailored tax code application (IR23BS)* form. Go to **www.ird.govt.nz** (search keyword: IR23BS).

If you're a non-resident contractor the application process is different. For more information go to **www.ird.govt.nz** (search keywords: NRCT special rate).

B If you don't want tax deducted from your schedular payments, you may be able to apply for a certificate of exemption (COE) in myIR or by completing the *Request for PAYE exemption on schedular payments (IR332)* form on our website.

If you're a resident contractor paid by a labour hire business under a labour hire arrangement you cannot use a COE for these payments. You may be able to apply for a 0% tailored tax rate instead. You can complete an IR23BS in myIR.

For more information about COEs go to **www.ird.govt.nz** (search keywords: schedular coe).

Non-residents

You can apply for a non-resident contractor certificate of exemption in myIR using the tailored tax code application. Send a secure mail with your enquiries about non-resident contractors in myIR or contact us:

Phone: 64 4 890 3056
Fax: 64 4 890 4502

Additionally, the following may be entitled to an exemption from tax:

- non-resident entertainers taking part in a cultural programme sponsored by a government or promoted by an overseas non-profit cultural organisation
- non-resident sports people officially representing an overseas national sports body.

Send a secure mail with your enquiries in myIR or contact us:

Phone: 64 9 984 4329
Fax: 64 9 984 3081

Schedular payment tax rates

If you are receiving payment for any of the types of work listed below, enter the activity number in the box at section 2 on page 1.

The description below may not include all activities. For a more detailed description see schedule 4 of the Income Tax Act 2007. You'll generally be required to complete an income tax return at the end of the tax year.

Activity number	Activity description	Standard tax rate – %	No-notification rate – %
1	ACC personal service rehabilitation payments (attendant care, home help, childcare, attendant care services related to training for independence and attendant care services related to transport for independence) paid under the Injury Prevention and Rehabilitation Compensation Act 2001	10.5	45
2	Agricultural contracts for maintenance, development, or other work on farming or agricultural land (not to be used where CAE code applies)	15	45
3	Agricultural, horticultural or viticultural contracts by any type of contractor (individual, partnership, trust or company) for work or services rendered under contract or arrangement for the supply of labour, or substantially for the supply of labour on land in connection with fruit crops, orchards, vegetables or vineyards	15	45
4	Apprentice jockeys or drivers	15	45
5	Cleaning office, business, institution, or other premises (except residential) or cleaning or laundering plant, vehicle, furniture etc	20	45
6	Commissions to insurance agents and sub-agents and salespeople	20	45
7	Company directors' (fees)	33	45
8	Contracts wholly or substantially for labour only in the building industry	20	45
9	Demonstrating goods or appliances	25	45
10	Entertainers (New Zealand resident only) such as lecturers, presenters, participants in sporting events, and radio, television, stage and film performers	20	45
11	Examiners (fees payable)	33	45
12	Fishing boat work for profit-share (supply of labour only)	20	45
13	Forestry or bush work of all kinds, or flax planting or cutting	15	45
14	Freelance contributions to newspapers, journals (eg, articles, photographs, cartoons) or for radio, television or stage productions	25	45
15	Gardening, grass or hedge cutting, or weed or vermin destruction (for an office, business or institution)	20	45
16	Honoraria	33	45
17	Modelling	20	45
18	Non-resident entertainers and professional sportspeople visiting New Zealand	20	N/A
19	Payment by a labour hire business to any person (eg individual, partnership, trust or company) performing work or services directly for a client of the labour hire business or a client of another person, under a labour hire arrangement	20	45
20	Payments for: – caretaking or acting as a guard – mail contracting – milk delivery – refuse removal, street or road cleaning – transport of school children	15	45
21	Proceeds from sales of: – eels (not retail sales) – greenstone (not retail sales) – sphagnum moss (not retail sales) – whitebait (not retail sales) – wild deer, pigs or goats or parts of these animals	25	45
22	Public office holders (fees)	33	45
23	Shearing or droving (not to be used where CAE code applies)	15	45
24	Television, video or film: on-set and off-set production processes (New Zealand residents only)	20	45
25	Voluntary schedular payments	20	45
	If you are a non-resident contractor receiving a contract payment for a contract activity or service and none of the above activities are applicable, then:		
26	Non-resident contractor (and not a company)	15	45
27	Non-resident contractor (and a company)	15	20

Note: If you need help choosing your tax rate use the estimation tool at **www.ird.govt.nz** (search keywords: contractor tax rate tool)

3

Skill Check – Schedular payments – Exercise

1. If a contractor (Directors Fees, Declared) had a schedular payment from an invoice of $3500 + GST, What is the PAYE to withhold?

2. If a contractor (Entertainer, Non declared) had a schedular payment from an invoice of $1245 + GST, what is the PAYE to withhold?

3. If a contractor (Cleaner, Declared) had a schedular payment from an invoice of $876.50 + GST, What is the PAYE to withhold?

Exemption to Schedular Payments (IR 331)

People who are in business for themselves, and who receive a schedular payment can apply for a certificate of exemption from PAYE.

A certificate of exemption may also be held by a non-resident contractor undertaking contract activity in New Zealand.

If a worker has a certificate of exemption, you can make payments without deducting tax. It cannot be used to exempt an employee's salary or wages from deducting PAYE.

Checking the IR 331
When someone shows you a certificate of exemption, you must check it is valid and current.

If the certificate is valid and current, don't deduct tax from payments you make to them.

If the certificate is neither valid nor current, the worker must complete an IR 330C tax code declaration. You must deduct tax from payments you make.

However, you must keep a record of these payments.

It's a good idea to keep a record of the certificate number, in case IRD review your records.

Employees Vs Contractors

For tax and accident compensation purposes, you must decide whether the people who work for you are employees or self-employed contractors. It is important to note that a person can be self-employed in one line of work and still work for someone else as an employee.

Read the table below to help you decide.

Generally they are...	**if they, for example...**
employees	• do the work themselves, rather than hiring someone else to do it for them • can be told at any time what to do on the job, or when and how to do it • are paid at a set rate (for example, hourly weekly, monthly, or per unit of production) • can get overtime pay or penal rates • work set hours, or a given number of hours a week or month • have someone else who sets the standards for the amount and quality of their sales or output • work at the premises of the person they are working for, or somewhere that person decides • do the same sort of job as other people who are treated as employees • are under an employment contract, or any law that says how their relationship with their "employer" should be run • are prevented from doing work for anyone else • have to follow the rules or procedures of the person they are working for.

self-employed	• decide or control how they do the work - see the examples below • invest or risk their own money in the activity in any way - see the examples below • provide the major assets or working equipment needed for the job (not just small tools, work clothing and/or vehicle to get to and from work) • provide or pay for their own training • are responsible for getting the work done - see the examples below

Next steps

If you employ ...	**then you...**
an employee	• register as an employer, and • deduct PAYE at the rate indicated in the IR340 or IR341 PAYE deduction tables.
a self-employed contractor performing duties listed in the *PAYE deduction tables (IR340)* and *(IR341)*	• register as an employer, and • deduct tax at the withholding rate indicated in the IR340 or IR341 PAYE deduction tables.
a self-employed contractor performing duties not listed in the IR340 or IR341	• don't need to deduct tax.

Examples of self-employed work

If they...	then they, for example...
decide or control how they do the work	• decide when they take their holidays • decide when, where and what hours they work • decide the standard or quality of work • decide how much they get paid and how.
invest or risk their own money in the activity	• could sell the business • could support the business with their own money, for example lend it money or provide some working capital (excluding shares obtained from any employee share purchase plan) • are responsible for losses or their own bad management • are responsible for management and investment decisions for the business.
are responsible for getting the work done	• can get other people to work with or for them, without needing to get permission from anyone else • pay these people from their own funds • are free to work for other people • advertise their own account • can't do the job (for example they are sick) they organise a replacement • their contract says they'll be penalised in some way if they stopped work, or left without completing a particular project • must correct unsatisfactory work in their own time and at their own expense.

How the courts define the difference between a Contractor or Employee

Payments to an ***employee*** constitute payments of salary or wages (Income Tax Act). They are made "in respect of or in relation to the employment or service of the taxpayer", and as monetary remuneration are subject to the PAYE system. Employees cannot claim a deduction for any expenses incurred in performing their employment duties. If an employer incorrectly considers someone to be an independent contractor, that employer will be liable for penalties for non-deduction of PAYE.

A ***contractor***, however, is taxed on the basis that he or she is carrying on a business. The relationship is not one of a contract of service, but a contract for services. Payments made to independent contractors are often subject to deduction of schedular payments at a specified rate (defined on the last page of the ir330) based on the contractor occupation. Independent contractors can claim deductions for work related expenses, employee cannot. GST issues would also be should also be considered by independent contractors.

Five Tests to determine the difference

The difficulty has always been how to distinguish between the characteristics of these two relationships. The Courts have established a number of tests to use to determine what the true relationship is in any one case. Employers should note that tax cases use the principles established in respect of employment law. Employers must look at each instance in its own right, and the decision in any particular case will always be a question of fact. The 5 tests are:

Control Test

This measures the employer's right to control the individual's method of doing the work.

This includes for example:

- Who has the right to make choices about hours of work,
- Where their place of work is,
- If they have to wear a uniform, of code of dress in the workplace
- Can work be delegated to subordinate staff?

Result: The more control of a person by an employer the more they look like an employee.

Organisation of Integration Test

This test is about how integrated the person is with the business.

This includes for example:

- Is the work integral to the employer's business?
- Is it of a type that other employees do?

The more the person is integrated within the business the more they look like an employee.

Independence Test

This test is about how independent the person is.

This includes for example:

- How independently does the individual work?
- Does this person supply their own equipment?
- Can they choose to work from home?
- Can they work for other people?
- Do they maintain their own accounting system?
- Do they invest or risk their own money in the activity?
- Do they submit invoices in respect of the work performed?

The less independent the person is the more they look like an employee.

Intention Test

This test is about what was agreed verbally and in writing when the parties entered into the relationship.

This includes for example:

- What was the intention of the parties as to their relationship?
- Why is this individual being treated as a self-employed person?
- What has the relationship of the two parties been in the past?
- Is there enough evidence on which to base an assumption that these parties believed they were independent contractors?

Depending on what was verbally stated or in writing will potentially define the relationship between the parties. The more vague the terms are the less certainty in using this to define the relationship.

Economic Reality Test

This test is about where the person gets their money from.

This includes for example:

- Does the person only get their money from one business?
- Does the person work for many different organisations?
- Is this a normal situation within the organisation?

If a person gets all their money from one source that is typical of being an employee.

Case Study – Contractor or Employee?

Use the five tests to the following real case to determine if this person is a contractor or employee.

Stubbs v Kimchi Rest Home:

- Mr Stubbs was appointed as a contractor by a rest home and hospital organisation in 1997.
- Contractor arrangement replaced full time employee caretaker position.
- Stubbs appointed as a contractor – no written contract but both parties understood this to be the position. Stubbs referred to himself in writing and verbally as a "maintenance contractor."
- Stubbs worked as a caretaker for 20 hours per week, working each weekday morning starting at 8am. He was paid $12.00 per hour. He was free to work for others in the afternoon.
- Stubbs submitted regular invoices showing daily start and finish times.
- Carried out regular routine maintenance checks as well as repairs/maintenance as and where required.
- All materials, equipment and additional help supplied by the Rest Home.
- Stubbs was able to prioritise his own work from a central list of repairs/maintenance required.
- Only worked in mornings, had afternoons and evenings free to work for others.
- Agreed increase in hours in 1999 to 31 per week following discussion.
- As a result, could now only work for Rest Home. Stubbs approached the Home and asked for his position to be reclassified to "employee" instead of "contractor."
- Stubbs had previously asked for reclassification as an employee several times between 1997 and 1999.
- Stubbs was told he would be appointed but due process had to be followed (i.e. advertising, interviewing, selection)
- Full time position was advertised in 2000, and an external applicant was appointed.
- Stubbs received a letter from the Rest Home advising his services, as an independent contractor would no longer be required.

Was Mr Stubbs a contractor or an employee?

Current Income tax rates

The rates in the table below apply from 1 April 2020 to 31 March 2021.

Taxable income	Income tax rates for every $1 of taxable income (excluding ACC earners' levy)	PAYE rates for every $1 of taxable income (including ACC earners' levy*)
up to $14,000	10.5 cents	11.89 cents
from $14,001 to $48,000	17.5 cents	18.89 cents
from $48,001 to $70,000	30 cents	31.39 cents
$70,001 and over	33 cents	34.39 cents
No notification**	45 cents	46.39 cents
***** The earners' levy rate (including GST) for the period 1 April 2020 to 31 March 2021 is **1.39%** ($1.39 per $100)		
****** Employers are legally required to use the no notification rate when an employee does not fully complete the *Tax code declaration (IR330)*. A completed form must include name, IRD number and tax code. The form must also be signed.		

Example 1

John's total taxable income for the year was $65,238. Here is how to work out the amount of tax due on the income:

$0 to $14,000	at	10.5%	=	$1,470.00
$14,001 to $48,000	at	17.5%	=	$5,950.00
$48,001 to $65,238	at	30%	=	$5,171.40
				$12,591.40

Therefore, the tax due on John's income of $65,238 was $12,591.40.

Example 2

Sarah's total taxable income for the year was $45,000. Here is how to work out the amount of tax due on the income:

$0 to $14,000	at	10.5%	=	$1,470.00
$14,001 to $45,000	at	17.5%	=	$5,425.00
				$6,895.00

Therefore, the tax due on Sarah's income of $45,000 was $6,895.00.

Correcting employee tax codes

Employees on the wrong tax code

Sometimes when your employee fills in the *Tax code declaration (IR330)*, they choose the wrong tax code.

IRD regularly check what has been payday filed for an employee to make sure that your employees are on the right tax code so that IRD deduct the correct amount of tax and/or student loan repayments from their salary or wages.

What IRD do

When IRD identify employees are using the wrong tax and/or student loan repayment code, IRD will write to you, or advise you via secure email MYIR, asking you to change the relevant code(s). IRD will tell you which employees are using incorrect tax codes and let you know what code they should be on.

What you need to do

To make sure employees start paying the correct amount of tax or student loan repayments as quickly as possible, you'll need to change their tax code to the correct code starting the next pay period.

When you receive a letter from IRD, you need to:

- change the employee's tax code to the code indicated in their letter
- deduct tax based on the new tax code.

Employer Responsibilities

As an employer you act as a tax collector for the IRD, making the tax deductions your employees are liable for. Deductions are paid to the IRD.

• PAYE	• KiwiSaver
• ACC Earner Levy	• Extra Pay
• Student loan	• Regular or production bonuses
• Superannuation fund contributions	• Payroll Giving
• Special tax code certificates	• Vehicle reimbursement rates for employees
• No Notification rate	

PAYE (pay as you earn)

PAYE deducted from your employees' pay is based on the tax code they entered on their IR330.

ACC Earner Levy

IRD collect all levies on the ACC's behalf. The levy is for the purpose of funding the cost of non-work-related injuries.
The levy is made up of two parts:

- ACC earners levy (from 1st Apr 2020 is $1.39).
- Earners account residual levy to fund the cost of non-work injuries (1 April 1992 to 30 Jun 1999).

The two components are combined into one deduction called the earners levy deduction.

Rates of levy and maximum liable income

Earners' levy is charged at a flat rate, which can change each year. There is a maximum amount of income that earners' levy is charged on. Any amount of salary, wages or self-employed income earned over this maximum isn't liable for earners' levy.

The maximum rates for each year are (past to present):

Income year	Earners' levy rate	Maximum income earners' levy charged on	Maximum levy anyone can pay
1 Apr 2017 to 31 March 2018	$1.39 per $100 (1.39%)	$124,053.00	$1,724.33
1 Apr 2018 to 31 March 2019	$1.39 per $100 (1.39%)	$126,268.00	$1,755.37
1 Apr 2019 to 31 March 2020	$1.39 per $100 (1.39%)	$128,470.00	$1785.73
1 Apr 2020 to 31 March 2021	$1.39 per $100 (1.39%)	$130,911.00	$1819.66

Student Loan Deductions

Employers are required to deduct student loan repayments through the PAYE system when an employee completes a *Tax code declaration (IR 330)* using one of these codes: M SL, ME SL, S SL, SH SL, SB SL or ST SL.

Employees with student loans who only have one main job should use the M SL or ME SL tax code.

This code includes student loan deductions which are set at 12 cents in the dollar for every dollar earned over the repayment threshold:

Threshold period	**Threshold 1 Apr 2019 to 31 Mar 2020**	**Threshold 1 Apr 2020 to 31 Mar 2021**	**Increase**
Annual	$19,760.00	$20,020.00	$260.00
Weekly	$380.00	$385.00	$5.00
Fortnightly	$760.00	$770.00	$10.00
Four weekly	$1,520.00	$1,540.00	$20.00
Monthly	$1,647.00	$1,668.33	$21.33

Where an employee uses S SL, SH SL or ST SL tax codes, the tables deduct student loan repayments at 12 cents in the dollar from every dollar earned. Employers also need to deduct student loan repayments at this rate from redundancy and lump sum payments.

Please note:

- **Primary Income,** 12% per $ over repayment threshold
- **Secondary Income,** 12%

Student loan deductions are calculated as:

1. gross earnings for the pay period (regular pay plus any extra pay)
2. minus pay period repayment threshold
3. multiply by 12%

Student loan examples:

Weekly:

An employee, Joe, has a student loan and is paid a weekly pay of $850. Student loan deductions are calculated as follows:

Pay	$850.00
Threshold	$385.00
Liable income	$465 × 12%
Student loan deductions on this pay is:	$55.80

Fortnightly:

An employee, Joe, has a student loan and is paid a fortnightly pay of $1,700. Student loan deductions are calculated as follows:

Pay	$1,700.00
Threshold	$770.00
Liable income	$930 × 12%
Student loan deductions on this pay is:	$111.80

Four weekly:

An employee, Joe, has a student loan and is paid a four weekly pay of $4,400. Student loan deductions are calculated as follows:

Pay	$4400.00
Threshold	$1540.00
Liable income	$2860 × 12%
Student loan deductions on this pay is:	$343.20

Monthly:

An employee, Joe, has a student loan and is paid a monthly pay of $5,200. Student loan deductions are calculated as follows:

Pay	$5,200.00
Threshold	$1,668.33
Liable income	$ 3,531.67 × 12%
Student loan deductions on this pay is:	$423.80

Exceptions to Standard Student Loan Deductions

Your employees may give you any of the following certificates or tax codes. These will change how much you deduct for their student loan.

The certificate will include the period the new deduction rate applies for. Your employee must give you a new certificate when the current one expires. If they don't, start making deductions at the standard rate.

Certificate or tax code	Effect on deductions
Repayment deduction exemption certificate	No student loan deductions made from their pay. Don't use a tax code with the "SL" repayment code.
Special deduction rate certificate	Make student loan deductions at the rate shown on the certificate. Use a tax code with the "SL" repayment code
• Casual agricultural workers (CAE) • Election day workers (EDW) • Schedular payments (WT)	No student loan deductions made from their pay. Don't use a tax code with the "SL" repayment code.

Student loan extra deductions

Employees can request extra deductions be made towards their student loan. Voluntary extra deductions can be started and stopped at any time.

In some situations, an employee may underpay their student loan. If this happens IRD send you a compulsory extra deduction notice. These extra deductions can be stopped once the amount on the notice has been repaid.

Voluntary extra deductions (SLBOR)	Make extra student loan deductions of an amount the employee chooses. These will show as an extra field on the EI schedule.
Compulsory extra deductions (SLCIR)	Make extra student loan deductions at the rate shown on the compulsory extra deduction notice. These will show as an extra field on the EI schedule.

SL repayment code SLCIR for additional deductions

Where the decision has been made by IRD to recover a significant under deduction, this will be achieved from additional SL deductions via the use of the new SLCIR code which is applied on future salary or wage income.

IRD will notify the borrower and the employer in writing that additional SL deductions are required.

The borrower and employer will receive notification that states –

- The name of the borrower
- The name of the employer
- The rate of additional deductions to be made
- The SL tax code (SLCIR) to be used (in addition to standard tax code/ repayment code).
- The amount of the significant under-deduction to recover via additional deductions
- That additional deductions are to continue until the earlier of:
    - when the amount to recover has been reached or
    - the Commissioner advises otherwise.
- Additional deductions (using the SLCIR tax code) will need to be deducted at the percentage rate advised on the notification.

The maximum rate will be 5% (50% of standard SL deductions) on income (over the pay period repayment threshold) for primary employment earnings. For secondary income this will be 5% on the gross payment of salary or wages.

The wording on the SLCIR notice to employers clarifies how to calculate the SLCIR deduction – for a 5% rate it will be a further deduction of 50% of the standard. Similarly, if the rate is 3%, then the deduction will be 30% of the standard. The SLCIR tax code must be used to identify this additional repayment.

IRD Example: How to calculate the compulsory extra deductions

Employer receives a student loan compulsory extra deduction notice for their employee asking them to make the extra deductions at 41.67% of the employees' student loan standard deduction.

The employee is paid weekly so their deductions for November will be as follows:

Week	Student loan standard deduction	Student loan compulsory extra deduction	Calculation
1	$45.90	$19.12	41.67% of $45.90 = $19.12
2	$60.00	$25.00	41.67% of $60.00 = $25.00
3	$0.00	$0.00	No standard deduction so no compulsory extra deduction required
4	$56.80	$23.66	41.67% of $56.80 = $23.66
Total	$162.70	$67.78	

Once the amount of the significant under-deduction has been paid from the borrower's salary/wages the additional deductions will cease.

SLCIR deductions will be made in addition to repayment deductions required under the standard SL repayment codes.

An employee may have up to three SL deductions in one pay period:

- Standard SL deductions
- additional deductions using the SLCIR repayment code, and
- additional deductions using the SLBOR repayment code.

SL repayment code SLBOR for additional deductions

Many borrowers currently choose to make additional deductions from their salary and wages to repay their loan quicker as well as receive the excess repayment bonus. With the introduction of 'full and final' these additional over-deductions will not be considered for the excess repayment bonus unless they are significant.

If the amounts deducted are below the significant over-deduction threshold, they will be considered 'full and final' and while they will repay the loan quicker they will not form part of the bonus calculation.

To enable borrowers to take advantage of the excess repayment bonus and encourage continued additional deductions through their salary and wages, a new repayment code SLBOR has been introduced for voluntary deductions requested by the borrower.

Additional SLBOR deductions will be at the request of the borrowers. Borrowers must continue to use standard SL repayment codes for required deductions. Where they wish to have additional deductions from their salary or wages, the employer will need to use the SLBOR code to identify these additional deductions.

Employers must make this deduction in addition to standard deductions. SLBOR deductions can be a fixed dollar amount or a percentage of the borrower's income for the pay period. A percentage SLBOR deduction may be based on gross or net income for a pay period, or based on the amount of their income that exceeds the pay period repayment threshold.

To initiate SLBOR deductions, the borrower will advise their employer they wish to make additional payments to reduce their loan balance. These payments must be in addition to any other SL deductions currently deducted each pay period.

The borrower's deduction must be made before other non-tax payments are deducted through their salary or wages (e.g. union fees) in accordance with Section 39(2) of the Student Loan Scheme Act 2011.

The SLBOR repayment code will be used to identify the SL deduction as an additional payment.

Request for a Student Loan Borrowers Deduction

Please fill out the fields below and return to the pay office.

Employee Name:	

1.Type of borrowers deduction and amount:

Fixed rate	**(Y/N) Circle one**	**Fixed rate amount:**	
Percentage rate	**(Y/N) Circle one**	**% rate:**	

***please note you only can choose either a fixed rate or percentage, not both.**

2.Start date for deduction:

Please start the above deduction from my pay on the (see right) and continue until notified to stop:			
OR			
Start the above deduction on the:		**And finish this deduction on:**	

***please note the deduction will start based on when the deduction request was received and the timing for processing pay, not the date stated above.**

I ..... request that my employer make the above additional repayments on my student loan under the borrowers deduction code SLBOR.

.....

.....

Signature **Date**

Pay Office:

Actioned on:	

Special Deduction Rate (SDR) and Special Tax Codes (STC)

From 1 April 2012, a borrower may have a special deduction rate (SDR) applied to their salary or wage income. This can be used where the borrower is in hardship, or where they have more than one job and earn under the pay period repayment threshold in their main job. Prior to 1 April 2012, a borrower needed a special tax code (STC) in these situations.

An SDR is any standard deduction rate less than 12%. No SDR can be greater than 12%. A borrower wanting deductions of more than 12% should be using SLBOR.

Borrowers will be provided with a Special Deduction Rate certificate which they provide to their employer.

The certificate will continue to advise which tax code/SL repayment code (e.g. S SL) the employer should use, the rate at which the SL deductions are to be made, and the period that the SDR should apply to. The SDR will be a whole percentage only (e.g. 3% or 3 cents in the dollar), calculated to two decimal places (e.g. $0.03).

The Special Deduction Rate Certificate may or may not require the pay period threshold to be used. For some tax codes the correct treatment can be inferred- e.g. "M SL" and "S SL" codes provide sufficient information as to whether or not the threshold is to be used.

The main difference that employers will see is the reduced period for which an SDR is applied. The certificate will provide start and end dates for the SDR, usually three months. After the end date standard 12% deductions should resume.

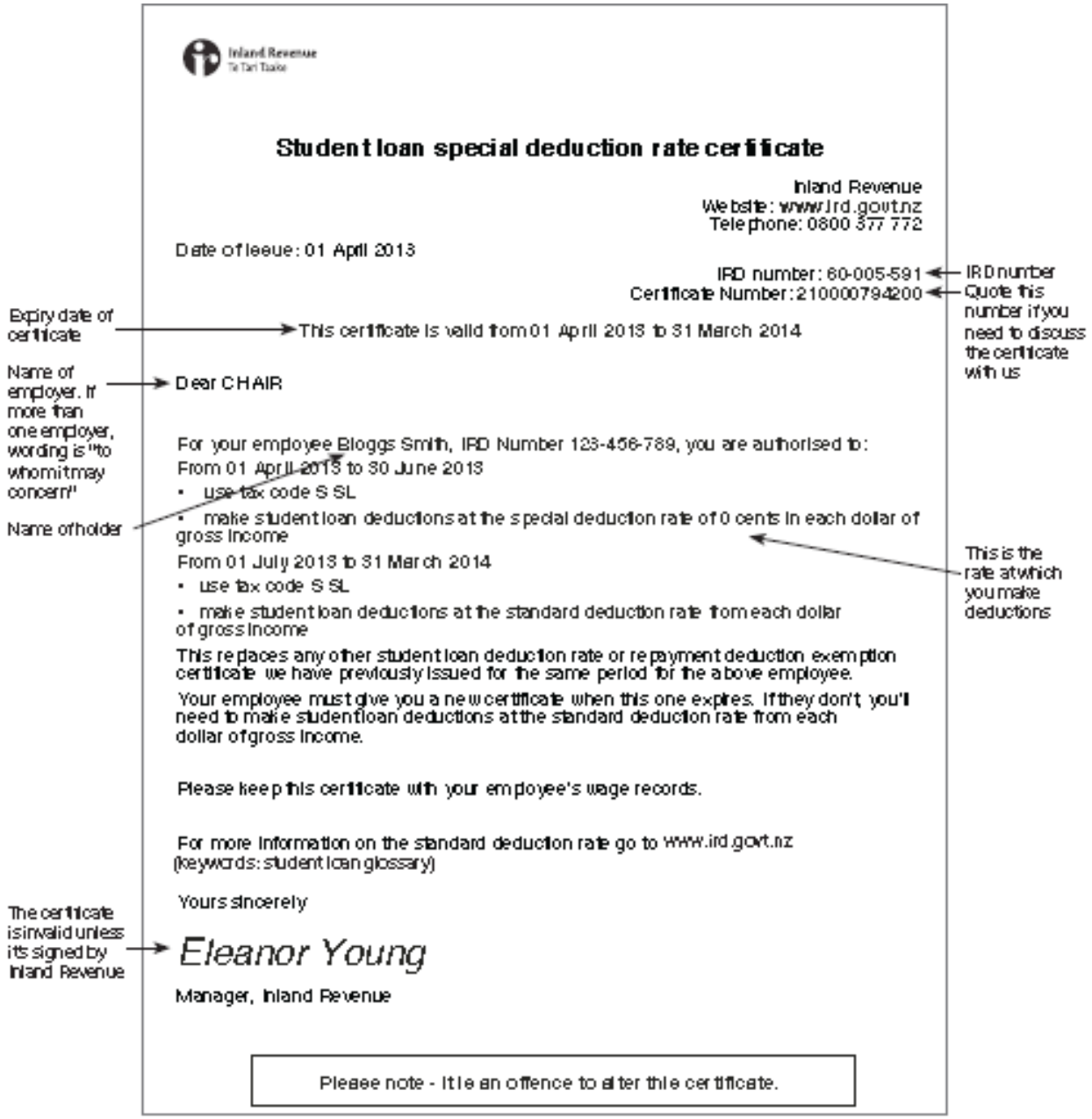
Special deduction rate and SLCIR –

- If an SDR is granted to a borrower, the Commissioner will cancel any SLCIRs that a borrower may have, regardless of employer.

Special Deduction Rate and SLBOR –

- If a borrower currently has an SDR rate of 8% for their secondary employment and also has additional deductions using the SLBOR repayment code of a set amount of $20.00 week. The borrower would have standard deductions using a SL repayment code (e.g. S SL) at the rate of 8%, and in addition have an extra $20 deducted for student loan using the SL repayment code SLBOR.

Borrowers can continue to apply for an STC in respect of income tax. Where the borrower is entitled to reduced income tax and SL deductions, a Special Tax Code Certificate will be issued. The certificate will continue to advise employers to use the STC tax code, the rate at which income tax should be deducted, the rate for SL deductions, and the period that the certificate should apply to.



Inland Revenue
Te Tari Taake

Student loan special deduction rate certificate

Inland Revenue
Website: www.ird.govt.nz
Telephone: 0800 377 772

Date of issue: 01 April 2013

IRD number: 60-005-591 ← IRD number
Certificate Number: 210000794200 ← Quote this number if you need to discuss the certificate with us

Expiry date of certificate → This certificate is valid from 01 April 2013 to 31 March 2014

Name of employer. If more than one employer, wording is "to whom it may concern" → Dear CHAIR

Name of holder → For your employee Bloggs Smith, IRD Number 123-456-789, you are authorised to:

From 01 April 2013 to 30 June 2013

- use tax code S SL
- make student loan deductions at the special deduction rate of 0 cents in each dollar of gross income

From 01 July 2013 to 31 March 2014

- use tax code S SL
- make student loan deductions at the standard deduction rate from each dollar of gross income

This is the rate at which you make deductions

This replaces any other student loan deduction rate or repayment deduction exemption certificate we have previously issued for the same period for the above employee.

Your employee must give you a new certificate when this one expires. If they don't, you'll need to make student loan deductions at the standard deduction rate from each dollar of gross income.

Please keep this certificate with your employee's wage records.

For more information on the standard deduction rate go to www.ird.govt.nz (keywords: student loan glossary)

Yours sincerely

The certificate is invalid unless it's signed by Inland Revenue → *Eleanor Young*

Manager, Inland Revenue

Please note - it is an offence to alter this certificate.

Skill Check – Student Loan

1. What is the current student loan threshold rate?

2. What is the standard SL deduction rate above the threshold?

3. What SL rate is the SLCIR based on?

4. What is the maximum % amount that can be taken through a SLCIR?

5. Does an employer have an obligation to administer a SLBOR for an employee?

6. Is an SDR deducted above or below the standard SL rate?

7. What ranks higher and takes priority - a SLCIR or SDR?

Calculating ESCT for Superannuation & KiwiSaver

If the employer makes contributions to an employee superannuation fund or KiwiSaver the employer will be liable to pay tax.

The term "superannuation contributions" has a specific meaning in this context. It covers any contribution to a superannuation fund paid by the employer for the employee's benefit (a superannuation fund is a scheme that has been registered under the Superannuation Schemes Act 1989).

If an employee asks an employer to make deductions from their wages and pay them into a superannuation scheme, these are not superannuation contributions.

How to tax ESCT

Employer superannuation contribution tax (ESCT), can be taxed in **one** of the following ways:

(a) an optional ESCT rate based on either:

- the annual salary or wages plus gross employer contributions paid to the employee in the previous standard tax year (where the employee was employed for all of that year), or
- an estimate of the total amount of salary or wages plus gross employer contributions that the employee will earn in the year ahead (where the employee was not employed for all of the previous tax year).

The following rates apply if you're paying ESCT based on your employee's salary or wages plus gross employer contributions from 1 April 2020 to 31 March 2021.

Income range	Tax rate
$0 - $16,800	10.5%
$16,801 - $57,600	17.5%
$57,601 - $84,000	30%
$84,001 and over	33%

or

(b) treat your employer contribution as salary or wages, for which you'll need the agreement of your employee.

Working out ESCT for an employee in different situations

Depending on when the employee started and if they worked the full or part tax year will change how ESCT is assess.

If the employee worked for the employer for the whole previous tax year

Add:

- employee's annual salary or wage for the previous tax year
- employers' annual gross contributions to the employee's superannuation scheme for the previous tax year.

If the employee worked for the employer for part of the previous tax year

Add:

- employee's estimated annual salary or wage for the current tax year
- employers annual estimated gross contributions to the employee's superannuation scheme for the current tax year.

If the employee started working for the employer during the current tax year

To find the employee's ESCT rate for the rest of the current tax year, add:

- employee's estimated salary or wage for the rest of the current tax year
- employers estimated gross contributions to the employee's superannuation scheme for the rest of the current tax year.

To find the employee's ESCT rate at the beginning of the following tax year, add:

- employee's estimated annual salary or wage for the following tax year
- employers annual estimated gross contributions to employee's superannuation scheme for the following tax year.

If the employee has a secondary job

Each employer needs to work out the ESCT rate for each employee. Payroll does not need to know how much an employee earns in other jobs.

ESCT rate based on employee salary or wages

The ESCT rate is based on the employee's salary or wages plus gross superannuation employer contributions received in the previous standard tax year, i.e., 1 April to 31 March. The tax rate is used for all employer superannuation contributions made in the current standard tax year.

There is no requirement to adjust the rate during an income year if an employee's salary or wages increase or decrease. If they do change during the year, affecting the applicable rate, a new rate will be set the following year based on this change.

ESCT is calculated on the whole dollar and is deducted from the gross employer contribution.

Example:

An employee has gross earnings of $392.40, gross KiwiSaver employer contribution (3%) of $11.77 and an ESCT rate of 17.5%.

ESCT is applied to the whole dollar (i.e., $11.00 in this example)

$11.00 multiplied by 17.5% = $1.92 ESCT
Deduct the ESCT from the gross employer contribution
$11.77 minus $1.92 = $9.85 net employer contribution

Net contributions of $9.85 are returned through payday filing and employer contributions, $1.92 when PAYE is paid as ESCT

In some cases, an employer may be "locked in" to an employment agreement where they contribute a set amount of their employee's salary or wage. In these cases, it may be necessary to gross up the employer contribution so the employee receives their full entitlement.

Example

The employer has an agreement with his employee to pay a net amount of $100.00 to the employee's KiwiSaver scheme and the employee has an ESCT rate of 30%.
Using the formula:

ESCT = a divided by (1 minus a) multiplied by b
a = ESCT rate (example 0.30 as 30%)
b = employer contribution

0.30 divided by (1 minus 0.30) multiplied by $100 = $42.85

Net contribution of $100 is returned through payday filing as KiwiSaver employer contributions, $42.85 with PAYE as ESCT

An employer is required to make an ESCT deduction when making any specified superannuation cash contribution. If an employer doesn't do this, the ESCT is worked out on the grossed-up amount of the employer's superannuation contribution.

Taxing contributions at the employee's personal tax rate

If employers agree, employees can choose to have all or part of the value of the employer's superannuation contribution included in their gross salary and wages and taxed at their personal tax rates. Employees must understand that classifying this amount as salary and wages will affect their Working for Families Tax Credits, independent earner tax credit entitlements, the amount of child support they pay and their student loan repayments. However, they can change back at any time.

The actual employer cash contribution is paid into the superannuation fund - the employee doesn't receive the contribution in the hand. The value of the employer contribution will be added to the employee's gross wages for the pay period and taxed at the appropriate rate. The rate will depend on the employee's tax code.

Contributions treated as salary and wages are subject to earners' levy (included in the PAYE tables). There are two ways of paying the employer cash contribution to the superannuation fund:

- the gross amount is paid; to the superannuation fund and the employee's net salary or wage is reduced by the amount of PAYE, or

- the net amount is paid to the superannuation fund after deducting the income tax component of the PAYE.

Example:

Rachel is employed by Red Bottle Ltd. She belongs to KiwiSaver. Her employment agreement includes Red Bottle Ltd contributing $50 a week to her KiwiSaver scheme, in addition to her normal weekly salary of $500.

Rachel chooses to have these contributions included as part of her salary and her employer agrees. This means Red Bottle Ltd uses the total of her salary and the employer contributions of $550 to calculate her PAYE.

1. If the superannuation contribution is paid as a gross amount, the calculation is:

Gross amount calculation	**amount**
weekly gross	$500
plus employer contribution	$50
total gross	$550
PAYE on $550	$85.04
weekly gross	$550
less PAYE	$85.04
less employer contribution	$50
net amount	**$414.96**

Skill Check – ESCT

1. When do you need to reassess the ESCT rate?

2. What payments are included in the assessment of ESCT?

3. If employee earnings need to be estimated, how can this be determined?

4. Can an employer set all employees up on salary packaging/total remuneration without an employee's consent?

5. Are there any potential issues with doing salary packaging/total remuneration with ESCT?

Employees with tailored tax codes

A tailored tax code can help an employee to pay the right amount of tax when they get paid, which means they'll avoid a large tax bill or refund at the end of the year.

A tailored tax code is applied for by the employee, payroll only applies what has been approved by IRD.

If IRD give one of your employees a tailored tax code certificate it will be valid from the date IRD approve it until the end of the tax year (31 March). When it's about to expire, IRD will contact your employee through myIR in time for them to reapply. They will then have to give their employer the new tailored tax code certificate.

If your employee stops using a tailored tax code they will need to complete a new Tax code declaration - IR330.

How a tailored tax code or rate works for the employee:

- A tailored tax code or rate is based on the information the employee gives to IRD. Because their income will be an estimate, IRD can only work out the exact amount of tax they must pay for the year when they complete your income tax return.
- Tailored tax codes are valid for one tax year. IRD will automatically send a renewal form to the employee to re-apply before 20 February each year.
- Some tailored tax rates may be issued for up to five years. IRD will determine the length based on the employee's compliance history.
- A tailored tax code or rate takes effect either from 1 April, or from the day IRD approve it. It cannot be backdated.
- A tailored tax code cannot be applied to an income-tested benefit (except for New Zealand Superannuation or Veterans Pension).
- If IRD ask the employee to send back their tailored tax code or rate certificate, they must do this within 7 days.
- The employee must tell IRD if their circumstances change during the year (eg, their income goes down) or the employee may end up with a large tax bill at the end of the year.

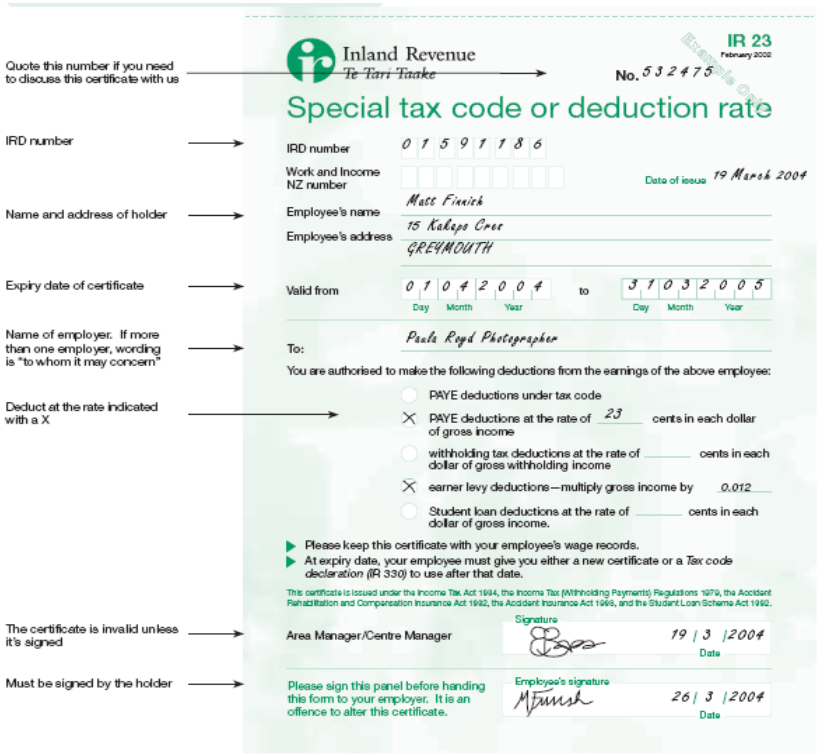
Tailored Tax Code (ir23)

Employees can also have a tailored tax code that they have applied for or been given by the IRD. To apply a special tax code the employee will have to provide to their employer a special tax code or deduction rate certificate (IR23).

Please note:	Make sure the IR23 is valid — check the year it applies for and that it is signed by an IRD manager.

On the IR23 there are five types of deductions. One or all of these types may be selected, and the employer will need to action any that are included. The types are:

- Type of tax code to be used for PAYE deductions
- The rate in cents for the deductions
- Schedular payment rate in cents
- Earners levy deductions rate in cents
- Student loan rate in cents



Example:

If an employee provides a special tax code certificate that states they are to be taxed $0.15 cents in the dollar, this is what the calculation would be:

- **Gross wages for the week:** $680
- **PAYE to pay:** $680 * $0.15 = $102

No Notification Rate

If an employee does not provide a signed IR 330 tax declaration form with their tax code, then the employer is required to tax them at the No Notification rate (use to be called Non-Declaration Rate).

The rates in the table below apply from 1 April 2020 to 31 March 2021.

Taxable income	Income tax rates for every $1 of taxable income (excluding ACC earners' levy)	PAYE rates for every $1 of taxable income (including ACC earners' levy*)
up to $14,000	10.5 cents	11.89 cents
from $14,001 to $48,000	17.5 cents	18.89 cents
from $48,001 to $70,000	30 cents	31.39 cents
$70,001 and over	33 cents	34.39 cents
No notification**	45 cents	46.39 cents
Use the Tax on annual income calculator if you want to know the tax rates for previous years.		
***** The earners' levy rate (including GST) for the period 1 April 2020 to 31 March 2021 is **1.39%** ($1.39 per $100)		

For contractors that have schedular payments by the employer from invoices there is also a No Notification rate. This can be found on the last page of the IR330c form.

Example:

If a new employee has not return their IR330 form for their first pay the employer is required to tax them at the no notification rate.
Gross earnings for the week: $750.00

PAYE to pay based on the tax year ending 2021 no notification rate with ACC earner levy is:

$750.00 * 46.39% = $347.92

For contractors that have schedular payments by the employer from invoices there is also a No Notification rate. This can be found on the last page of the IR330C form.

If a tax code has not been entered on the **IR330** by your employee then you will need to deduct PAYE or the Schedular payment at the no-notification rate.

Extra Pays

Extra pays payments are payments made to an employee, such as annual bonuses, and redundancy. Overtime or any regular payments are not lump sum payments.

An extra pay is defined under the Income Tax Act as:

Income Tax Act 2007 Section RD7 Extra pay

Meaning
An **extra pay**—
(a) means a payment that—
(i) is made to a person in connection with their employment; and
(ii) is not a payment regularly included in salary or wages payable to the person for a pay period; and
(iii) is not overtime pay; and
(iv) is made in 1 lump sum or in 2 or more instalments; and

(b) includes a payment of the kind described in paragraph (a) made—
(i) as a bonus, gratuity, or share of profits; or
(ii) as a redundancy payment; or
(iii) when the person retires from employment; or
(iv) as a result of a retrospective increase in salary or wages, but only to the extent described in subsection (2); and

(c) includes an amount of income that a person derives under section CE 9 (Restrictive covenants) or CE 10 (Exit inducements) if the income is derived in connection with an employment relationship between the person and the person who paid the amount; and

(d) does not include a payment of exempt income.

Deduct PAYE from extra pays payments as follows:

When the combined total of the lump sum payment and the grossed-up annual value of the employee's income for the previous four weeks* is ...	**then PAYE applies to the whole lump sum at a flat rate of ...**
$14,000 or less	11.89 cents
from $14,001 to $48,000	18.89 cents
from $48,001 to $70,000	31.39 cents
$70,001 and over, but **less** than the ACC earners' levy maximum threshold of $130,911.00 (for the 2021 tax year)	34.39 cents

You can also apply the top PAYE rate when the employee asks you to use this rate.

To calculate an extra pay for Weekly/Fortnightly/Four weeks:

* To calculate the grossed-up annual value of the employee's income:

(a) add up the PAYE income payments for the four weeks ending on the date of the extra payment, whether this is the normal pay cycle or not, and
(b) multiply by 13.
(c) Add the extra pay amount to the annualised figure.
(d) Look at what threshold rate the annualised and extra pay sits in and tax only the extra pay at this rate.

Please note:

To calculate an extra pay for monthly pays, multiply the monthly pay by 12 instead of 13 in (b) above. All other steps are the same.

Skill Check – Extra Pay – What rate to tax the bonus?

Use the following table to determine which rate to tax a bonus at?

When the combined total of the lump sum payment and the grossed-up annual value of the employee's income for the previous four weeks* is …	**then PAYE applies to the whole lump sum at a flat rate of …**
up to $14,000	11.89 cents
from $14,001 to $48,000	18.89 cents
from $48,001 to $70,000	31.39 cents
$70,001 and over, but **less** than the ACC earners' levy maximum threshold of $130,911.00 (for the 2021 tax year)	34.39 cents

1. Geoff's bonus will be $10,000 and his gross earning over the last 4 weeks was $3400, what rate will his bonus be taxed at and how much PAYE to pay?

2. Amanda's bonus will be $5400 and her gross earnings over the last 4 weeks was $2700, what rate would her bonus be taxed at and how much PAYE to pay?

Extra Pay – Special Types of Bonuses

Bonus payments that are made irregularly are taxed at the lump sum rate (refer PAYE deduction tables).

Please Note:	Depending on the tax code used by the employee, you may have to deduct student loan repayments.

Defining Restrictive Covenant and Exit Inducement Payments

Both types of payments are taxable at the lump sum rate.

- ***Restrictive Covenant Payments***
  This is a payment made to the employee who has agreed to restrict their ability to perform services.

  For example:

  This could be a payment made to an employee while employment has been terminated and there has been an agreement that the employee won't set up in competition against their former employer.

- ***Exit Inducement Payments***
  An exit inducement payment is not standard practice in New Zealand, but it is a payment made by a prospective employer to a person working for another employer for the purpose of getting them to leave their present employment.

Extra Pay: Redundancy and Retiring Payments

Redundancy and Retirement payments are not liable for ACC levies.

The tax rate is one of the following:

When the combined total of the lump sum payment and the grossed-up annual value of the employee's income for the previous four weeks* is ...	then PAYE applies to the whole lump sum at a flat rate of ...
$14,000 or less	10.50 cents in the dollar.
from $14,001 to $48,000	17.50 cents in the dollar.
from $48,001 to $70,000	30.00 cents in the dollar.
Greater than $70,000.	33.00 cents in the dollar.

Redundancy payments

Redundancy payments are taxable but are not liable for ACC levies because a redundancy payment is considered compensation not a wage or salary payment.

A redundancy payment is different from a retiring allowance. The decision to terminate employment is the employer's. Redundancy payments may be made:

- to an employee whose position is no longer needed, or
- To a seasonal worker whose usual seasonal position is no longer needed (the employee works for you at a regular time each year for a continuous period of less than 12 months).

The following are not redundancy payments, and are liable for earners' levy:

- any payment made to an employee solely because of a seasonal lay-off
- any payment made at the end of a fixed-term contract or a contract for a predetermined amount of work
- any payment made instead of giving an employee notice
- any payment of deferred wages made to an employee when finishing work (such as holiday pay, accrued bonuses and commissions)
- Any payment by a company under its articles of association to any of its directors.

A severance payment may be a redundancy payment for tax purposes. A lump sum severance payment made to a permanent employee when a specific job or project is finished is a redundancy payment if the position of the employee has been fully terminated, and the position is no longer required by the employer.

If the employee stays with the same employer on another job or project, any payment is liable for earners' levy.

If the employee uses an M SL, ME SL, SB SL, S SL, SH SL or ST SL code, you'll also have to deduct student loan repayments from retiring and redundancy payments.

Retiring Allowances

This is a payment made to an employee on retirement.

Employment must be fully terminated based on:

- The employee's decision
- Terms of any union contract
- Length of service of the employee
- The employer's policy

Please note:	Retiring allowances are taxable in full (not liable for earners levy)

HOW A HOLIDAYS ACT REMEDIAL PAYMENT (BACKPAY) IS TAXED?

If and underpayment for leave under the Holidays Act is to be paid it must be treated for tax as an extra pay.

Income Tax Act 2007 RD 7 Extra pay

Remedial payments for certain entitlements

(3) A remedial payment made in relation to 1 or more of a person's entitlements under the Holidays Act 2003, an employment agreement, or both, is treated as an extra pay if—

(a) the payment is made to a person in connection with their employment; and
(b) but for this subsection, the payment would be a payment of salary or wages or an extra pay, or a combination of both; and
(c) the payment is made to the person to meet all or part of a shortfall in 1 or more previous payments to the person who has an entitlement under the Holidays Act 2003, or an employment agreement, or both.

Underpayments impacts on gross earning going forward

An underpayment in a past period does not just effect the pay period the underpayment occurred in it becomes part of gross earnings for leave going forward and will be included in:

- Average Weekly Earnings (AWE)
- Average Daily Pay (ADP), if the day cannot be determined

Please note: The underpayment may not be part of Ordinary Weekly Pay (OWP) if not a regular part of the week but would be part of OWP S8(2) the 4-week average if that had been used because the week could not be determined.

For example:

An employee that is paid weekly is found to have been underpaid $100.00, 6 months previously. The $100 is now part of gross earnings for AWE for the next 52 weeks and will affect each instance of leave taken. The effect of one large underpayment could create further underpayments throughout the following period it is not a one-off event.

Skill Check – Extra Pay

1. What period of gross earnings is the annualised calculation based on?

2. What multiplier is used to annualise the gross earnings period?

3. Is the extra pay tax rate, one rate or many depending on what the employee is being paid?

4. Which type of extra pay does not include the earner levy?

5. Does student loan come out of a redundancy compensation payment?

6. Is redundancy compensation defined as being part of salary and wage?

Regular Bonuses

Definition:

A regular bonus is any bonus paid frequently throughout the year, such as:

- Regular monetary incentives
- production bonuses

How to tax a regular bonus

- Add the bonus amount to the employee's gross wages for the **pay periods** in which they were earned.
- Deduct PAYE from the total, based on the employee's normal tax code.

Tax calculations for more than one pay period

Monthly bonuses covering more than one pay period

1. Add up the gross wages paid in the month, e.g. if you pay weekly, add the four weekly payments together.
2. Work out the PAYE on the gross wages for the month by:
    1. using the IRD *PAYE calculator*, and
    2. Selecting *monthly* when asked "how often is employee paid?"
3. Add the bonus to the gross wages calculated at step 1 and work out the PAYE for the month on the total.
4. Subtract the PAYE calculated at step 2 from that calculated at step 3. This gives you the PAYE on the bonus.

Bonuses covering more than one month

1. Divide the bonus by the number of months it covers. This gives you the monthly bonus amount.
2. Add the monthly bonus to the normal pay for the month and calculate PAYE. Select monthly in the PAYE calculator.
3. Calculate the PAYE on the normal monthly pay and subtract this amount from the PAYE calculated at step 2 above. This gives you the PAYE on the monthly bonus.
4. Multiply this by the number of months the bonus covers to get the total PAYE to be deducted from the bonus.

Bonuses for a broken period

If a bonus covers a broken period, such as when an employee leaves, treat the bonus as being for the whole of the pay period. Add the bonus to wages in that pay period

Bonuses for one pay period

For bonuses relating to one pay period, add the bonus to other wages for the pay period in which the bonus was earned. Deduct the PAYE the total earnings.

Example

- Ordinary wages for pay period $270.00
- Bonus for same pay period $ 54.00
- Total earnings $324.00

Regular Bonuses Summary

Regular Incentive or Production Bonuses	Add the bonus to wages in the pay period it has been earned. The PAYE tables are then used to work out PAYE.
Bonuses for One Pay Period	Add the bonus to wages and deduct PAYE from the total earnings.
Monthly Bonuses - With more than one Pay	Add up gross wages and bonus in the month. Work out the PAYE (using monthly tables).
Bonuses covering more than one month	Divide the bonus by the number of months. Add the number of pays and use the monthly PAYE tables.

Special benefits paid to employees

Special employment benefits such as prize money; loss of earnings compensation; life and personal accident insurances; and honoraria may be subject to PAYE or withholding tax.

- **Taxing payments to volunteers**

  Honoraria are payments made for service where the usual custom is that the price is not set. Examples include payments to mayors, chairpersons, and members of local bodies, clubs, societies and organizations.

- **Taxing life insurance and personal accident premiums**

  If you pay the premiums of life insurance policies for an employee, and the proceeds of that policy go to them, you treat the premiums as salary and wages. If the proceeds are payable to you, the premiums are not taxable.

- **Taxing loss of earnings compensation**

  Compensation for loss of earnings paid by ACC to your employees is liable for PAYE.

- **Taxing prize money at sporting events and competitions**

  You must deduct withholding tax from prize money at any sporting event or competition, not just professional events. The prize money threshold is $500. For any amount won over this threshold, you must deduct withholding tax of 20%.

Payroll Giving

Payroll Giving has been introduced so that an employee can be granted an immediate tax credit for their donation(s) to a donee organisation (listed on Inland Revenue's Donee List).

The tax credits for payroll donations are used to reduce the amount of PAYE paid by the employee. Payroll Giving is voluntary for both employers and employees.
Tax credits for payroll donations are reported via payday filing to IRD. Payroll Giving is only available to employees of employers who payday file electronically.

Tax credits for payroll donations are calculated using the following formula:

Total Donation x 0.3333

The same calculation applies to all tax codes and all annual incomes equally. (In other words, the rate is 0.3333 for all donations.)

Before making a donation, individuals must have met all tax obligations and any payments legally required to be deducted from their pay. These include:

- PAYE (tax and ACC earner levy)
- Student Loan
- Child Support
- KiwiSaver

For example:

Fred's tax code is M SL and he earns $1400 a week. He is a KiwiSaver member
contributing 4% and is paying off his student loan. Fred would like to make a donation of $200 to his local sports group who are on the approved donee list so he checks what the maximum donation is that he could make.

Weekly wage	$1,400.00
Less PAYE	$306.84
Less KiwiSaver	$56.00
Less Student loan	$121.80
Maximum allowable donation amount	**$915.36**

He works out he could donate up to $915.36, so is able to make his donation of $200 and receive a tax credit of $66.66 ($200 donation x 0.3333).

Example Calculation for Employee's Pay Slip

The following table shows how tax credits for payroll donations would affect an employee's payslip (using 2021 tax rates where:

- Their gross income is $4,164 per month, and
- They donate $100 using payroll giving and receive their $33.33 tax credit for
- payroll donations, and
- They have a student loan, and
- They are a KiwiSaver member (using a contribution of 4%)

Employee (paid monthly)

Gross Wage		$4,164.00
PAYE (including Earner's Levy)	Minus	$725.40
Student Loan Deductions	Minus	$299.48
KiwiSaver Employee Deductions	Minus	$166.56
Donation	Minus	$100.00
Total deductions Equals		$1,291.44
Tax credits for payroll donations	Plus	$33.33
Take home pay (After Donation)	Equals	$2,905.89

The amounts deducted and contributions for PAYE, KiwiSaver and the Student Loans have been calculated using the tax code of M SL.

Note: All amounts deducted are calculated on the gross wage. Amounts deducted are not calculated on the gross wage less the donation.

Employee Allowances - Background

Over recent years there has been uncertainty over the tax treatment of employer payments for relocations and overtime meals, and whether these payments constitute income of the employees who receive them. For many years these two types of payment have been generally treated as non-taxable by both taxpayers and Inland Revenue. Developments over time have, however, complicated the situation.

Before 1995 taxpayers required approval from Inland Revenue if a particular payment was to be treated as non-taxable, but since then taxpayers have self-assessed whether a payment is taxable or non-taxable.

In 2007 Inland Revenue attempted to identify more generally the circumstances under current tax law, including case law, when amounts paid by employers in relation to employee-related expenses would be exempt from income tax. These circumstances were outlined in a draft Interpretation Guideline (IG03162), which was released for public comment on 24 October 2007. The Interpretation Guideline specifically focused on those situations covered by section CW 13 of the Income Tax Act 2004.

The draft guideline concluded that there were three criteria that must be met:

- The employee was performing an obligation under the contract of service at the time the expenditure was incurred.
- The obligation served the purpose of the income-earning process of deriving income from employment.
- The expenditure incurred by the employee was necessary as a practical requirement of the performance of the obligation.

Apart from relocations, these criteria also had implications for overtime meal allowances as these would have been taxable under the criteria, but had traditionally, in practice, been treated as non-taxable.

What are an employee's entitlements to allowances over and above their salary or wages?

The payment of and level of allowances, over and above salary or wages, is a matter for agreement between the employer and employee, as there is no specific legal entitlement to allowances.

Generally, allowance payments are used to recognise extra qualities or skills an employee brings to a job, special responsibilities an employee may have taken on (leading hand or supervisor) or any unpleasant or inconvenient features of their work. Allowances may also be paid to an employee to reimburse them for costs or expenditure incurred on behalf of the employer.

Where an employee has incurred a cost on their employer's behalf it is good practice for the employer to ensure that the employee is reimbursed or compensated in some form. Where allowances are a regular feature of a job, it is good practice to have them clearly specified, either in an agreement or in a workplace policy, so that it is clear for everyone when and how they apply.

Examples of Allowance Clauses

There are a range of allowances that may be relevant to different employment relationships. Examples of allowances that may be relevant are: Tools; Clothing; Uniform; Meals; Travel; etc.

Where an allowance is made to recognise an employee for working on a particular day of the week (say Sunday), or a public holiday, this is more appropriately described as a penal rate.

Examples of allowance clauses

Allowance clauses are by agreement and there is no legal requirement to provide them to employees. For payroll the clause needs to be clear and concise stating the value of the allowance and when it is applied.

Examples clauses are for:

- **Allowance Clause (This would be a taxable allowance)**
  The Employee shall be paid a **[insert name]** allowance of **[insert amount]** per **[insert circumstances]**, which shall be paid to the Employee on a **[insert payment period]** basis.

- **Penal Rates (This would be a taxable allowance)**
  The parties agree that the Employee shall be entitled to penal rates for working on **[insert situations]**. Where penal rates are payable, they shall be paid at the following rate: **[insert rate of penal payment]**.

- **Overtime (This would be a taxable allowance)**
  The parties agree that where the Employee works requested overtime, the Employee shall be entitled to payment for each hour of overtime at the following rate: **[insert rate]**.

- **Reimbursement of Expenses (This would be a non-taxable allowance)**
  The Employee shall be entitled to reimbursement by the Employer of all expenses reasonably and properly incurred by the Employee in the performance of their duties, provided the Employee produces appropriate receipts to the Employer when requesting reimbursement.

- **Reimbursement of Travel and Accommodation Expenses (This would be a non-taxable allowance)**
  The Employee may be required to travel from time to time as part of their duties. The Employer shall reimburse the Employee for their reasonable work related travel and accommodation costs upon production of appropriate receipts.

Types of Allowances

Allowances can be taxable or tax-free, and are usually paid as a result of:

- an industrial collective agreement, or
- an agreement made between the employer and employees—commonly known as an in-house agreement.

Taxable allowances are added to the employee's gross earnings and PAYE is deducted from this total.

Three types of allowances commonly paid. They are:

- **Benefit allowances** (Taxable)
- **Reimbursing allowances** (Non-Taxable)
- **Travelling allowances** (Non-Taxable).

Benefit Allowances

Benefit allowances are payments made in addition to salary or wages, which benefit the employee. A benefit allowance is taxed with the employee's wages in the pay period it's paid.

Food or accommodation provided to employees may also be a benefit allowance. The taxable benefit is the difference between the market value of the benefit provided, and any amount the employee pays.

Add the taxable value of the benefit to the employee's wages each pay period and deduct PAYE from the total.

Accommodation Allowance

Example

Market value of accommodation	$ 250 per week
Less rent paid	$ 100 per week
Value to be added to wages and taxed	$ 150 per week

If the employee paid no rent, the value to be taxed would be $250 per week.

Any allowance you pay to an employee instead of providing them with accommodation is fully taxable.

[Note from IRD]: Employees in KiwiSaver who receive an accommodation allowance

If you provide an accommodation allowance to employees who are KiwiSaver members, you'll need to read this. You may have been receiving letters every month from us querying the under-deduction of compulsory employer contributions (CECs). This is because the accommodation allowance is deducted from your employee's gross pay prior to calculating the CEC.

Until now you've needed to contact us every month to tell us you've deducted an accommodation allowance.

IRD now have a new process and we're updating our records for those employers we know are deducting an accommodation allowance. When the new process is in place, you'll no longer receive a letter every month querying the under-deduction of your CEC.

IRD will contact you after 12 months to check if you're still providing an accommodation allowance or if your circumstances have changed. If IRD can't contact, you by phone they will send a letter.

Meal allowances

Employers typically meet an employee's meal costs when link to work-related duties to recognise that these meals may be more expensive for the employee than normal meal costs at home.

There are two specific exemptions:

1. An exemption applies of up to three months for meal payments if the employee is required to work away from their normal work location because they're travelling on business. This may be for a specific short-term, work-related journey or for a longer period such as a secondment to a distant work location.
2. Payments to cover working meals and light refreshments when working off the employer's premises are exempt without any upper time limit.

In both situations, when the exemption applies, the full amount of any meal payment will be exempt. The exemption includes reimbursement payments and meal allowances.

Please Note: These rules don't affect the existing exemptions that apply to overtime meal payments and sustenance allowances or where fringe benefit tax (FBT) is payable on meals directly provided by the employer.

Working meals and light refreshments

A tax exemption may also apply for payments for light refreshments (in the form of snack food such as biscuits and fruit, or liquid refreshments such as tea or coffee), when the following criteria are met:

- the employee's duties mean they're away from their work premises for most of the day
- the employer would normally provide the refreshments to the employee on the day, and
- it isn't practicable for the employer to provide the refreshments on the day.

Other types of Benefit Allowances

Higher duties allowance

When an employee is asked to act in a higher position than their own and is paid an allowance to compensate them for the extra responsibility this can be called a Higher Duties Allowance.

Key points to consider:

- This is a taxable allowance and would go into gross earnings for Holiday Act calculations.
- It should be for a defined period of time in writing.
- The agreement should state that this allowance is not paid when the employee is on leave (sick, bereavement, public and annual).

Shift Allowance

Shift work is outside the usual hours of employment for ordinary day workers. A shift allowance is paid to employees on shift work to compensate for their having to work outside the usual span of hours fixed for day workers. For example: the worker working 8 hours on a night shift is paid an extra amount for the inconvenience of working at night. The extra amount is the shift allowance.

Key points to consider:

- This is a taxable allowance and would go into gross earnings for Holiday Act calculations.
- It should be clear what shifts and times it is applied to.

Attendance allowance

This is basically to motivate employees to come to work every day.

Key points to consider:

- This is a taxable allowance and would go into gross earnings for Holidays Act 2003 calculations.
- It should be clear what qualifies the employee to get this allowance.

Reimbursing allowances

Reimbursing allowances are payments made to employees to compensate them for expenses they've incurred while doing their job—such as mileage allowances, tool money or overtime meal allowances.

Overtime Meal Allowance:

CW 17C Payments for overtime meals and certain other allowances
Eligibility requirements: overtime meals
(3) Subsection (1) applies only if—
(a) the employee has worked at least 2 hours' overtime on the day of the meal; and
(b) either—
(i) the employee's employment agreement provides for pay for overtime hours worked; or
(ii) the employer has an established policy or practice of paying for overtime meals.

For overtime meal allowance, overtime means the time an employee works for an employer beyond their ordinary hours of work as set out in their employment agreement.

Clothing payments

There are two types of clothing payments that will be exempt from tax. They are payments:

- provided to cover the cost of distinctive work clothing, e.g., uniforms, and
- to meet the costs of plain clothes allowances paid to members of a uniformed service, provided certain conditions are met.

"Distinctive work clothing" is defined as meaning a single item of clothing, that:

- is worn by an employee as, or as part of, a uniform that can be identified with the employer:
  - through the permanent and prominent display of a name, logo or other identification that the employer regularly uses in carrying on their activity or undertaking, or
  - because of the colour scheme, pattern or style is readily associated with the employer
- is worn in the course of, or as an incident of, employment, and
- isn't clothing that employees would normally wear for private purposes.

Distinctive clothing therefore only includes uniforms or specialist clothing that isn't reasonably suitable for private use and is necessary and peculiar to a particular occupation.

Sustenance allowances

The exemption originates from a submission in relation to the tax treatment of an allowance paid to several thousand postal delivery workers, which covers the costs of their purchasing adequate food or liquid to ensure that they maintain their energy levels while completing their mail deliveries. It recognises that these employees do not have access to the usual employer-provided drink facilities that employees working in offices would normally have access to at no or little cost, and the additional costs associated with their particular situation.

Because these workers are required to carry bags of mail, either on foot or by bicycle, they do not have the capacity to carry energy drinks and other sustenance with them and therefore, must purchase these items along their mail route. For a sustenance allowances to be tax-free, all of the following need to be met:

- The employee works a minimum of seven hours on the day.
- Their employment requires them to work outdoors and away from their employment base for most of the day, and to undertake a long period of physical activity in travelling through a neighbourhood or district on foot or by bicycle.
- It is not practicable for the employer to provide sufficient sustenance on the day for the period when the employee is working outdoors.
- The allowance recognises both the arduous physical nature of the employee's work and that the employer would normally provide tea, coffee, water, or similar refreshments at the employment base in the course of their business.

Relocation allowance

What payments are covered?

Payments may be made in several ways. Employers may directly pay an account that is in the name of an employee (this is known as a payment on account of an employee). Alternatively, employees might seek reimbursement of an amount they have already paid, or the employer might provide them with an allowance to cover the estimated costs they are expecting to incur. Likewise, the relocation may arise from employees migrating to New Zealand, or migrating from New Zealand, or moving within. New Zealand. The legislative changes cover all these types of situations.

These situations differ from those covered by the fringe benefit tax rules, although ideally the outcomes should be similar. Accordingly, some changes have been made to the fringe benefit tax rules too.

A further requirement is that the relocation of the employee's residence (or home base) must be necessary to carry out the job. If the employee could have commuted to the new job from an existing residence there would be a clear monetary private benefit involved when the employer pays for the relocation costs and, in principle, this should be taxable.

Although the legislation refers to actual expenses, this should be sufficiently wide to enable employers to provide an advance to an employee in anticipation of relocation expenditure being incurred, provided there is ultimately a square-up. Estimates of costs would not, however, be allowed, on the basis that it is not unreasonable to expect employees and employers to keep track and provide evidence of actual expenditure given the relatively small number of employees involved and the magnitude of the costs associated with a relocation.

Relocation Payments

Work-related relocation payments made to your employees are tax-free provided all of the following conditions are met:

Your employee's relocation is required as the result of:

- taking up new employment with a new employer, or
- taking up new duties for you at a new location, or
- continuing in their current position but at a new location.
- Your employee's existing home is not within reasonable travelling distance of their new workplace (unless accommodation is provided as part of the job).
- The expense is on the list of eligible relocation expenses**, see next page**.
- The payment reflects actual expenditure incurred.
- The expenditure is incurred before the end of the tax year in which your employee relocates following the tax year in which the employee relocates.

Reimbursing allowances are not taxable. However, if the payment is more than the employment related expenses, the excess is taxable.

List of eligible relocation expenses

This list sets out the types of expenditure that may be treated as exempt income when an employee is reimbursed, or the expenditure is paid on an employee's behalf, when the employee (including their immediate family) relocate their accommodation for employment purposes.

"Immediate family" includes the employee's partner, dependent children and any dependent adults that are part of the employee's household. A dependent adult might be a dependent parent of the employee or partner or a disabled relative for whom the employee or the employee's partner is the caregiver.

The costs should be reasonable in the circumstances and, where relevant, should be as if they had been calculated on an arms-length basis between third parties.

Where there is a time limit specified on an item, that limit will be assumed to have been met for payments made prior to the issue of this determination.

Furthermore, the time limit on a specific item is subject to the overall time limit set in the legislation (that is, expenditure must have been incurred by the end of the tax year following that in which the relocation occurred).

Preparatory
Engaging a relocation consultant
A familiarisation trip to the new location immediately prior to relocation, for a maximum of 7 days in the new location (this excludes travelling time between the old and new locations)
Obtaining immigration assistance
Immigration and emigration applications
Health checks, tests and immunisations necessary for immigration or emigration
Any documentation and police and other agency checks required as a result of the relocation
Obtaining advice on the taxation and superannuation implications of relocating and of obtaining assistance in meeting any additional tax reporting/return requirements that arise from relocating

Transportation
Removal and transport of household effects (including insurance, insurance excesses and taxes)
Moving "tools of trade" (including insurance, insurance excesses and taxes)
Moving other personal items such as cars, boats or trailers (including insurance, insurance excesses and taxes)
Cleaning and fumigation associated with the removal, transportation and storage of household effects
Excess baggage charges arising from the transportation of household and other personal effects and "tools of trade"
Customs' clearance and other costs associated with complying with New Zealand Customs regulations and other regulatory requirements that arise when transferring household and personal effects and "tools of trade" from the old to the new location
Transport to get to the new location (such as, but not limited to, air fares and car rental costs) using a direct route, and meals and accommodation on route
Relocating pets, including quarantining and boarding fees
Hiring a replacement vehicle while awaiting transportation and clearance of the employee's own vehicle to the new location. If the employee does not have a vehicle in transit, the cost is limited to a maximum of one month's hire
A trip to tidy up affairs after relocation
Property
Exiting or breaking existing accommodation leases and similar contracts
Selling an existing home and acquiring a new dwelling: • real estate commissions; • advertising and auctioning; • legal and conveyancing fees and disbursements; • loan application fees; • mortgage early repayment loan application fees; • valuation costs; • LIM and building reports (or similar);

• any stamp duty; and • penalty interest charges for breaking a fixed term loan. (But not any loss in capital value of the existing home).
Finding accommodation, whether to rent or to purchase, in the new location (but not bonds, refundable or otherwise)
Hiring household and/or personal effects for the new location, while awaiting transportation of related property to the new location
Storage of household or personal effects left at the old location, for (subject to the overall time limit) up to two years
Storage for household or personal effects once they have arrived in the new location, for up to three months, or until the employee finds a permanent home, whichever is sooner
Disposing of household/personal effects and similar assets at the previous location (but not capital losses)
Conversion of any electrical appliances because of voltage differences between the old and new locations
Disconnection and connection fees for, respectively, the old and new residences in relation to utilities (such as power and gas) and telecommunication services (such as telephone, internet and television)
Accommodation or value of employer provided accommodation once the employee has arrived in the new location, for up to three months after arrival
Cleaning and fumigation of old and new residences
Utility, rates, insurance and maintenance for the employee's previous residence for up to one year if, despite reasonable efforts, it cannot be sold or rented, or if the property is rented by the employee, it cannot feasibly be rented to someone else (for example, because the relocation is for a short period)
Individuals, dependants and miscellaneous
Language training for the employee necessary for the relocation (up to 12 months after relocation)
Redirecting mail

Disposal of investments, including superannuation and insurance policies, (but not any reduction in the value thereof), that cannot be held or continued because of the relocation
Charges for currency exchange on actual eligible relocation expenses incurred
Travel/health insurance while relocating
Additional childcare costs that arise as a result of a relocation giving rise to a temporary household rearrangement, for up to three months from the time of relocation
School uniform items that need to be replaced because of the relocation
Private school application fees if an employee's children were enrolled in private schools in the previous location or where there is no alternative to private schools in the new location
Cancelling professional and club memberships
Other costs directly arising from relocation, up to $500 in aggregate

Travelling allowances

Employers need to decide how to tax a travelling allowance paid to an employee. An allowance paid for an employee's usual travel costs between home and work is taxable.

A travel allowance is tax free to the extent that the amount paid reimburses an employee's additional transport costs, is for the employer's benefit, and one or more of the following special circumstances exists:

- the employee is working outside the normal hours of work (e.g., overtime, shift or weekend work)
- the employee needs to transport work related tools, equipment or materials (e.g., the employee normally takes the bus to work but has to use some other type of transport to carry work-related gear)
- there's a temporary change in workplace
- the employee is travelling to fulfill a statutory obligation for the employer
- there's some other condition of the employee's job (e.g., the employee usually takes the bus to work but their employer requests using their private vehicle while the company car is in the workshop)
- there is no adequate public transport system serving the workplace.

Other types of Reimbursing Allowances

Tool allowance

Tool allowance can be for the upkeep of tools that are the property of the employee but are used in the workplace as a requirement of their position i.e. mechanic.

Key points to consider:

- This is a non-taxable allowance and would not go into the gross earnings for Holiday Act calculations.
- To make this a non-taxable allowance the allowance must be for the reimbursement of the cost to maintain tools.
- There should be a schedule of tools the employee has to maintain.

Uniform/Dry Cleaning allowance

This allowance is paid to the employee to maintain a uniform that is a requirement of the employee position.

Key points to consider:

- This is a non-taxable allowance and would not go into the gross earnings for Holiday Act calculations.
- To make this a non-taxable allowance the allowance must be for the cost of cleaning a uniform that is only used for work.

Phone/Internet allowance

This allowance can be a non-taxable allowance if it can be clearly shown this is not a benefit for the employee but a requirement of the business that phone or internet access is needed as part of their duties i.e. an IT engineer that has to check a server from home when a fault is forwarded.

Key points to consider:

- This is a non-taxable allowance and would not go into the gross earnings for Holiday Act calculations.
- To make this a non-taxable allowance the allowance must be for the reimbursement of having phone or internet for business purposes.

Using a kilometre rate for business running of a motor vehicle

Employee reimbursement

Where the employee maintains a logbook, or other evidence that establishes the proportion of employment use for an income year, the calculation of the exempt portion of reimbursement may be based on the kilometre rate set by Inland Revenue.

The Tier One rate can be applied for the business portion of the first 14,000 kms (total) travelled by the vehicle in each income year, after which the Tier Two rates will apply.

Note that even where the employee records a logbook test period in accordance with the rules in section DE 6 to DE 11, the annual kilometres travelled must still be monitored so that it is known whether the 14,000 figure is reached each year.

However, where no logbook or other records are maintained, the use of the Tier One rate to calculate the exemption for employee reimbursement is limited to the first 3,500 kilometres travelled for employment purposes. The Tier Two rates may be used for kilometres travelled for employment purposes above the 3,500 km figure.

2018 /2019 Kilometre Rates		
Vehicle Type	**Tier One Rate**	**Tier Two rate**
Petrol or Diesel	79 cents	30 cents
Petrol Hybrid		19 cents
Electric		9 cents

For more information go to: https://www.ird.govt.nz/topics/income-tax/day-to-day-expenses/vehicle-running-costs

Reimbursing employees for motor vehicle expenses

To reimburse staff, including shareholder-employees using their own vehicle for work, you can either use:

- IRD mileage rate, or
- rates published by a reputable independent New Zealand source representing a reasonable estimate (for example New Zealand Automobile Association mileage rates), or
- actual costs.

Actual expenditure

You can reimburse an employee's actual expenditure instead of using the mileage rates. For this method both the employer and employee must keep accurate records, including details of private and work-related expenditure, to justify the reimbursements.
Or, you can make a reasonable estimate of the amount of expenditure likely to be incurred by your employee or group of employees.

Logbook

You can also work out the business use of your vehicle by keeping a logbook for at least 90 days. After 90 days you can work out the average proportion of business to private use of your vehicle. The logbook term is up to three years, provided variance of business use is less than 20% of the logbook representation.
The logbook must record:

- the start and end of the 90-day test period
- the vehicle's odometer readings at the start and end of the test period
- the distance of each business journey
- the date of each business journey
- the reason for each business journey.

Skill Check – Allowances

1. What is the current IRD rate for motor vehicle reimbursement?

2. List at least 3 of the 6 criteria to make a tax free travel allowance?

3. Who defines if an allowance is taxable or non-taxable?

4. What are the three criteria to receive an overtime meal allowance?

5. If Jeff travels on behalf of the business and pays for some work related expenses does this get included in his gross earnings?

6. If you provided a Tool Allowance would this be taxable or non-taxable, why?

When employee deductions are made

Deductions must be paid by the due date or penalties will be applied.

There are two types of employers that pay deductions to IRD:

- Small employers (with a gross PAYE, ESCT less than $500,000)
- Large employers (with a gross PAYE, ESCT $500,000 or more)

Small employers pay their deductions once a month:

- PAYE deducted this month will be paid by the 20th of the following month.

Large employers pay the deduction twice monthly:

- Wages paid between 1st and 15th of the month are paid by the 20th of the same month.
- Wages paid between 16th to the end of the month by the 5th of the following month.

Please note	If you start as a small employer but during the year cross over the $500,000, contact IRD so you can be changed to a large employer and pay twice monthly.

Payday filing

You must file your employment information each payday.

What is payday filing?

With payday filing, you'll:

- send IRD your employment information (the pay details of your employees) with your normal pay cycle

- **Note**: if you don't have a pay run you don't need to send IRD any information.

- provide employee details for new and departing employees to IRD. This includes your employees' start and end date, contact details and date of birth (if they provide this to you). These details need to be filed on or before any new employees' first payday. IRD don't require these details for existing employees. You should let your employee know that this information will now be provided to IRD.

- file electronically within two working days of the payday, or, file by paper. If you file by paper, IRD will send you paper forms each month. You'll need to file your information within 10 working days of the:

    - payday, or
    - 15th and end of month if you choose to send IRD information twice a month.

- **Note**: if your annual PAYE and ECST deductions are $50,000 or more, you must file electronically. If less than $50,000, you can file electronically or by paper. Payday filing by paper will only be available from April 2019. If you file your own PAYE as an IR56 taxpayer, you'll have 10 working days after the payday to file this information.

- correct your employment information online. Please note: IRD aren't able to accept negative adjustments.

What happens once I start payday filing

You'll need to file your employment information to IRD online within two working days of the payday.

For the first month you'll:

- delegate others or reset access for others to use the **Payroll** account if you are filing online
- file your employment information each payday
- submit any new employee details before or on their first payday. If you file by paper, send IRD *New employee details (IR346).*

  What does my employment information file look like?

  What you submit will look similar to your IR348 and you'll include the same information you do now. However, you'll also need to provide the following:

  - ESCT (employer superannuation contribution tax) for each employee
  - pay period start and end dates
  - pay cycle, eg weekly, monthly, ad hoc
  - payday date
  - additional information about new and departing employees.

Making payments

Payment of PAYE are on due dates - pay monthly or twice-monthly.

How do I delegate others access to my Payroll account?

The owner of the myIR account will be the only person with initial access to the **Payroll** account. The account owner can delegate access to new or existing users so they can payday file through the **Payroll** account.

You can check **Manage account access** to find out who has access to the account. The **User access report** will provide you a list of who has access to what service.

How do I file my employment information and employee details?

There are three ways you can file your employment information online.

1. **Directly from your software (GATEWAY)**

   If supported by your software provider, you can file directly to IRD without having to upload any files through myIR. This means you'll:

   - no longer have to file upload in myIR
   - be able to set up your employees with the right information from the start
   - make adjustments and be able to amend information you've already filed.

   Your software will need to support the new employment information and employment details file, along with some KiwiSaver files. Check with your software provider if it can. When you've completed and submitted these files they'll transfer from your software directly to IRD.

   You'll need to use your myIR account user ID and password to authorise these submissions from your software. This is a one-off process to establish a link between your software and IRD.

2. **File upload from your Payroll account in myIR**

   If supported by your software provider, you can upload files in myIR in the **Payroll** account. This account will only appear once you've opted into payday filing.

   You can send your information through **File return** or **File transfer link**. From here, the process is similar to ir-File.

3. **Onscreen in your Payroll account in myIR**

   If you have smaller pay runs, you can use our onscreen data entry method in myIR in the **Payroll** account.

Payday filing for schedular payments

If you choose to use payday filing you don't need to provide contractors' details such as date of birth, start and end dates and contact details if you don't have them.

You can include your schedular payments information when you file your employment information on a payday basis, ie when you pay contractors, or on a twice-monthly basis. Schedular payments made:

- **between the 1st and 15th of the month** must be reported to IRD within two working days after the 15th of the month.
- **from the 16th to the end of the month** must be reported to IRD within two working days after the end of the month.

Any payments made within any half month must be included for that pay period.

New Employee Details form ir346

If you are paper based filier the following form needs to be completed if the online version is not used.

Inland Revenue
Te Tari Taake

New employee details

IR346
April 2019

When to complete this form

You must complete this form for any new employee(s) who start working for you and send it to us either:

- before their first pay day; or
- with the *Employment Information (IR348)* form that includes their first pay.

Details you need to include

- **KiwiSaver status** - check with your employee and use the relevant status from the list below for your employee:
  - Active member
  - Non-member
  - Not eligible
  - Opted out
  - Savings suspension (formerly known as Contribution holiday)
- **Tax Code** - use the code provided by your employee on their *Tax code declaration (IR330)*
- **Address details**
- **Date of birth** (if you hold this).

You can download additional copies of the IR346 form from our website. Go to **www.ird.govt.nz** (search keyword: IR346).
Manage all your Inland Revenue matters securely online with a myIR account. Go to **www.ird.govt.nz/myIR** to find out more.
Send your completed forms to:
Inland Revenue, PO Box 39090, Wellington Mail Centre, Lower Hutt 5045

Employer Name | **Employer IRD number**

Employee Name (First name(s), Surname) | Date of Birth (If held) D D M M Y Y Y Y | IRD number
Email Address | KiwiSaver Status
Physical Address (Street address, Suburb, City, Postcode) | Tax Code

Employee Name (First name(s), Surname) | Date of Birth (If held) D D M M Y Y Y Y | IRD number
Email Address | KiwiSaver Status
Physical Address (Street address, Suburb, City, Postcode) | Tax Code

Employee Name (First name(s), Surname) | Date of Birth (If held) D D M M Y Y Y Y | IRD number
Email Address | KiwiSaver Status
Physical Address (Street address, Suburb, City, Postcode) | Tax Code

Employee Name | Date of Birth (if held) D D M M Y Y Y Y
First name(s)
Surname | IRD number
Email Address | KiwiSaver Status
Physical Address | Tax Code
Street address
Suburb | City | Postcode

Employee Name | Date of Birth (if held) D D M M Y Y Y Y
First name(s)
Surname | IRD number
Email Address | KiwiSaver Status
Physical Address | Tax Code
Street address
Suburb | City | Postcode

Employee Name | Date of Birth (if held) D D M M Y Y Y Y
First name(s)
Surname | IRD number
Email Address | KiwiSaver Status
Physical Address | Tax Code
Street address
Suburb | City | Postcode

Employee Name | Date of Birth (if held) D D M M Y Y Y Y
First name(s)
Surname | IRD number
Email Address | KiwiSaver Status
Physical Address | Tax Code
Street address
Suburb | City | Postcode

Employee Name | Date of Birth (if held) D D M M Y Y Y Y
First name(s)
Surname | IRD number
Email Address | KiwiSaver Status
Physical Address | Tax Code
Street address
Suburb | City | Postcode

RESET FORM

Skill Check – IRD Reporting

1. If an employer is classified as a small employer, how many times and when do they need to pay PAYE?

2. How many times and when does a large employer need to pay PAYE in a month?

3. From payday how number days do you have to file with IRD?

4. What are the three ways payday filing can be filed with IRD?

Pay record keeping requirements

You must keep records of all your PAYE deductions.

Records to keep

You must keep:

- wage book information
- PAYE payment receipts
- tax code declarations (IR330) completed by employees
- letters from IRD requesting you change your employee's tax code.

How long does payroll need to keep them?

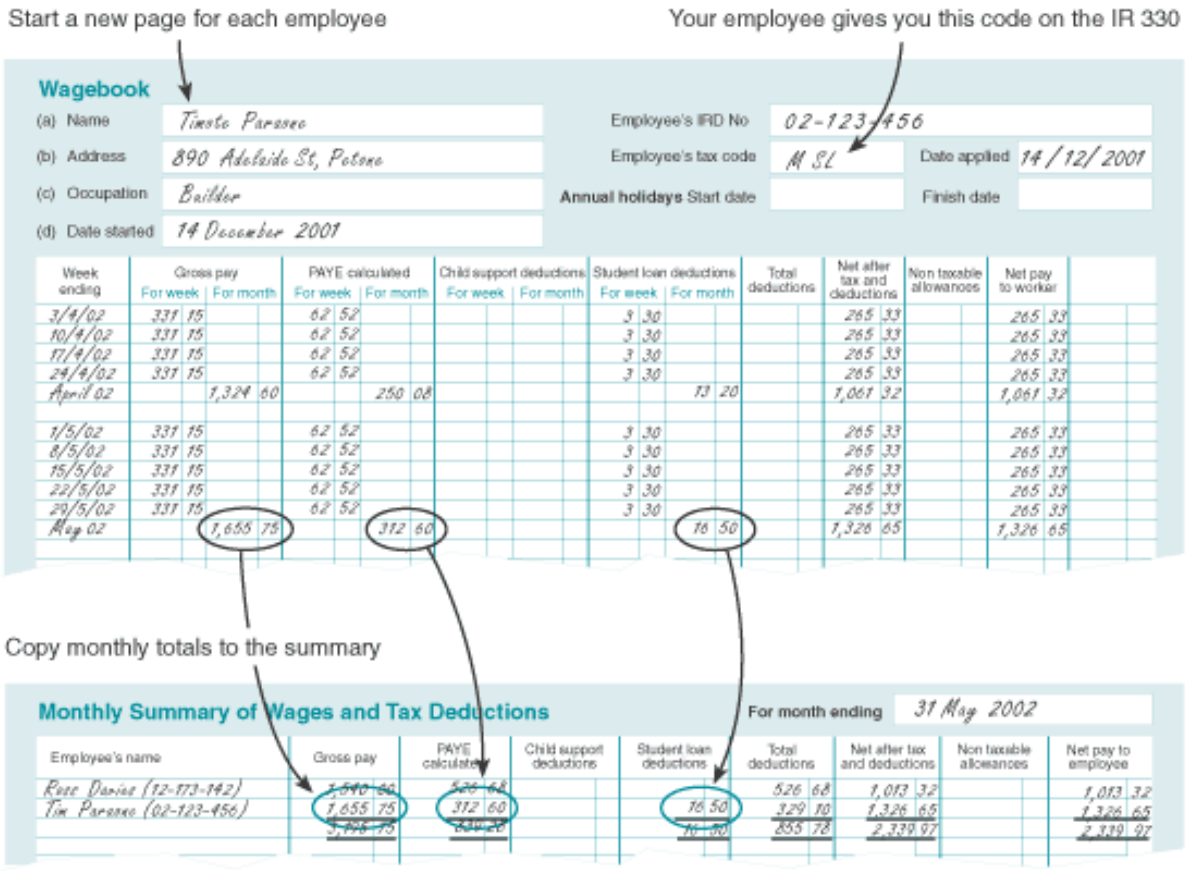
All your pay records must be held in New Zealand for at least seven years.

Keeping a manual wage book

Here are some tips to help you keep a wage book:

- Start a new page in your wage book as soon as an employee starts work with you, or at the beginning of each tax year. Make sure they give you the personal details you need.
- Keep a separate page for each employee, even if they were only employed for one day.
- Complete all these wage details each payday:
    - total gross earnings, including taxable allowances (the amount before PAYE is deducted)
    - the amount of PAYE deducted (taking into account any tax credits for payroll giving donations)
    - any payroll giving donations and tax credits for them
    - any child support allowances
    - any student loan repayments
    - any ESCT
    - the value of tax-free reimbursing allowances.
- Summarise the details for each employee at the end of each deduction payment period. This will be either twice-monthly or monthly, depending on your yearly PAYE deducted.

- Keep a summary sheet that shows, for each period, the following totals:
    - gross wages
    - PAYE deducted (taking into account any tax credits for payroll giving donations)
    - any payroll giving donations and tax credits for them
    - child support allowances
    - student loan repayments, and
    - ESCT



KiwiSaver Act 2006

KiwiSaver is a voluntary, long-term savings initiative. For many people, KiwiSaver will be work-based.

As an employer, you will need to provide them with information about KiwiSaver, and their KiwiSaver contributions will come straight out of their pay.

It's designed to make it easy for people to maintain a regular savings pattern.

Administering KiwiSaver

Payroll plays a key role in ensuring that KiwiSaver runs smoothly for your employees.

You're required to give your employees information about KiwiSaver if they ask for it. For general information about KiwiSaver, give them a copy of the *KiwiSaver employee information pack (KS3)* within 7 days of starting their employment.

Getting employees started

People who start a new job and meet the criteria for automatic enrolment must be enrolled in KiwiSaver, unless you offer an approved alternative superannuation scheme. You must provide KiwiSaver information to all new employees and to any existing employees who ask for the information.

If employees ask for financial advice

You should not give financial advice to employees. Instead, refer them to the Retirement Commission's Sorted website (www.sorted.org.nz) or encourage them to see an independent advisor. Providing general savings or KiwiSaver information does not constitute giving financial advice.

An overview of your KiwiSaver responsibilities as an employer

New employee starts at your business (existing employees can also join)

↓

You give them a *KiwiSaver employee information pack (KS 3)* supplied by Inland Revenue if they meet the criteria for automatic enrolment or if they are considering opting in or if they ask for one

↓

Employee gives you their details, including IRD number, name and address. Send this information to Inland Revenue

↓

You automatically enrol new employee and start deductions from the employee's first pay, or start making deductions for employees that opted in. You must also make compulsory employer contributions on behalf of your employee

↓

New employee opts out

New employee can opt out by giving you or Inland Revenue an opt out form:
send form and the *New employee and KiwiSaver details (*IR346K*)* form to Inland Revenue

↓

If the employee opts out, you must stop making deductions and you can refund any KiwiSaver contributions held that have not been sent to Inland Revenue. Employer contributions you have made will be refunded to you. Late opt outs operate slightly differently

Employee stays in KiwiSaver

↓

Pay contributions to Inland Revenue with your PAYE payments.
Please send new employee details
to Inland Revenue before your employer monthly schedule if possible

↓

Inland Revenue passes contributions to your employee's scheme provider

↓

Employees or Inland Revenue can ask you to stop KiwiSaver deductions by showing you a
Savings Suspension request notice from Inland Revenue

Who's involved?

Employers

KiwiSaver is a work-based savings plan, so employers play an important role.

- Employers give new employees and others who are interested a KiwiSaver information pack.
- They also pass employees' details to Inland Revenue to enable them to be enrolled, and deduct KiwiSaver contributions from employees' before-tax pay.
- Employers will also give employees investment statements from their chosen KiwiSaver scheme provider, if they have one.

Government

The Government:

- Provides an annual member tax credit
- Some people may also be eligible for help with the deposit on their first home

There is no Crown guarantee of KiwiSaver schemes or investment products of KiwiSaver schemes. Every investment statement relating to a KiwiSaver scheme must contain a statement to that effect.

Inland Revenue

IRD administer members' contributions mainly through the Pay-As-You-Earn (PAYE) tax system. Their main responsibilities under KiwiSaver include:

- receiving members' contributions (including any employer contributions) through their employers and transferring them to the right KiwiSaver scheme provider
- allocating default schemes to people who don't choose one themselves
- administering opt-out and savings suspension requests
- providing information to the public and helping build awareness of the KiwiSaver savings initiative

Role of the employer

As an employer, you will play an important role in helping your employees to save. KiwiSaver has been designed to minimise any extra work for you. From 1 July 2007 all employers will be required to make KiwiSaver available to new staff, unless the employer qualifies for an exemption from automatic enrolment.

Workplaces with existing registered superannuation schemes can convert to KiwiSaver, establish a KiwiSaver scheme under a trust deed that also governs registered superannuation schemes, or apply for an exemption from the automatic enrolment requirements.

Employer responsibilities

As an employer, you will play an important role in helping your employees to save. KiwiSaver has been designed to minimise any extra work for you.

Since 1 July 2007 all employers have been required to make KiwiSaver available to new staff, unless the employer qualifies for an exemption from automatic enrolment.

10 Who automatic enrolment rules apply to

The automatic enrolment rules apply to every employee who—

(a) starts new employment with an employer that is not an exempt employer; and

(b) is aged 18 or over, but less than the New Zealand superannuation qualification age, when he or she starts that new employment.

16 Time limit for opting out

Every employee to whom the automatic enrolment rules apply when starting new employment may opt out at any time in the period beginning on the **13th day after the date** on which the person started the new employment and ending on the close of the **55th day after the date** on which the person started the new employment.

Please note: How section 16 is applied is from Day 14 to Day 56.

8 Steps Automatically enrolment of employees into KiwiSaver

Payroll must enrol eligible new employees aged 18 years and over and under 65 into KiwiSaver. It's an automatic enrolment.

1. Check if your employee is in KiwiSaver already

If your employee is already in KiwiSaver there's no need to auto-enrol them.

Ask them to fill in a KiwiSaver deduction - KS2 form.

KiwiSaver deduction form (KS2)

Section A

- If the employee is a existing KiwiSaver member?
- Are they on a savings suspension (if they are, they need to provide the letter to payroll to action)?

Section B

- Employees details.

Section C

- What contribution rate the employee would like to contribute at (if none select the default is 3%.
- The options available for the employee are:

3%, 4%, 6%, 8%, 10%

- **Please note:** The employer is under no obligation to match the 4% through to 10%. The default of 3% that the employer has to pay less tax (ESCT). If the employer wants to pay more than 3% it would be an agreed term.
- Employee signs and dates to confirm the above details are correct.

Inland Revenue
Te Tari Taake

KS2 0420

KS2
April 2020

KiwiSaver
Poua he Oranga

KiwiSaver deduction form

Do not send this form to Inland Revenue. This form should be kept by your employer with your employment records.

KiwiSaver Act 2006

Use this form to provide your details to your employer if you are:

- starting new employment
- an existing employee and want to opt into KiwiSaver
- a KiwiSaver member and want to change your contribution rate.

To be eligible to join KiwiSaver you must:

- Live, or normally live in New Zealand, and
- be a New Zealand citizen, or entitled to stay in New Zealand indefinitely.

You are not required to be auto enrolled when starting a new job if you are under the age of 18 or you are over the age of eligibility for New Zealand Superannuation (currently 65).

Please read the notes on the back to help you fill in this form

Section A General Please put a dash to indicate your situation eg

1. Are you a KiwiSaver member? – Yes. Go to Question 2 – No. Go to Question 3
2. Are you on a savings suspension? – Yes See note below – No. Go to Question 3

If you have a savings suspension notice you must show it to your employer to prevent them making KiwiSaver deductions.
If you have lost your notice, you can get a replacement online at **ird.govt.nz** from your myIR account.

Section B Personal details Please use BLOCK LETTERS

You must provide your IRD number, name and address.

3. Your IRD number — If you don't know your IRD number or you don't have one, call us on 0800 549 472
4. Your name – Mr – Mrs – Miss – Ms – Other
   Put a dash to indicate your title
   First names
   Surname
5. Your postal address
   Street number
   Street address or PO Box number
   Suburb, box lobby or RD
   Town or city
   Postcode
6. Your contact numbers
   Day
   Mobile
7. Your email address
   If you give an email address you may receive KiwiSaver information by email

Section C Contributions

8. Choose a contribution rate: – 3% – 4% – 6% – 8% – 10%
   If you don't choose a rate, the default rate of 3% will be deducted.
9. I declare that the information I have provided on this form is true and correct.

Signature / Date

RESET FORM

Please give this completed form to your employer

2. Check employee eligibility to join KiwiSaver

An employee can join KiwiSaver if they're living (or normally living) in New Zealand and they're either:

- a New Zealand citizen or entitled to be in New Zealand indefinitely
- an Australian citizen
- a New Zealand or Australian residence permit holder.

Employees who cannot join KiwiSaver

An employee cannot join KiwiSaver if they:

- hold a temporary, visitor or student visa
- are a New Zealand citizen or someone who can live in New Zealand indefinitely, but they're just visiting New Zealand or on holiday.

3. Check if your employee should auto-enrol

Some of your new employees do not have to be automatically enrolled into KiwiSaver by you. If they're eligible, and want to join, they choose to opt in such as:

Employees under 18

- Eligible new and existing employees aged 18 and under opt in. They can only opt in with a scheme provider.

- Do not automatically enrol your new eligible employees aged under 18.

Employees 65 and over

- Eligible new and existing employees aged 65 and over opt in.
- They either opt in through you or a scheme provider.

Existing employees

- Your existing eligible employees who are older than 18 and less than 65 years of age opt into KiwiSaver.

- They can either opt in through you or with a scheme provider.

Temporary and casual employees

- Your temporary and casual employee's situation can mean either you automatically enrol them in to KiwiSaver, or they can choose to opt in.
- Check their situation to see if you automatically enrol them.

Usually, you do not automatically enrol temporary employees you're employing for 28 days or less.

The 28 days is their period of employment, not the number of days or hours they work. For example, if your employee has a 2 week contract but only works Tuesdays and Thursdays, their period of employment is 14 days employment not 4 days.

If they're eligible, they can choose to opt into KiwiSaver.

A temporary employee is an employee who:

- is employed to work 'as and when required', without a specific end date
- starts their period of employment each time they are engaged to work, and
- stops working each time that engagement ends.

Applying the 28 day rule to enrolment
If you engage your employee for future work and their current engagement has not ended, the combined engagements are 1 period of employment.

As long as each period of employment remains 28 continuous days or less, then you do not have to automatically enrol them.

You must automatically enrol them if their employment is extended beyond 28 days. This applies from the date you decide to extend their contract.

Casual employees
You do not have to automatically enrol your casual employees who:

are engaged on an irregular and intermittent basis
get holiday pay with their wages.

They can opt in through you or a scheme provider.

Employees who change jobs

- Payroll changes are the best way to tell if employees who change jobs opt in or automatically enrol.

Please note: Other special types of employees can be found on the IRD website.

4. Give your employee their KiwiSaver auto-enrolment pack

Give the employee you're auto-enrolling their KiwiSaver pack within seven days of their start date:

- Your introduction to Kiwisaver – employee information (KS3)
- KiwiSaver deduction form (KS2)
- KiwiSaver opt out request (KS10)

Your introduction to Kiwisaver – employee information (KS3)

Inland Revenue
Te Tari Taake

KiwiSaver
Poua he Oranga

KS3 | April 2020

Your introduction to KiwiSaver – employee information

KiwiSaver is a work-based savings initiative designed to help set you up for your retirement. Most members will build up their savings through regular contributions from their pay, making saving simple and easy.

To join KiwiSaver you must:

- live, or normally live in New Zealand, and
- be a New Zealand citizen or be entitled to stay in New Zealand indefinitely.

Already in work

You can choose whether you join KiwiSaver. If you decide to, you can join with a scheme provider directly or through your employer.

Starting a new job

If you're between the ages of 18 and 65 you'll be automatically enrolled in KiwiSaver if you're eligible. Your employer will give you some information about KiwiSaver.

Self-employed or not working

You can join KiwiSaver by contacting your chosen scheme provider directly. They'll send you a product disclosure statement and enrolment form.

Opting out

If you have been automatically enrolled you can choose to opt out of KiwiSaver at **ird.govt.nz/kiwisaver-individuals** This form must be completed within eight weeks of starting your new job. We'll refund any contributions you've made.

If you've chosen to join KiwiSaver you can't opt out. However, after 12 months you could take a savings suspension.

KiwiSaver benefits

If you're over 18 you may be entitled to:

- an annual contribution paid by the government of up to $521.43
- employer contributions that match 3% of your gross earnings.

Three years after your first KiwiSaver contribution you may be able to use your savings to buy your first home. You may also be eligible for the First Home Grant from Kāinga Ora.

Choosing a scheme provider

You don't have to choose a scheme when you join KiwiSaver.

When you join through your employer or are automatically enrolled, you will either:

- be allocated to your employer's chosen scheme, (if they have one) or
- be allocated to a default scheme.

You can actively choose your own scheme provider, by contacting them directly.

Making contributions

Making contributions is easy, whether you're working, not working or self-employed.

If you're working

Your employer deducts contributions from your before-tax pay at your chosen rate of 3%, 4%, 6%, 8% or 10%. If you don't choose a rate the default rate of 3% will be applied. Your employer passes this money to us and we pass it on to your scheme provider.

Once you've chosen a contribution rate you must continue using this rate for three months before you're able to change it.

Self-employed or not working

You and your KiwiSaver scheme provider agree how much you want to contribute and you make payments directly to them.

How your contributions are processed

It takes about two months for any KiwiSaver contributions deducted from your pay to reach your account. We transfer your contributions to your scheme provider, including any interest earned, once we've made sure your employer's payroll information is correct.

Employer contributions

If you're a KiwiSaver member making contributions from your pay, employer must also make a contribution. This will equal 3% of your pay before tax.

All employer contributions paid to a superannuation fund for the benefit of an employee are liable for ESCT (employer superannuation contribution tax). The exception to this is if the employee and employer have agreed to treat some or all of the employer contributions as salary or wages under the PAYE rules.

Your employer doesn't have to make compulsory employer contributions if:

- they're already paying sufficient contributions into another approved superannuation scheme for you
- you're under 18
- you're over 65
- you're not required to have deductions made from your pay (eg, if you're on a savings suspension, or on leave without pay).

Savings suspension

After you've been contributing to KiwiSaver for 12 months you can apply to take a break from contributing for three to 12 months. There's no limit on how many times you can do this.

However, when you're on a savings suspension, your employer doesn't have to make contributions either.

If you're experiencing financial hardship you may get approval to stop making contributions.

Existing superannuation schemes

If you're in a complying superannuation scheme, you may be entitled to some of the KiwiSaver benefits through that scheme, including the Government contribution and having your employer pay compulsory employer contributions.

Your employer only has to pay a total 3% compulsory employer contribution regardless of whether you're a member of both KiwiSaver and a complying superannuation scheme.

You can still join KiwiSaver if you're a member of a complying superannuation scheme, but the benefits will only apply to one of your schemes.

Withdrawing your savings

In most cases, your KiwiSaver savings will be locked in until:

- you're eligible for NZ Super (currently 65), or
- you've been in KiwiSaver for at least five years (if you joined prior to 1 July 2019) - whichever date is later.

KiwiSaver won't affect your eligibility for NZ Super or reduce the amount of NZ Super you're eligible for.

Exceptions

You may be able to withdraw part (or all) of your savings if you're:

- buying your first home
- moving overseas permanently (to a country other than Australia)
- suffering significant financial hardship
- seriously ill
- suffering from a life-shortening congenital condition.

Your KiwiSaver will be paid to your estate if you die.

If you move to Australia permanently, you can't withdraw your KiwiSaver savings. You can either:

- keep your savings in your current KiwiSaver scheme, or
- transfer your savings to an Australian complying superannuation scheme.

Future responsibilities

After you've enrolled in KiwiSaver, check your deductions and contributions at **ird.govt.nz/kiwisaver** or with your scheme provider.

When you change jobs, it's your responsibility to give new employers a **KiwiSaver deduction - KS2** form.

Getting advice

Neither your employer nor Inland Revenue can give you financial advice about whether KiwiSaver is the right choice for you or which scheme you should join.

KiwiSaver isn't guaranteed by the government. This means you make your investment choices in a KiwiSaver scheme at your own risk. However, all KiwiSaver schemes are regulated by the Financial Markets Authority in a similar way to other registered superannuation schemes.

If you'd like help deciding whether or not to join KiwiSaver you can go to **sorted.org.nz** This is the Commission for Financial Capability's website and it provides free, independent information about money matters, including KiwiSaver.

Alternatively, contact a financial advisor for advice on:

- your personal financial circumstances
- whether or not KiwiSaver is right for you
- how to choose a scheme or investment product
- the overall KiwiSaver scheme and its financial concepts.

For more information about KiwiSaver go to **ird.govt.nz/kiwisaver-individuals**

ird.govt.nz

Go to our website for information and to use our services and tools.

- **Log in or register for myIR** - manage your tax and entitlements online.
- **Calculators and tools** - use our calculators, worksheets and tools, for example, to check your tax code, find filing and payment dates, calculate your student loan repayment.
- **Forms and guides** - download our forms and guides.

New Zealand Government

The information in this document was current at the time of publication. Please refer to our website for the most up-to-date information. ird.govt.nz/kiwisaver

KiwiSaver deduction form (KS2)

Inland Revenue
Te Tari Taake

KS2 0420

KS2
April 2020

KiwiSaver
Poua he Oranga

KiwiSaver deduction form

Do not send this form to Inland Revenue. This form should be kept by your employer with your employment records.

KiwiSaver Act 2006

Use this form to provide your details to your employer if you are:

- starting new employment
- an existing employee and want to opt into KiwiSaver
- a KiwiSaver member and want to change your contribution rate.

To be eligible to join KiwiSaver you must:

- Live, or normally live in New Zealand, and
- be a New Zealand citizen, or entitled to stay in New Zealand indefinitely.

You are not required to be auto enrolled when starting a new job if you are under the age of 18 or you are over the age of eligibility for New Zealand Superannuation (currently 65).

Please read the notes on the back to help you fill in this form

Section A **General** Please put a dash to indicate your situation eg —

1. Are you a KiwiSaver member? — Yes. Go to Question 2 — No. Go to Question 3
2. Are you on a savings suspension? — Yes See note below — No. Go to Question 3

If you have a savings suspension notice you must show it to your employer to prevent them making KiwiSaver deductions.
If you have lost your notice, you can get a replacement online at **ird.govt.nz** from your myIR account.

Section B **Personal details** Please use BLOCK LETTERS
You must provide your IRD number, name and address.

3. Your IRD number — If you don't know your IRD number or you don't have one, call us on 0800 549 472
4. Your name — Mr Mrs Miss Ms Other
   Put a dash to indicate your title
   First names
   Surname
5. Your postal address
   Street number — Street address or PO Box number
   Suburb, box lobby or RD
   Town or city — Postcode
6. Your contact numbers
   Day — Mobile
7. Your email address
   If you give an email address you may receive KiwiSaver information by email

Section C **Contributions**

8. Choose a contribution rate: — 3% — 4% — 6% — 8% — 10%
   If you don't choose a rate, the default rate of 3% will be deducted.
9. I declare that the information I have provided on this form is true and correct.
   Signature — Date / /

RESET FORM

Please give this completed form to your employer

KiwiSaver opt out request (KS10)

Inland Revenue
Te Tari Taake

KS10 0420

KS10
April 2020

KiwiSaver
Poua he Oranga

Opt-out request

KiwiSaver Act 2006

Use this form to opt out if you have been automatically enrolled, are a minor who was incorrectly enrolled, and you don't want to be a member of KiwiSaver. Or go to **ird.govt.nz/kiwisaver** to complete our online form. **Read the notes on the back to help you fill in this form.**

Section A **Personal details** Use BLOCKLETTERS

1. Your IRD number — If you don't know your IRD number or you don't have one, call us on 0800 549 472
2. Your name — Mr Mrs Miss Ms Other
   Put a dash to indicate your title
   First names
   Surname
3. Your postal address
   Street number
   Street address or PO Box number
   Suburb, box lobby or RD
   Town or city
   Postcode
4. Your contact numbers
   Day
   Mobile
5. Your email address
   If you give an email address you may receive KiwiSaver information by email
6. Bank account details
   Bank Branch Account number Suffix
   Name of account holder
7. I wish to opt out of KiwiSaver
   Signature
   Day Month Year

Section B **Employment details** Use BLOCKLETTERS

8. Employer's IRD number — If you don't have your employer's IRD number ask them for it.
9. Employer's business name
10. Employment start date
    Day Month Year

Give this form to your employer or send it to Inland Revenue.

Section C **Late opt-out** Read the notes on the back of this form

11. If your request to opt out is more than eight weeks after you started employment, or you are a minor who was incorrectly enrolled, give a reason for your late opt-out request.

RESET FORM

5. Give your employee your product disclosure statement

If the employee is joining:

- your employer-chosen scheme, you give them their product disclosure statement
- a default scheme, they'll get their product disclosure statement from IRD.

6. Send IRD your IR346K

Fill in a New employee and KiwiSaver details – IR346K for each employee you're automatically enrolling.

You can complete it in myIR or post it to the address on the form either:

- before their first pay day
- with the Employment information - IR348 form that includes their first pay.

Keep a copy for payroll records.

New employee and Kiwisaver details IR346K

Inland Revenue
Te Tari Taake

KiwiSaver
Poua he Oranga

New employee and KiwiSaver details

IR346K | March 2020

EMPLOYER DETAILS & WHEN TO COMPLETE THIS FORM

You must complete this form for any new employee(s) who start working for you, and any existing employees wanting to opt into KiwiSaver, or when details need updating:

- Before their first pay day; or
- With the **Employment Information - IR348** that includes their first pay.

Employer business name:

Employer IRD number: (8 digit numbers start in the second box 1 2 3 4 5 6 7 8)

EMPLOYER/EMPLOYEE KIWISAVER GUIDANCE SECTION

KiwiSaver status

Your employee must be one of the five following KiwiSaver status types.

- Active KiwiSaver member
- Not eligible for KiwiSaver
- Casual/temporary employee
- New employee automatically enrolled into KiwiSaver
- Existing employee - opting into KiwiSaver.

Choosing the KiwiSaver status:

Use the following KiwiSaver status when the criteria is met:

- "Active KiwiSaver member" when you have a new employee starting employment with you and is an existing KiwiSaver member
- "Not eligible for KiwiSaver" when your new employee is not eligible to be in KiwiSaver
- "Casual/temporary employee" when you have a new employee who is not subject to automatic enrolment due to being a casual/ temporary employee
- "New employee automatically enrolled into KiwiSaver" when your new employee meets the automatic enrolment criteria
- "Existing employee - opting into KiwiSaver" when your existing employee is choosing to opt into KiwiSaver.

See the **KiwiSaver employers guide - KS4** for further information needed.

Tax code status:

Tax Code - use the code provided by your employee on their **Tax code declaration - IR330**.

Exempt earnings for KiwiSaver

If your employee receives exempt earnings for KiwiSaver within the first 12 months of employment select one of the reasons below:

- Accommodation and living costs overseas" when the exempt earnings are the value of overseas accommodation and cost of living allowance
- Board or lodging when the exempt earnings are the value of providing board or lodging, or use of a house or quarters, or the payment of an allowance instead of the provision of this benefit
- Employee share scheme when the exempt earnings are free or discounted shares received under an employee share scheme
- Voluntary Bonding Scheme when the exempt earnings include payments under a Voluntary Bonding Scheme funded by the Ministry for Primary Industries, the Ministry of Health or the Ministry of Education
- Overpayment of contribution when the exempt earnings include an overpayment of an amount of an employer's superannuation cash contribution that an employee chooses to have treated as salary or wages
- Honoraria payments when the exempt earnings are honoraria payments made under the Fire and Emergency Act 2017 paid by Fire and Emergency New Zealand to a volunteer.

See the **KiwiSaver employers guide - KS4** for further information.

Where and when to send this completed form

You can download additional copies of the IR346K form from our website. Go to **ird.govt.nz/forms-guides**

Manage all your Inland Revenue matters securely online with a myIR account. Go to **ird.govt.nz/myIR** to find out more.

Send your completed forms to: Inland Revenue, PO Box 39090, Wellington Mail Centre, Lower Hutt 5045

EMPLOYEE DETAILS

Complete this section below if an employee is registering for KiwiSaver

Employee Name
First name(s)
Surname

Date of Birth (D D M M Y Y Y Y)

IRD number

Email Address

KiwiSaver Status

Physical Address
Street address
Suburb City Postcode

Tax Code

Only complete this section below, if your employee will have KiwiSaver deductions taken from their pay

EMS identifier

Daytime phone: ( )

Exempt earnings for KiwiSaver

7. Check if they're on a savings suspension

If your employee's on an approved savings suspension ask to see their notice.

If they're on an approved savings suspension do not:

- deduct KiwiSaver from their pay
- pay employer contributions.

Get a copy for your records.

Savings suspension notices

IRD approve your employee's savings suspension. Once IRD have, IRD send a savings suspension notice to payroll and your employee.

The notice has dates showing how long the suspension is for. The suspension applies from your employee's next payment of salary or wages.

When you have a copy of the notice stop:

- deducting KiwiSaver contributions from their pay
- compulsory employer contributions (CEC) and ESCT payments.

Suspension notices and your employer contributions

On the dates shown in the savings suspension notice you can stop:

- making compulsory employer contributions (CEC)
- paying employer superannuation contributions tax (ESCT).

You can still make employer contributions to your employee's KiwiSaver scheme. It's your choice. If you do, you pay employer superannuation contribution tax (ESCT) on the contributions.

When a suspension notice is ending

Employees can ask you to re-start their KiwiSaver deductions. They can do this before the end date on their suspension notice.

Sometimes employees apply for another savings suspension towards the end of their current notice. IRD will let you know if they do.

Close to the end of your employee's savings suspension, IRD will notify you of the date you re-start:

- KiwiSaver deductions from your employee's pay
- compulsory employer contributions (CEC) and ESCT payments.

Your employee cannot suspend or start their KiwiSaver deductions too often. The minimum period before they can ask for changes, unless you agree otherwise, is 3 months.

New employees who do not give you a suspension notice

New employees who tell you they're on a savings suspension must give you their approved savings suspension notice.

If they cannot give you a valid savings suspension notice, you'll have to:

- deduct KiwiSaver contributions from their pay
- pay compulsory employer contributions and employer superannuation contributions tax (ESCT).

When your new employee gives you a valid savings suspension notice after they've started:

- refund them any deductions you've yet to pass on to IRD
- let your employee know they'll need to ask IRD for a refund of deductions you've passed on to IRD
- IRD will refund your compulsory employer contributions, you do not have to do anything to tell IRD.

You'll need to apply for a refund from IRD of any employer superannuation contribution tax you've paid. You can do this by either:

- filling in an Employment information amendments - IR344 form contacting IRD.

8. Complete employee auto-enrolment

Your employee's auto-enrolment is complete when you've:

- sent IRD your IR346K
- got their KS2 (keep hold of this for you own records)
- given them the Your introduction to KiwiSaver - employee information - KS3
- given them the KiwiSaver opt out request - KS10
- started contributions and deductions.

How KiwiSaver is calculated

Employers play an important role in the KiwiSaver scheme by calculating employees' contributions, deducting the correct amount from their pay, and forwarding it to IRD.

Contribution rates

Employees can choose one of five contribution rates: 3%, 4%, 6%, 8% or 10% of their gross pay. Employers only have to match the employee contribution at a 3% contribution rate (less tax) any higher rate would be a matter of agreement.

Gross salary or wages for KiwiSaver

For contributions to KiwiSaver schemes, gross salary or wages generally means salary, wages or allowances including:

- bonuses
- commission
- extra salary
- gratuity
- overtime pay
- other remuneration of any kind

except:

- redundancy payments
- the value of overseas accommodation and cost of living allowance
- the value of providing board or lodging, or use of a house or quarters, or the payment of an allowance instead of the provision of this benefit
- free or discounted shares received under an employee share scheme
- payments under a Voluntary Bonding Scheme funded by the Ministry for Primary Industries, the Ministry of Health or the Ministry of Education.
- an overpayment of an amount of an employer's superannuation cash contribution that an employee chooses to have treated as salary or wages.
- honoraria payments made under the Fire and Emergency Act 2017 paid by Fire and Emergency New Zealand to a volunteer.

For contributions to complying funds, gross salary or wages has the same meaning as for a KiwiSaver scheme, but excludes bonuses, commissions and other amounts that are not included in the employee's gross base salary or wages by the relevant complying fund.

How KiwiSaver Deductions Are Made

The KiwiSaver deduction is calculated on the gross earnings of the employee but PAYE is also calculated on the gross earnings.

Example:

Employee earning $600.00 per week.

Gross Pay	$600.00	
Less PAYE	$ 94.49	(Per Weekly and Fortnightly PAYE deductions tables 2021 IR340)
Less KiwiSaver	$ 18.00	(3% of Taxable Gross)
Net Pay	$487.51	

The correct treatment of KiwiSaver is as follows: KiwiSaver is calculated on the gross amount of wages, however, it should be deducted after PAYE has been calculated.

What does not go into Gross earnings for KiwiSaver?

The definition of gross salary and wages has been amended for KiwiSaver purposes to exclude redundancy, but not bonus payments. Accordingly, no CEC is required for redundancy payments.

The changes also exclude reasonable allowances or expenses if the expense or allowances are for accommodation overseas or other costs of living overseas (providing any allowance is calculated with reference to the actual costs).

Forwarding deductions

- Forward KiwiSaver deductions to IRD along with PAYE payments.
- Payday filing includes fields for KiwiSaver employee contributions and employer contributions.

Deductions from Accident Compensation payments

- If you participate in the Accident Compensation Corporation's (ACC) Partnership Programme or have an ACC employer reimbursement agreement, you continue paying an employee after an accident. In this case, you must continue to deduct any KiwiSaver contributions that were applicable before the employee's accident.
- To stop KiwiSaver deductions, the employee must apply to IRD for a savings suspension.

- When ACC (and not the employer) pays the employee weekly compensation, KiwiSaver deductions do not need to be made from those payments unless the employee instructs ACC to make deductions.

Contributions made in error

Please let IRD know if you make an error in deducting contributions from an employee's pay. If necessary, IRD will refund any contributions made. If employer contributions are included, these will be repaid to the company.

Employees on paid parental leave

KiwiSaver contributions will not automatically continue during paid parental leave, but they can keep going if the member contacts IRD. If you continue to pay an employee while they are receiving paid parental leave, KiwiSaver contributions will continue unless the employee applies for a savings suspension.

When an employee returns to work after taking paid parental leave, you'll need to resume deducting KiwiSaver contributions from their pay.

Additional information on Savings Suspension Requests

If an employee takes a break from saving with a savings suspension request, you'll need to stop their deductions and restart them when their savings break finishes, or when they ask.

IRD will send the member a letter confirming the start and end dates of their approved savings suspension. They can show you a copy of the savings suspension letter and ask you to cease making deductions. IRD will also send payroll a letter at the end of any member's savings suspension, asking you to restart deductions.

If a member is on a savings suspension but cannot show you a savings suspension letter, deductions are required until they can get a replacement letter. Deductions may then be refunded, either by IRD or by you.

Applications for savings suspension

102 Who may apply for savings suspension

A person to whom subpart 1 (deductions of contributions from salary or wages) applies may apply to the Commissioner for a savings suspension—

(a) at any time after the Commissioner receives the first contribution in respect of that person, if the person is suffering, or likely to suffer, financial hardship; or

(b) at any time after 12 months have expired since the earlier of—

(i) the date that the Commissioner received the first contribution in respect of that person; or

(ii) the date that a provider received the first contribution in respect of that person's membership of a KiwiSaver scheme.

Inland Revenue
Te Tari Taake

KS6 0419

KS6
April 2019

KiwiSaver
Pou a he Oranga

Savings suspension request (employee to complete)

KiwiSaver Act 2006

Use this form to request a temporary stop of KiwiSaver employee contributions. This also temporarily stops employer contributions. If you have been a member for less than 12 months please refer to the back of this form. It's faster to request a savings suspension online at **www.kiwisaver.govt.nz** through *My KiwiSaver*.

Please read the notes on the back to help you fill in this form.

Section A Personal details Please use BLOCK LETTERS

1. Your IRD number

2. Your name – Mr – Mrs – Miss – Ms – Other
   Put a dash to indicate your title
   First names
   Surname

3. Your postal address
   Street number
   Street address or PO Box number
   Suburb, box lobby or RD
   Town or city
   Postcode

4. Your contact numbers
   Day
   Mobile

5. Your email address
   If you give an email address you may receive KiwiSaver information by email

6. You can suspend your contributions from 3 to 12 months. How long are you temporarily stopping your contributions for? Year (Max 1) or Months (Min 3)

Section B Employment details Please use BLOCK LETTERS

7. If you want us to tell an employer to stop making KiwiSaver deductions, please enter their details below. If you have other employers who you want us to tell, please attach a list to this form.

   Employer's business name

   Employer's address
   Street number
   Street address or PO Box number
   Suburb, box lobby or RD
   Town or city
   Postcode

RESET FORM

Savings suspension in the first 12 months

A KiwiSaver member is only eligible for a savings suspension within the first 12 months if they are suffering, or likely to suffer, from financial hardship.

In these cases, IRD determine the appropriate length of a savings suspension — the default period is three months. IRD may determine a longer period if that is appropriate considering the financial hardship.

An automatically enrolled member who opts out late and has been a member for less than 12 months, will not be eligible for a savings suspension. A financial hardship savings suspension will not be considered unless the member makes an explicit request.

Penalties and disputes

IRD will work with you to help you meet your KiwiSaver obligations. Where an error does occur, (e.g. not deducting KiwiSaver contributions) IRD will issue a reminder. This will be followed by a notice warning you that IRD may charge you a KiwiSaver penalty if you don't meet your obligations in the future.

There are KiwiSaver penalties for

- failure to provide information—where you don't provide KiwiSaver information to your employees or to IRD
- failure to deduct—where you don't make a correct KiwiSaver deduction when required to do so

The penalties are

- $50 per month for small employers, and
- $250 per month for large employers.

Note:

- You will not be penalised if an employee refuses to supply information or supplies false information.
- You will not be penalised for failure to provide a *KiwiSaver employee information pack (KS3)* when required if IRD don't provide the information packs to you on time, as long as you notify IRD that further packs are required as soon as possible.

Employer contributions

From 1 April 2013 employers have been required to contribute to their employee's KiwiSaver account or complying fund at 3% of their gross salary or wage.

A complying superannuation fund is a section within a registered superannuation scheme that has been approved by the Government Actuary as having met certain criteria similar to KiwiSaver, e.g. KiwiSaver lock-in rules and portability.

KiwiSaver employer contributions need to be paid with your PAYE while contributions you make with your employees' complying funds still need to be paid directly to the applicable scheme.

Eligibility

You need to make contributions if your employee:

- is having KiwiSaver or complying fund member contributions deducted from their salary or wages, and
- is aged 18 and over, and
- has not reached the age of eligibility for New Zealand Super (currently 65), or has not been a member of a KiwiSaver scheme or complying fund for five years, whichever date is later, and
- is not a member of a defined benefit scheme.

How to calculate minimum compulsory contributions

Your employer compulsory contributions must be on top of your employee’s regular pay. This means that if you have agreed to a total remuneration package with your employee, the compulsory employer contributions must be paid on top of that package. Your employee’s take-home pay should not be reduced because you are making a compulsory contribution.

Through good faith bargaining, a salary package under an employment agreement can be negotiated whereby compulsory employer contributions can be offset against the employee’s gross pay.

Compulsory employer contributions must vest in the employee immediately. 3% is the minimum contribution rate from 1 April 2013. You can make additional voluntary contributions if the employer wanted.

Calculating employer contributions

Here's the formula to use if you're not currently contributing to your employees' superannuation:

Payment of gross salary or wages x compulsory rate = minimum employer contribution

For example, if your employee earns $2,600 a month and is a member of, and is contributing to a KiwiSaver scheme, or complying fund, from the first whole pay period after 1 April 2013, the minimum compulsory employer contribution will be:

$2,600.00 × 3% = $78.00

You only need to pay the compulsory employer contribution if your employee is a member of and is contributing to a KiwiSaver scheme or complying fund.

Employer contributions must be made through IRD when PAYE is paid. You must also include payment details through payday fling. These forms can be filed online if you are registered to use myIR. IRD hold employer contributions until payment is cleared by your bank and then pass them on to the provider.

The Crown does not guarantee employer contributions and one-off payments.

Don't pay member or employer contributions for a complying fund to IRD. These should be made direct to the scheme provider.

Stopping and starting contributions

For new employees, you start paying contributions from their first pay. For existing employees, you pay contributions from their first pay after either IRD or the employee notifies you that they have joined a KiwiSaver scheme or complying fund.

You can stop contributions if the employee elects to take a savings suspension or when IRD advise you to stop making contributions.

Opt-outs

If a new employee opts out of KiwiSaver, IRD will refund you the employer contributions you've made for the employee. The refund will be paid with interest.

Interest effective date on employer contributions

IRD will pay interest on employer contributions from the date they receive payment.

Back pay

You must make compulsory employer contributions on backdated payments of salary or wages from which member contributions are deducted.

Short-paid employer contributions

IRD "pro rata" (divide equally) any short-paid employer contributions received. Balances that are too small to pro rata equally across the total number of employees may be divided at their discretion, provided the same employees do not benefit or lose out in every instance.

This does not prevent the scheme trustee from reallocating contributions on the basis provided for in their trust deed, if it differs from the pro rata calculation IRD use.

If you short-pay employer contributions for a period, any subsequent payments to make up the short payment will be credited to the same period. Short-paid or dishonoured employer contributions do not create enforceable debt.

Backdating of employer contributions

Penalties apply for failure to make compulsory employer contributions. Compulsory employer contributions will be backdated after 1 April 2008 where an employee is still employed by you effective from the date that:

- the employee should have been automatically enrolled, or
- the employee's savings suspension expired, or
- the employee turned 18, or
- deductions and compulsory employer contributions should have occurred.

Skill Check – KiwiSaver

1. What age does employer contribution start?

2. What are the three ways an employee can join KiwiSaver?

3. What are the different rates an employee can contribute to KiwiSaver?

4. How is the employer contribution to KiwiSaver calculated?

5. What is the period that the employee can opt out of KiwiSaver?

6. What period can a savings suspension take?

7. Does KiwiSaver come out of a bonus?

8. Does KiwiSaver come out of redundancy compensation payment?

Child Support Act 1991

Legal obligations to make deductions

As an employer, you are required by law to:

- deduct child support payments from an employee's wages if IRD instruct you to do so
- continue making the deductions until IRD (not the employee) instruct you to stop

IRD will send you an initial notice explaining how to make and pay the deductions. You will receive additional notices when there is a change in the deductions amount or if the deductions are to stop.

In some cases IRD may ask you to deduct for a contractor or a commission agent. You are required to make these deductions also.

Legal obligations regarding employee privacy and protection from discrimination

As an employer, you are required by law to ensure employee privacy and protection from discrimination in child support matters. You cannot normally give out any information about the child support obligations of employees. The only two exceptions are:

- IRD ask for information
- when you are required to give information as part of your business (for example, if you are asked to show records to an Inland Revenue investigator)

It is an offence to discriminate against an employee or a potential employee because of their child support obligations.

Making deductions for child support

This section explains how child support deductions work, what child support deduction notices show and how to deal with them, and what happens if the deducted amount changes. It also clarifies that child support payments take priority over other deductions, and identifies the forms that you must complete.

How do child support deductions work?

IRD work out how much child support a paying parent should pay each month. If the paying parent is your employee, IRD may contact you for information such as:

- how often you pay wages
- the next regular payday or pay period for this employee
- whether you want an employee reference on the notice IRD send you

Child support payments, like PAYE and other deductions, are due on the 20th of each month. For large employers, they are due on the 5th of each month as well.

Child support deduction notices

Once IRD have all the required details, IRD will send you a child support deduction notice (CS503). This notice tells you to deduct child support payments from your employee's pay. It also shows:

- your employee's name and IRD number
- the payday or pay period when you must start deducting child support
- the amount to deduct from each pay
- an employee reference (if you provided this information)

Where possible, to help make your processing easier, IRD include all child support notices issued for the same payday or pay period in one envelope. IRD also send a copy of the notice to the employee.

You can choose whether to receive the deduction notices as:

- a consolidated deduction notice showing all additions and changes to child support payments made from your employees' pay
- an individual CS503 notice and a consolidated deduction notice in the same envelope

What happens if the amount of the deduction changes?

If the amount to be deducted changes during the year, IRD send you another Child support deduction notice (CS503). It shows:

- the new amount to be deducted
- when you must start deducting the new amount

Inland Revenue
Te Tari Taake

CS503

PERSONNEL SECTION "CONFIDENTIAL"

IRD Number

Our Reference

Your Reference

Example Only

DEAR
CHILD SUPPORT DEDUCTION NOTICE
(Section 154 of the Child Support Act 1991)

Please make child support deductions from the net salary or wages of the following employee:

Employee

IRD number: _ _ - _ _ _ - _ _ _

From pay day _ _ / _ _ / _ _ and every (*weekly, fortnightly, monthly*) pay after that, the amount of $$$$.$$ is to be deducted.

This notice replaces any earlier child support deduction notice you have received for this employee.

You must follow this deduction notice until you receive a new deduction notice from us or your employee is no longer employed by you.

A copy of this notice has been sent to your employee.

All child support amounts deducted are to be paid to Inland Revenue not later than the 20th day of the following month.

Please read the booklet "Employer's Guide" (IR 184) for more information. If you have any questions, please contact us. We will be pleased to help you.

Thank you for your co-operation.

Yours sincerely

Priority of child support deductions

Child support deductions have priority over any other deductions from an employee's pay. After deducting PAYE, you must deduct child support before you deduct anything else like:

- KiwiSaver
- student loan repayments
- insurance
- superannuation
- union fees

Note: Work and Income NZ collects some money owed under other schemes. If you are already making these deductions, continue doing so until Work and Income NZ contacts you. Pay these deductions directly to Work and Income NZ and not to Inland Revenue.

Notes

Child Support Employer Deductions – Examples

Example 1: Where deductions leave net pay above protected net earnings

John's weekly wage is $420. PAYE deductions are $60.49. This leaves John with a net pay of $359.51 ($420 - $60.49).

Out of his net pay, John has to pay child support of $70 per week, which leaves him with a take-home pay of $289.51 ($359.51 - $70).

Since 60% of $359.51 (net pay) is $215.71 and John receives more than this in the hand, his employer can deduct the full $70 of child support. If, for example, John also had superannuation contributions deducted from his wages, the employer would deduct such contributions from his $289.51 take-home pay, even if this payment (of, say, $70) then leaves him short of the 60% earnings protection.

Example 2: When protected net earnings apply

John's weekly wage is $ 420. PAYE deductions are $60.49. This leaves John with a net pay of $359.51 ($420 - $60.49).

Assume that John has had three days' leave without pay in a week. John's reduced wage is therefore $168.00. From this amount he is liable for PAYE deductions of $19.97, leaving him with a net pay of $148.03.

Since the protected 60% of $148.03 is $88.82, the amount available for child support is $59.21 ($148.03 - $88.82), rather than the full $70.

John's take-home pay before other deductions would therefore be $88.82 ($148.03 - $59.21). Any other deductions need to come out of the $88.82.

Skill Check – Child Support

1. When does a child support deduction notice start from?

2. Do you act on instruction from an employee to stop child support?

3. Can anyone view a child support deduction?

Accident Compensation Act 2001

Since 1974 New Zealand has provided compensation where people have suffered personal injury by accident. The original scheme was established on a no-fault, no-liability principle which has been continued under this legislation.

The Accident Compensation Act 2001 (formally known as the Injury Prevention, Rehabilitation and Compensation Act 2001) is a pay as-you-go scheme, which means each account must provide for its own income to meet the expected costs in that year. There are six major accounts.

How is the scheme funded?

The ACC scheme has six major accounts but there are two that are important to business:

Employers' Account	This account is funded by employers paying premiums based on their industry risk. The risk is determined by severity of claim and number of claims in that sector. Employers are grouped into units of like risk. This is called the Premium Classification Unit (P.C.U.). The funds cover all **work-related** claims.
The Earners' Account	This account is funded by employees at the rate of ***$X*** per $100.00 of earnings and has been used, since 1 July 1992, to fund **all non-work related accidents**. This premium is paid whilst paying PAYE i.e. the ***$X*** per $100.00 is incorporated in the IRD tax tables. The IRD then pay that amount to ACC as the earners' premium.

ACC Workplace Accident Schemes

In a nutshell there are three types of ACC workplace cover schemes in general. Each scheme has different requirements and coverage for the employee with some agreed between the employer and ACC and some not.
It is important that payroll clearly understands what scheme is used in their workplace.

The three main schemes are:

- Standard Scheme
- Employer Reimbursing Agreement
- Partnership Programme

Standard Scheme

The standard scheme is what most employer use as it provides the default coverage to employees that have a workplace accident.
The standard scheme consists of:

- The employer paying 80% for the first week (based on the last 7 days from the date of incapacity).
- ACC paying 80% from the second week on.

Variations on the first week:

- Some employers decide to top up the 80% for the first week. This is not by law bit by agreement.
- If the employer does not top up and employee can use 1 day of sick leave to top up to 100% for the week (80% by the employer and 20% by the employee)

Determining 'first week'

The time period when an employer is liable to make payment for the first week starts:

a) in a case where there are separate periods of incapacity resulting from the same personal injury, on the day on which the initial period of incapacity commences; or

b) in any other case, on the day on which an incapacity resulting from a personal injury first commences; and ends with the close of the sixth day after that day.

Employee's right to receive first week compensation (Section 97)

1. First week compensation for loss of earnings is payable to a claimant who –
   (a) Has an incapacity resulting from –
      (i) A work-related personal injury for which he or she has cover; or
      (ii) A motor vehicle injury to which section 29 (2) applies; and
   (b) Was an employee immediately before his or her incapacity commenced.

2. The compensation payable is 80% of the amount of earnings as an employee lost by the employee, as a result of the incapacity, during the first week of incapacity.

3. For the purposes of this section, there is a presumption that the earnings the insured loses as a result of the incapacity is the difference between –
   (a) The claimant's earnings in the 7 days before his or her incapacity commenced; and
   (b) The claimant's earnings in the first week of incapacity.

4. The presumption can be rebutted by proof to the contrary.

Employer's duty to pay first week compensation (Section 98)

1. The employer in whose employment the claimant suffered the work-related personal injury or the motor vehicle injury referred to in section 97 (1) (a) (ii) is liable to pay all the first week compensation to which the claimant is entitled.

2. Before paying the first week compensation, the employer may require the employee to meet reasonable requirements as to the production of evidence of the personal injury such as, for example, the production of a certificate by a registered health professional nominated and paid by the employer.

3. An employer who fails to comply with subsection (1) commits an offence.

This section allows employers to withhold the "first week's" payment if the employer requires better, or more substantive evidence of there being personal injury. The employer has the ability to direct the employee to any doctor nominated by the employer for the purposes of further evidence or opinion.

Incapacity

Before employers pay first week, the following criteria should be met.

1. There is personal injury; and
2. It is work-related; and
3. The employer accepts the claim as work-related.

The following table shows payments for the first and second week and who is responsible:

	Work Accident	Non-Work Accident
First Week	Employer pays 80 percent of earnings lost. *	ACC pays nothing. Employer liable to pay nothing (sick leave may be used).
Second Week Onwards	ACC pays 80 percent of earnings lost.	ACC pays 80 percent of earnings lost.

*Sick leave and Family Violence leave can be used for top-up payments to the 80% .

Topping up the 80% with sick or family violence leave

The employee can use sick or family violence leave entitlement to top up the 80% if they choose. The employer cannot use these leave types without the employee authority.

Accident Compensation Act 2001

Sick leave may be used when employer not liable for first week compensation (Section 306)

(2) If an employee suffers a personal injury that is not a work-related personal injury and is not a motor vehicle injury described in section 29(2), and the employee is incapacitated, the employee may elect to take any unused sick leave entitlement that the employee may have under subpart 4 of Part 2 of the Holidays Act 2003 and use it in respect of an equivalent part of the first week of incapacity.

Holidays Act 2003

72I Payment for family violence leave

(4) However, if an employer pays the difference between the employee's first week compensation or weekly compensation and ordinary weekly pay, the employer may agree with the employee that the employer may deduct from the employee's family violence leave entitlement 1 day for every 5 whole days that the employer makes that payment.

Employer Reimbursement Agreement

An ACC Employer Reimbursement Agreement enables employers to choose to pay weekly compensation directly to employees, effectively making the payment on behalf of ACC. Employers then seek reimbursement from ACC.

What are the benefits?

An ACC Employer Reimbursement Agreement:

- allows the employer to be directly involved in the claims process
- makes it easier if the employer want to 'top up' compensation payments over the statutory 80 percent of gross weekly earnings.

It also makes the claims process easier for employees. They can promptly receive their weekly compensation and any other benefits the employer may offer them as an employee, directly from one source.

Who can join?

The programme is open to all employers and covers both work and non-work injuries suffered by employees.

It best suits employers who:

- have dedicated payroll staff and/or
- have complex payroll systems and/or
- make regular deductions on behalf of their employees, such as health insurance and superannuation.

How does it work?

Once the employer have signed an ACC Employer Reimbursement Agreement, the employer take responsibility for paying weekly compensation directly to injured employees.

ACC will:

- calculate the weekly compensation payable to the employee
- determine the period for these payments based on the medical certificate supplied by the employee's treatment provider
- advise the employer how to apply for reimbursement.

It is important to note that:

- ACC will only reimburse the employer based on a current medical certificate
- if the employer want to pay your employees more, the employer will only be reimbursed for the amount ACC calculate.

Responsibilities under the Agreement

The ACC Employer Reimbursement Agreement is a legal agreement that outlines the responsibilities of both the employer and ACC.

The Agreement authorises the employer to make weekly compensation payments to your injured employees on ACC's behalf, based on the calculations ACC provide.

- Once signed, the Agreement is in place until it is officially terminated, in writing.
- The Agreement specifies dates and deadlines that the employer and ACC must meet.
- The employer must use your best endeavours to find alternative work for injured employees, even if the injury is not work-related.
- The employer must consult ACC if your situation changes, e.g. your business merges with another company or becomes insolvent. Otherwise, the Agreement automatically expires.

What if the employer wants to stop direct payments?

The employer can ask ACC to resume weekly compensation payments at any time.

ACC Partnership Programme

The ACC Partnership Programme allows the employer to 'stand in the shoes' of ACC, managing workplace injuries for your employees and providing entitlements under the Accident Compensation Act 2001 in relation to work-related personal injuries and illnesses.

The ACC Partnership Programme encourages the employer to take responsibility for your own:

- workplace health and safety
- injury management, which includes rehabilitation
- claim management of employees' work injuries.

The Programme offers significant levy discounts to employers who take responsibility for their own workplace health and safety and the management of work-related injuries.

What does the 'partnership' mean?

The 'partnership' is a mutually supportive health and safety management relationship between **the employer** and your **employees** and their representatives.
It involves:

- joint (but not equal) management and accountability for workplace safety and
- workplace injuries
- the establishment of good systems and practices together
- the sharing of information and expertise
- the integration of good health and safety practices into 'business as usual'.

This partnership is important as it provides a balanced and complete picture of workplace safety. It also requires a level of necessary accountability for injury management away from ACC's corporate and branch environment.

An effective partnership provides:

- structure to give all employees a representative 'voice'
- local, regional and national forums for multiple-site businesses
- evidence of senior management commitment and involvement
- feedback to management and to employees at all levels
- ongoing health and safety improvements.

What are the risks of being in the Programme?

The employer needs to be aware of all the implications of joining the ACC Partnership Programme.

Taking over the responsibility for work injury claims also means taking on significant financial risks. If one of your employees suffers a fatal or permanent injury, the employer could end up providing financial support to the claimant or their surviving dependants for the life of the claim depending upon which liability option is chosen.

The employer needs to consider the total potential costs of workplace injuries and your ability to manage the risks. There is potential for increased costs without effective management.

What to pay in the first week?

Employers are only liable to pay first week for work-related accidents (80% of earnings lost). If it is not a work place accident the company is not liable to pay anything, except if the employee wishes to use sick leave entitlement (if they have met the requirement for this entitlement).

Skill Check – ACC

1. What is the current earner levy rate? And what will it be on the 1 April 201X?

2. Who pays first week compensation for a work place accident?

3. What timeframe is the 80% calculation based on for the first week?

4. When does ACC start paying 80% cover for a workplace or personal injury (under a standard ACC scheme)?

5. Can an employee top up the first week with sick leave?

6. Does the employer have to pay anything in the first week if it is a personal injury?

Key Definitions

Employment	*Means work engaged in or carried out for the purposes of pecuniary gain or profit; and, in the case of an employee, includes any period of paid leave other than paid leave on the termination of employment.*
Full-time employment	*In relation to any earner, means employment for an average of no less than 30 hours per week in the 4 weeks immediately before the incapacity commences; or a lesser number of hours if such lesser hours are defined as full-time employment in an employment contract due to the particular nature of that employment.*
Place of employment	*Means any premises or place occupied for the purposes of employment; or to which a person has access because of his or her employment; or attended by a person for a course of education or training for the purposes of his or her current employment, if he or she receives earnings from that employment for his or her attendance.*
Most direct practicable route	*Does not include, to the extent of the deviation or interruption, any deviation in or interruption of a journey for purposes unrelated to the employment.*

Important sections of the Act

This section details what needs to be included in employee earnings.

9 Earnings as an employee: what it means

(1) **Earnings as an employee**, in relation to any person and any **[**tax year**]**, means all source deduction payments of the person for the **[**tax year**]**.

(2) This section is subject to sections 10 to 13.

Section 11 details what should not be included in employee earnings.

11 Earnings as an employee: what it does not include

(1) **Earnings as an employee**, in relation to any person and any **[**tax year**]**, does not include—

(a) any income-tested benefit, veteran's pension, New Zealand superannuation, living alone payment, or withholding payment; or

[(aa) any parental leave payments paid under Part 7A of the Parental Leave and Employment Protection Act 1987; or**]**

(b) any student allowance established in accordance with regulations made under section 303 of the Education Act 1989; or

(c) any amount allocated to a person or persons, other than the person who is the employee in question, under section GD 3 of the **[**Income Tax Act 2004**]**; or

(d) any amount deemed to be a dividend paid by any person, to the person who is the employee in question, under section GD 5 of the **[**Income Tax Act 2004**]**; or

(e) any redundancy payment; or

(f) any retiring allowance; or

(g) any pension from a superannuation scheme or pension fund not registered under the Superannuation Schemes Act 1989**[**; or**]**

[(h) any pension that is paid in the circumstances set out in any of the following provisions:

(i) section DF 4 of the Income Tax Act 1994 or section DC 2 of the Income Tax Act 2004:

(ii) section DF 8A or section DF 8B of the Income Tax Act 1994 or section DC 3 of the Income Tax Act 2004:

(iii) section FF 17 of the Income Tax Act 1994.**]**

(2) In this section, **income-tested benefit**, **veteran's pension**, **New Zealand superannuation**, **living alone payment**, and **withholding payment** have the same meanings as in section OB 1 of the Income Tax Act 1994.

Determining if it was an accident:

The term accident means an event has occurred that has three criteria:

1. **Time:** 9.30 am
2. **Place:** Playing Soccer
3. **Location:** Injured ankle

Please Note: Employers must check these criteria against their own accident records to determine if an accident actually happened at work.

Notes

When is an accident a work-related accident?

For an accident to be deemed a work-related accident four criteria have to be satisfied:

Employers must check:

1. Did an event take place?
2. Was the person employed at the stated time of the event?
3. Do your own accident records confirm the event?
4. Is there a cause and effect relationship?

Notes

Abatement of compensation

Abatement of compensation is for the purpose of making it attractive for the employee to get back to work as soon as possible. What it means is the ACC payments will reduce as the work hour's increase.

51 Abatement of compensation

(1) In calculating weekly compensation under this Part, the Corporation must reduce the amount of weekly compensation paid to a claimant by—

(a) 24 cents for every $1 of earnings derived during the period of incapacity in excess of $56.67 a week, but not in excess of $90.62 a week; and

(b) 56 cents for every $1 of earnings derived during the period of incapacity in excess of $90.62 a week.

(b) 56 cents for every $1 of earnings derived during the period of incapacity in excess of $90.62 a week.

(2) The Corporation must also reduce the amount of weekly compensation paid so as to ensure that the total of the claimant's weekly compensation and earnings after his or her incapacity commences does not exceed the claimant's weekly earnings as calculated under clauses 33 to 45 or 47.

(3) The weekly amounts in subclause (1) must be adjusted in the manner provided in section 115.

(4) The amount of a claimant's weekly earnings under subclause (2) must be adjusted in the manner provided in section 115.

Notes

Glossary of employer terms

Employee

Generally someone whose work you control and who does not hire anyone else to do the job. An employee normally works at the employer's premises or a place the employer specifies, is paid at a set rate (hourly, weekly, monthly or by unit of production) and works set hours or a given number of hours (weekly or monthly). An employee is paid sick pay and holiday pay, and may be eligible for overtime or penal rates.

Employer

Someone who pays or is liable to pay a source deduction payment on salary or wages.

Labour-only contract

A contract wholly or substantially for labour-only in the building industry. (See the *Employer's guide (IR335)* for a more detailed definition.)

Large employer

An employer making gross annual PAYE deductions of $500,000 or more.

PAYE (pay as you earn)

The basic deduction employers must take out of employees' wages. It includes ACC earner levies.

Salary and wages

All payments received by an employee made by the employer, but may also include other payments from various government agencies.

Self-employed

Applies to workers whose work routine and timeframe are usually not controlled and who may hire others to do the work. They are seldom paid at a set rate (e.g. hourly, weekly or by units of production) and do not work set hours or a given number of hours each week or month. Those contracting them do not pay them sick pay, holiday pay, overtime or penal rates.

Shareholder-employee

A shareholder and employee is both a shareholder and an employee of a company.

Small employer

An employer making gross annual PAYE deductions of less than $500,000.

Schedular payments

Payments made by employers to people working for them who are not employees. Regulations determine what activities are taxed at the withholding rate. Withholding payments are taxed at a flat rate. See the main activities subject to withholding tax and the tax rate for each.

Skill Check – Case Study – Contractor or Employee? – The Result

Stubbs v Kimihia Rest Home [2001] – Employment Relations Authority determination.

- Mr Stubbs began work as a contractor, but the nature of the relationship changed with the increase to 31 hours in 1999 pivotal in changing Mr Stubbs' status to employee.
- The parties' initial mutual intention was a contractor/principal relationship, but by 1999 that intention was no longer clear. Intention was no longer a decisive factor at the time of the dismissal.
- The level of control was not determinative either way. The fact that Mr Stubbs could prioritise his work could apply to a contractor or to an employee equally.
- Stubbs was a "trusted and integral part" of the operation and the freedom he had to organise his own work reflected that. When he increased his hours to 31 per week he became more integral to the home.
- The Authority found that Mr Stubbs was not in business for himself. He had no opportunity to make a profit from the work he performed, nor did he assume any business risk. He was unable to subcontract or hire his own assistance.
- Authority determined that Mr Stubbs' status was that of an employee from 1999 and therefore his dismissal was held to be unjustified. So there was no just cause and no due process prior to the dismissal.
- The Authority accepted that the Respondent did not act out of malice, but in the honest, but misplaced, belief that Mr Stubbs was a contractor.
- Mr S was awarded $2,000 hurt and humiliation; holiday pay from 1999 onwards when his hours went up to 31; and lost wages.

The nature of a relationship may evolve or develop in a way that is different to the nature of the relationship at the time of its formation or at subsequent times. Therefore the way the relationship works in practice may be relevant to determining the real nature of the relationship.

As employment status may evolve over time, the following factors must be considered:

- Put the contract terms agreed in writing including a clear statement of the parties' intention.
- A contract for services must be properly managed to ensure that over time a contractor does not evolve into an employee.

Holidays Act 2003

The Holidays Act 2003 came into effect on 1 April 2004. It is a major change in how holidays are now granted to employees and how payments are calculated.

There are six main leave entitlements under the act, they are:

- **Annual Holidays** (4 weeks of annual leave)
- **Public Holidays** (11 public holidays)
- **Sick Leave** (5 days after 6 months)
- **Bereavement Leave** (3 days for close family members, 1 day for everyone else)
- **Alternative Holidays** (for working on a public holiday that is an otherwise working day)
- **Family Violence Leave** (10 working days)

Gross Earnings

The gross earnings calculation is the most important calculation in the Holidays Act because all other calculations use gross earnings as the basis for these calculations.

This is the main area where mistakes are made because there are different periods of gross earnings that are being used in the different calculations under the act.

The periods are:

1. 12 months taken for the last pay period back 52 weeks.
2. 4 weeks taken from the last pay period back 4 weeks.
3. From start date to end date (less than 12 months)
4. From last entitlement date to end date (less than 12 months)
5. If there is special standard pay cycle different to above, then gross earnings can be also taken for that period.

If you are using a payroll system you need to check the set up for gross earnings to understand what type of payments are included or excluded for that gross earnings period. It is also essential that any decisions made with gross earnings in documented for audit, problem solving, training and history purposes.

Sections 14. Meaning of gross earnings—

In this Act, unless the context otherwise requires, "gross earnings'', in relation to an employee for the period during which the earnings are being assessed,—

(a) means all payments that the employer is required to pay to the employee under the employee's employment agreement, including, for example—

(i) salary or wages:

(ii) allowances(except non-taxable payments to reimburse the employee for any actual costs incurred by the employee related to his or her employment):

(iii) payment for an annual holiday, a public holiday, an alternative holiday, sick leave, bereavement leave, or family violence leave taken by the employee during the period:

(iv) productivity or incentive-based payments (including commission):

(v) payments for overtime:

(vi) the cash value of any board or lodgings provided by the employer as agreed or determined under section 10:

(vii) first week compensation payable by the employer under section 97 of the Accident Compensation Act 2001 or former Act; but

(b) excludes any payments that the employer is not bound, by the terms of the employee's employment agreement, to pay the employee, for example—

(i) any discretionary payments:

(ii) any weekly compensation payable under the Accident Compensation Act 2001 or former Act:

(iii) any payment for absence from work while the employee is on protected voluntary service or training within the meaning of the Volunteers Employment Protection Act 1973; and

(c) also excludes—

(i) any payment to reimburse the employee for any actual costs incurred by the employee related to his or her employment:

(ii) any payment of a reasonably assessed amount to reimburse the employee for any costs incurred by the employee related to his or her employment:

(iii)any payment of any employer contribution to a superannuation scheme for the benefit of the employee

(iv) any payment made in accordance with section 28B.

Worked example:

John works a 40-hour week, his gross earnings under section 14 are as follows:

Wages ($22.00 per hour for 47 weeks):	$41360
Allowances (Non tax -Living away allowance):	$ 1500
Annual holiday payment (4 weeks):	$ 3520
Annual Bonus (65% of bonus):	$ 650
Overtime payment (34 hours at time and a half):	$ 1122
First week ACC (80% figure for one week):	$ 704
Gross earnings leave to be based on:	$47356

*__Please note:__ Allowances (Non tax -Living away allowance) would not be part of gross earnings for leave as it was a reimbursing allowance.

Here is the definition of a discretionary payment:

discretionary payment—
(a) means a payment that the employer is not bound, by the employee's employment agreement, to pay the employee; but
(b) does not include a payment that the employer is bound, by the employee's employment agreement, to pay the employee, even though—
(i) the amount to be paid is not specified in that employment agreement and the employer may determine the amount to be paid; or
(ii) the employer is required under that employment agreement to make the payment only if certain conditions are met.

Entitlement to Annual Holidays

Entitlement to annual holidays provides the criteria for which employees are entitled to a paid annual holiday. It also details what is considered continuous employment. Sub section three allows the employer to extend the 12 months qualifying period to get annual leave if the employee takes a period of unpaid leave.

Section 16. Entitlement to annual holidays

(1) After the end of each completed 12 months of continuous employment, an employee is entitled to not less than 4 weeks' paid annual holidays.

(2) For the purposes of subsection (1), the 12 months of continuous employment—

(a) includes any period during which the employee was—

(i) on paid holidays or leave under this Act; or

(ii) on parental leave under the Parental Leave and Employment Protection Act 1987; or

(iii) on protected voluntary service or training within the meaning of the Volunteers Employment Protection Act 1973; or

(iv) receiving weekly compensation under the Accident Compensation Act 2001 or former Act as well as, or instead of, payment from the employer; or

(v) on unpaid sick leave or unpaid bereavement leave or unpaid family violence leave; or

(vi) on unpaid leave for any other reason for a period of no more than 1 week; but

(b) unless otherwise agreed, does not include any other unpaid leave, being leave other than that referred to in paragraph (a)(v) and (vi).

(3) If, for the purposes of subsection (2)(b), an employer and employee agree that any period of unpaid leave of more than 1 week is to be included in the employee's 12 months of continuous employment, the divisor of 52 to be used for the purposes of calculating the employee's average weekly earnings must be reduced by the number of whole or part weeks greater than 1 week that the employee was on the unpaid leave.

(4) An employee's entitlement to annual holidays remains in force until the employee has taken all of the entitlement as paid holidays.

Unpaid Leave

Under section 16(2)(v) if unpaid sick or unpaid bereavement leave is given it will mean that the employee accrues annual holidays while on this type of leave. By just calling it unpaid leave (leave without pay) it will not accrue AL.

Making an Employee Take Annual Leave

Section 19 allows the employer to give the employee not less than fourteen days to take annual leave. This is useful when there are staff refusing to book leave or who have accumulated a large amount of leave.

Section 19. When employee may be required to take annual holidays

(1) An employer may require an employee to take annual holidays if—

(a) the employer and employee are unable to reach agreement under section 18(3) as to when the employee will take his or her annual holidays; or

(b) section 32 (which relates to closedown periods) applies.

(2) If subsection (1) applies, an employer must give the employee not less than 14 days' notice of the requirement to take the annual holidays.

Reasons we want employees to take leave

Leave liability

One of the main areas for payroll practitioners is to report back to the business on leave liability. This is how much leave is untaken by employees and the cost of that to the business. If not reported and acted on leave liability can grow to substantial amounts and affect future decision-making.

For example:

Peter has been working for the business for three years and has not taken any leave except for public holidays. Peter started on $26,000 but each year because of his hard work has had his salary increased. Peter now has a salary of $30,000.

If Peter takes his 10 weeks of annual leave it will be based on his $30,000 present salary not his original. This means the business will end up paying more in annual leave payment than they needed too.

Stress and Health and Safety

Getting employees to take their annual leave throughout the year (every year) will allow them to have a break from work, reducing any potential harmful stress from building up. Also if there was a serious accident in your workplace as part of the investigation they will want to know when the employees involved last had a holiday.

Getting your employees to take their annual leave will minimise risk and cost to the employer. Payroll needs to provide the information to the right people at the right time to ensure this happens.

Notes:

Annual Holidays Calculations

There are three calculations used to calculate annual holiday's payment. The three calculations apply to five different situations. The calculations are:

- Average Weekly Earnings
- Ordinary Weekly Pay
- 8% of Gross Earnings

Average Weekly Earnings

Section 5. Interpretation

(1) In this Act, unless the context otherwise requires,—

"average weekly earnings" means 1/52 of an employee's gross earnings

Example:

$$\frac{\textbf{Gross earnings}}{\textbf{Divisor (52 Weeks)}}$$

Worked example:

$$\frac{\textbf{\$52,000}}{\textbf{52}} = \textbf{\$1000}$$

Ordinary Weekly Pay

Section 8. Meaning of ordinary weekly pay—

(1) In this Act, unless the context otherwise requires, "ordinary weekly pay'', for the purposes of calculating annual holiday pay,—

(a) means the amount of pay that the employee receives under his or her employment agreement for an ordinary working week; and

(b) includes—

(i) productivity or incentive-based payments (including commission) if those payments are a regular part of the employee's pay:

(ii) payments for overtime if those payments are a regular part of the employee's pay:

(iii) the cash value of any board or lodgings provided by the employer to the employee; but

(c) excludes—

(i) productivity or incentive-based payments that are not a regular part of the employee's pay:

(ii) payments for overtime that are not a regular part of the employee's pay:

(iii) any one-off or exceptional payments:

(iv) any discretionary payments that the employer is not bound, under the terms of the employee's employment agreement, to pay the employee.

(2) If it is not possible to determine an employee's ordinary weekly pay under subsection (1), the pay must be calculated in accordance with the following formula:

$$\frac{a-b}{c}$$

where—

a is the employee's gross earnings for—

(i) the 4 calendar weeks before the end of the pay period immediately before the calculation is made; or

(ii) if, the employee's normal pay period is longer than 4 weeks, that pay period immediately before the calculation is made

b is the total amount of payments described in subsection (1)(c)(i) to (iii)

c is 4.

(3) However, an employment agreement may specify a special rate of ordinary weekly pay for the purpose of calculating annual holiday pay if the rate is equal to, or greater than, what would otherwise be calculated under subsection (1) or subsection (2).

Worked example:

A is Gross earnings (4 calendar weeks before the end of the pay period) = $4,000

B is payment under Section (1)(c)(i) to (iii) = $200 (one-off payment to all staff)

C is the last 4 calendar weeks.

$$\frac{\$4{,}000 - \$200}{4}$$

$$= \$950$$

8% of Gross Earnings

The 8% calculation is done for accrual in regard to the following situations:

- On termination (before completing 12 months)
- On termination (from last entitlement date to end date after 12 months)
- Pay as you go (fix term less than 12 months or a casual)
- Closedown (cashing up from start date to start of closedown)

Worked example (terminates less than 12 months service):

Employee resigns after 3 months working for an employer.

Gross earnings for period is: (12 weeks = 4 weeks, $1000 per week)

$12,000 * 8% = $960

Skill Check – Holidays Act 2003: Part 1

1. Are non-taxable allowances included in gross earnings for Holiday Act calculations?

2. Name two types of payments excluded from the gross earnings for Holiday Act calculations?

3. Provide two examples of what constitutes continuous employment?

4. What are the three calculations used to calculate annual leave under the Holidays Act?

5. Can you get an employee to take annual holidays, if yes what section of the act?

6. What divisor is used for the Average Weekly Earnings calculation?

7. List the three ways Ordinary Weekly Pay can be calculated?

Payment for Annual Holidays

Annual Leave In Advance

Section 20. Employer may allow employee to take annual holidays in advance

An employer may allow an employee to take an agreed portion of the employee's annual holiday's entitlement in advance.

The three calculations that have already been discussed apply to five different situations.

- Sections **21**, **22**, and **24** require two of the three calculations to be done (Average weekly earnings & Ordinary weekly pay) with the greater value from the two calculations being used as the annual holiday payment. These calculations are only used for annual leave entitlement.

- Sections **23** and **25** use the **8%** gross earning calculation. This calculation is only used for annual leave accrual.

- Section **26** states any cashed up entitlement must go into the 8% calculation on termination.

Understanding the difference between Annual Leave Entitlement and Annual Leave Accrual

Annual leave entitlement	When an employee has done 12 months continuous employment the four weeks becomes leave entitlement.
Annual leave accrual	Before 12 months it is leave accrual (not yet entitlement). This happens every year until the employee has done a further 12 months service then it becomes entitlement.

Calculation of Annual Holiday Pay

Section 21. Calculation of annual holiday pay—

(1) If an employee takes an annual holiday after the employee's entitlement to the holiday has arisen, the employer must calculate the employee's annual holiday pay in accordance with subsection (2).

(2) Annual holiday pay must be—

(a) for the agreed portion of the annual holidays entitlement; and

(b) at a rate that is based on the greater of—

(i) the employee's ordinary weekly pay as at the beginning of the annual holiday; or

(ii) the employee's average weekly earnings for the 12 months immediately before the end of the last pay period before the annual holiday.

Notes:

Worked example 1:

Employee gets annual holiday of four weeks (approved) to be taken from the 2 Oct to the 30 Oct.

Weekly salary is $1000 per week

Ordinary weekly pay:

$1000

Average weekly earnings:

$$\frac{\$52000}{52} = \$1000$$

Calculation of Annual Holiday Pay If Holiday Taken In Advance

The difference between Section 21 and section 22 is that in section 22 the divisor used in the average weekly earnings can be reduced to reflect the amount of time the employee has actually been in the workplace.

Section 22. Calculation of annual holiday pay if holiday taken in advance

(1) If an employee takes an annual holiday in advance, the employer must calculate the employee's annual holiday pay in accordance with subsection (2).

(2) Annual holiday pay must be—

(a) for the agreed portion of the annual holidays entitlement; and

(b) at a rate that is based on the greater of—

(i) the employee's ordinary weekly pay as at the beginning of the annual holiday; or

(ii) the employee's average weekly earnings for—

(A) the 12 months immediately before the end of the last pay period before the annual holiday if the employee has worked for the employer for not less than 12 months; or

(B) the period of employment before the end of the last pay period before the annual holiday if the employee has worked for the employer for less than 12 months.

(3) To avoid doubt, for the purposes of subsection (2)(b)(ii)(B), the divisor of 52 for the purpose of calculating the employee's average weekly earnings is to be reduced so that it represents the number of whole or part weeks that the employee worked for the employer in the period of employment.

Worked example 1:

Employee has been employed for six months. Employee gets annual holiday in advance of one week (approved) to be taken from the 2 Oct to the 6 Oct.

Weekly salary is $1000 per week

Ordinary weekly pay:

$4000 (gross earning over four weeks)

---

4 (last four calendar weeks from beginning of the annual holiday)

=$1000

Average weekly earnings:

$26000

26

=$1000

Calculation of Annual Holiday Pay If Employment Ends Within 12 Months

Section 23. Calculation of annual holiday pay if employment ends within 12 months

(1) Subsection (2) applies if—

(a) the employment of an employee comes to an end; and

(b) the employee is not entitled to annual holidays because he or she has worked for less than 12 months for the purposes of section 16.

(2) An employer must pay the employee 8% of the employee's gross earnings since the commencement of employment, less any amount—

(a) paid to the employee for annual holidays taken in advance; or

(b) paid in accordance with section 28.

Worked example:

Employee has worked for three months (13 weeks) and decides to resign.

Weekly salary is $1000 per week.

$13000 (Gross earnings) * 8% = Final annual leave pay is $1040

Calculation of Annual Holiday Pay If Employment Ends and Entitlement to Holidays Has Arisen

Section 24. Calculation of annual holiday pay if employment ends and entitlement to holidays has arisen—

(1) Subsection (2) applies if—

(a) the employment of an employee comes to an end; and

(b) the employee is entitled to annual holidays; and

(c) the employee has not taken annual holidays or has taken only some of them.

(2) An employer must pay the employee for the portion of the annual holidays entitlement not taken at a rate that is based on the greater of—

(a) the employee's ordinary weekly pay as at the date of the end of the employee's employment; or

(b) the employee's average weekly earnings during the 12 months immediately before the end of the last pay period before the end of the employee's employment.

Worked example:

Employee has worked continuously for 12 months and is entitled to four weeks of annual leave but decides to resign.

Weekly salary is $1000 per week

Ordinary weekly pay (as at the date of the end of the employee's employment):

$4000 (gross earning over four weeks)

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4 (last four calendar weeks from beginning of the annual holiday)

=$1000

Average weekly earnings (employee's average weekly earnings during the 12 months immediately before the end of the last pay period):

$52000

52

=$1000

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Calculation of Annual Holiday Pay If Employment Ends Before Further Entitlement Has Arisen

Section 25. Calculation of annual holiday pay if employment ends before further entitlement has arisen—

(1) Subsection (2) applies if—

(a) the employment of an employee comes to an end; and

(b) the employee is not entitled to annual holidays for a second or subsequent 12-month period of employment because the employee has not worked for the whole of the second or subsequent 12 months for the purposes of section 16.

(2) An employer must pay the employee 8% of the employee's gross earnings since the employee last became entitled to the annual holidays, less any amount—

(a) paid to the employee for annual holidays taken in advance; or

(b) paid in accordance with section 28.

Worked example:

Employee has worked for fifteen months, has taken their four weeks of annual leave but then decides to resign.

Weekly salary is $1000 per week.

3 months (13 weeks) since last annual leave entitlement.

$13000 (Gross earnings) * 8% = $1040

Payments may be cumulative

Section 26. Payments may be cumulative

To avoid doubt,—
(a) gross earnings for the purposes of section 25(2) includes any payments under section 24(2); and
(b) an employee may be entitled to payments for annual holidays under both section 24 and section 25.

Worked Example:

An employee works for 15 months and then resigns. At the 12-month mark they had taken one week of annual leave entitlement.

Annual leave payment on termination would be:

- Employee has 3 weeks of entitlement at a total of $2400.00
- Employee has 3 months of accrual at a total of $9600.00 (12 weeks x $800 per week) * for this example always 4 weeks in a month.

Calculation would be:

(Total for entitlement + Total for accrual) * 8%

- $2400.00 + $9600.00 = $12,000.00 * 8% = $960.00
- $2400.00 + $960.00 = $3360.00

On the final pay slip it should be represented as the following:

- Annual leave entitlement (15 Days) $2400.00
- Annual leave accrual 8% $960.00

When Payment for Annual Holidays Must Be Made

Section 27. When payment for annual holidays must be made

(1) An employer must pay an employee for an annual holiday before the holiday is taken unless—

(a) the employer and employee agree that the employee is to be paid in the pay that relates to the period during which the holiday is taken; or

(b) the employee's employment has come to an end.

(2) If subsection (1)(b) applies, the employer must pay the annual holiday pay in the pay that relates to the employee's final period of employment.

When Annual Holiday Pay May Be Paid With Employee's Pay

Section 28. When annual holiday pay may be paid with employee's pay

(1)Despite section 27, an employer may regularly pay annual holiday pay with the employee's pay if—

(a) the employee—

(i) is employed in accordance with section 66 of the Employment Relations Act 2000 on a fixed-term agreement to work for less than 12 months; or

(ii) works for the employer on a basis that is so intermittent or irregular that it is impracticable for the employer to provide the employee with 4 weeks' annual holidays under section 16; and

(b) the employee agrees in his or her employment agreement; and

(c) the annual holiday pay is paid as an identifiable component of the employee's pay; and

(d) the annual holiday pay is paid at a rate not less than 8% of the employee's gross earnings.

(2) If an employee to whom subsection (1)(a)(i) applies is employed by the same employer beyond 12 months on a series of fixed-term agreements of less than 12 months each, the employer and employee may agree that the employee is to be paid in accordance with subsection (1) regardless of the number of agreements.

(3) If the fixed-term agreement of an employee to whom subsection (1)(a)(i) applies is followed by permanent employment with the same employer, the employee—

(a) becomes entitled to paid annual holidays at the end of 12 months' continuous employment (including the period of that fixed-term agreement) under section 16; but

(b) the amount of the holiday pay that the employee is entitled to be paid for the holidays is reduced by the amount that the employee has already received under subsection (1).

(4) If an employer has incorrectly paid annual holiday pay with an employee's pay in circumstances where subsection (1) does not apply and the employee's employment has continued for 12 months or more, then, despite those payments, the employee becomes entitled to annual holidays in accordance with section 16 and paid in accordance with this subpart.

Example:

For 2 days of work a casual employee receives gross wages of $185.25.

Pay as you go would be:

$185.25 * 8% = $14.82

This would be paid to the employee in their pay as an identifiable component on the pay slip.

Extending annual holiday entitlement on termination

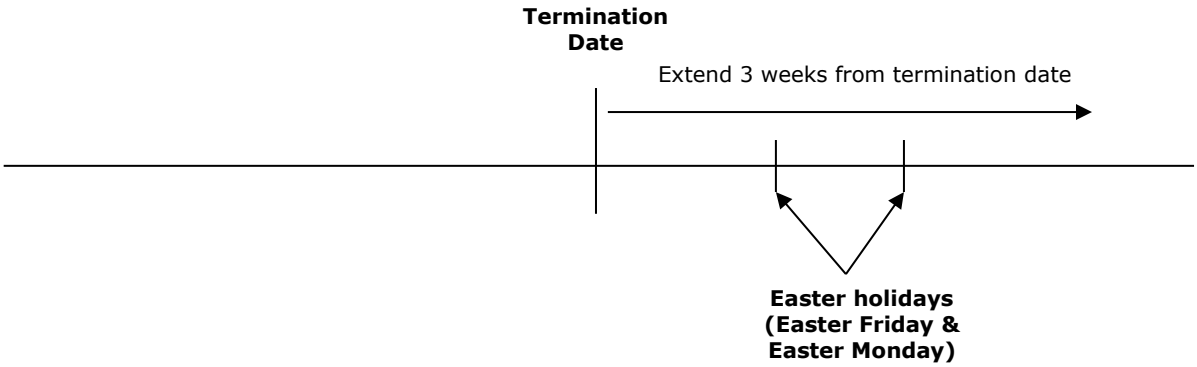
The difference between entitlement and accrual is that entitlement represents money and time whereas accrual just represents money under the act.

What this means on the termination of an employee is that and entitlement is extended from the termination date and if there are any public holiday during that time then the employee would also get those as well.

For example:

Wendy has three weeks of annual holiday entitlement that will be cashed up on her termination.

Her termination will happen the week before Easter so that will mean if her annual holiday entitlement is extended, she will also get Easter Friday and Monday paid out in her final pay using the relevant daily pay calculation.



40 Relationship between annual holidays and public holidays

(1) A public holiday that occurs during an employee's annual holidays must be treated as a public holiday and not as part of the employee's annual holidays.

(2) Subsection (3) applies if—

(a) the employment of an employee comes to an end; and

(b) the employee is entitled to annual holidays; and

(c) the employee has not taken the annual holidays or has taken only some of them.

(3) The employee is entitled to be paid for a public holiday if the holiday would have—

(a) otherwise been a working day for the employee; and

(b) occurred during the employee's annual holidays had the employee taken his or her remaining annual holidays entitlement immediately after the date on which the employee's employment came to an end.

Cashing Out Annual Holiday Entitlement

As part of the Holidays Amendment Act 2010 there is provision to allow an employee to have up to 1 week of current annual holiday entitlement paid out. This is not a compulsory section that employers must follow in that the employer can decline a request made by the employee and does not have to provide a reason for doing so.

The main points that Section 28A state are:

- An employee has the right to request their employer to pay out a portion of the employee's entitlement to annual holidays.

- A request must be in writing and may be made on 1 or more separate occasions until maximum of 1 week of employee's annual entitlement is paid out in each entitlement year.

- In a payroll system this could mean the developer could have this function as an optional feature that can be turned on if the employer allows a pay-out or turned off if the employer has adopted a policy to prevent pay out.

Only annual holidays the employee becomes entitled to from 1 April 2011 may be cashed up. For example, if an employee is entitled to four weeks' annual holidays on 1 June 2011, the employee will be able to request their employer to pay-out up to one week of the four weeks' annual holiday entitlement they received on 1 June 2011. Leave accumulated from previous years cannot be cashed out.

The paid out annual holiday must come from the entitlement year defined as:

- A period of 12 months continuous employment beginning on the anniversary of the employee's employment; and
- Includes a period of 12 months continuous employment described in section 16(2)

What the above section means in regard to entitlement year is that only the current minimum entitlement can be used if the employer agrees to pay it out. This does not cover previous entitlement earned in previous years that may not have been used and is still in the employees annual holiday entitlement balance.

If the employee takes annual holiday in advance prior to their anniversary date then any cashed up annual holiday must come out

of any remaining entitlement (a maximum of 1 week). Cashed up annual holiday entitlement cannot be from leave in advance.

Cashed up annual entitlement can be calculated in hours or days. The employer will need to show if cashed up in hours or days, no more than 1 week of annual holiday entitlement has been cashed up.

To define a week that can be cashed up if not clearly defined in the employment agreement or otherwise for a week that is non-standard or the employee works variable hours the definition of a working week will need to be agreed between the parties.

How the 1 week cashed up annual holiday payment is taxed is as follows:

- Cashed up annual holiday is a lump sum payment and will fall under the RD 7 (1) meaning of "extra pay".

- If these payments are made as an Extra payment as per s RD7 ITA 2007 then the PAYE would still be likely to be the correct amount for the year, but may calculate the correct amounts.

The cashed up value of annual holiday is not included in gross earning as per section 8(2)(iv) this is excluded earnings.

For employees receive Pay as you go under section 28 they cannot request to cash up any annual holidays. However, if parties agreed that their annual holiday's entitlement is to be met as 8% of hours worked, then an employee could request to cash-up up to 2% (or "one week") of their annual holiday entitlement. This should not be different from an employee requesting to take one week or a portion of a week of annual holidays as holidays away from work.

There is no legislative requirement to show a cashed up week of annual holiday as a separate payment on a pay slip but it will be useful to include to answer employee and Labour Inspector queries. There is a requirement to include there amount in the holiday and leave record (section 81).

Cashing out Annual holidays – The calculation to use

"**28B Payment for annual holidays paid out**
"(1) If an employer agrees to pay out a portion of the employee's annual holidays under section 28A(3)(c), the employer must pay the employee for that portion—

"(a) in accordance with section 21(2); and
"(b) as soon as practicable after the employer has agreed to the employee's request under that provision.

"(2) If an employer has incorrectly paid out a portion of the employee's annual holidays where the employee did not make a request for the payment, or in circumstances where the employee's request for payment was not informed and voluntary, the employee's entitlement to take the portion of annual holidays concerned remains in force as if the payment had not been made.

Section 21. Calculation of annual holiday pay—

(2) Annual holiday pay must be—

(a) for the agreed portion of the annual holidays entitlement; and

(b) at a rate that is based on the greater of—

(i) the employee's ordinary weekly pay as at the beginning of the annual holiday; or

(ii) the employee's average weekly earnings for the 12 months immediately before the end of the last pay period before the annual holiday.

Rules with cashing out the 4th Week of Annual holidays

The following rules are useful in understanding what can and what cannot be done with cashing out the 4th week of annual holidays:

1. The employer does not have to do it, they can set a policy stating this or do it on a case by case basis.

2. The employee can only cash up the 4th week of current entitlement cannot cash old entitlement from previous periods.

3. The employee can only cash out a maximum of a week in any one entitlement year but that could mean a day at a time if a request is made and the employer request.

4. Cashing out any additional weeks (a 5th week provided by agreement) is by agreement and is not covered by the rules for the 4th week. It could be cashed out tomorrow if agreed.

5. The employee cannot accumulate leave going forward and cash out all at once (wait three years and cash out three years all at once).

6. If the 4th week is cashed out it is treated as an extra pay (taxed like an annual bonus).

7. If the 4th week is cash out it is not included in gross earnings for Holidays Act calculations going forward (if a 5th week or subsequent week is cash up it would be included as part of gross earnings).

8. If the 4th week is cashed out then it must be part of the Holiday and Leave record for the employee that is kept for 6 years.

Relationship between annual holidays and other entitlements

36 Employer may allow employee taking annual holidays to take sick leave

(1) This section applies to an employee who is taking annual holidays under this subpart and who then—

(a) becomes sick or injured; or

(b) has a spouse or partner or dependant who becomes sick or injured.

(2) An employee may, with his or her employer's agreement, take any period of sickness or injury that the employee would otherwise take as an annual holiday as sick leave.

37 Employer must allow employee taking annual holidays to take bereavement leave

(1) This section applies to an employee who is taking annual holidays under this subpart and who then suffers a bereavement as described in section 69(2).

(2) The employer must allow the employee to take any period related to a bereavement that he or she would otherwise take as an annual holiday as bereavement leave.

37A Employer must allow employee taking annual holidays to take family violence leave

(1) This section applies to an employee who is taking annual holidays under this subpart and who then becomes entitled to take family violence leave under section 72C.

(2) The employer must allow the employee to take any period related to the effects on the employee of family violence that the employee would otherwise take as an annual holiday as family violence leave.

38 Sickness, injury, or bereavement, or family violence arising before scheduled annual holidays

(1) This section applies if—

(a) an employee has been allowed to take annual holidays under this subpart; and

(b) before taking those holidays, the employee—

(i) becomes sick or injured; or

(ii) has a spouse or partner or dependant who becomes sick or injured; or

(iii) suffers a bereavement as described in section 69(2); or

(iv) becomes entitled to take family violence leave under section 72C.

(2) The employer must allow the employee to take—

(a) any period of sickness or injury that the employee would otherwise take as an annual holiday as sick leave:

(b) any period related to the bereavement that the employee would otherwise take as an annual holiday as bereavement leave.

(c) any period related to the effects on the employee of family violence that the employee would otherwise take as an annual holiday as family violence leave.

39 Employer may allow employee to take annual holidays if sick leave or bereavement leave, or family violence leave exhausted

(1) This section applies if—

(a) an employee has exhausted his or her entitlement to sick leave under subpart 4, but then—

(i) becomes or remains sick or injured; or

(ii) has a spouse or partner or dependant who becomes or remains sick or injured; or

(b) an employee requires more leave for a bereavement than he or she is entitled to under subpart 4; or

(c) an employee requires more leave to assist the employee to deal with the effects on the employee of being a person affected by family violence than he or she is entitled to under subpart 5.

(2) The employer—

(a) must not require the employee to take any leave in the circumstances set out in subsection (1) as annual holidays; but

(b) may agree, if requested by the employee, to the leave being taken as annual holidays to which the employee is entitled.

40 Relationship between annual holidays and public holidays

(1) A public holiday that occurs during an employee's annual holidays must be treated as a public holiday and not as part of the employee's annual holidays.

(2) Subsection (3) applies if—

(a) the employment of an employee comes to an end; and

(b) the employee is entitled to annual holidays; and

(c) the employee has not taken the annual holidays or has taken only some of them.

(3) The employee is entitled to be paid for a public holiday if the holiday would have—

(a) otherwise been a working day for the employee; and

(b) occurred during the employee's annual holidays had the employee taken his or her remaining annual holidays entitlement immediately after the date on which the employee's employment came to an end.

Payment Of Annual Holiday Pay During Closedown Period For Employee Entitled To Annual Holidays

Section 33. Payment of annual holiday pay during closedown period for employee entitled to annual holidays

(1) This section applies to an employee who, at the commencement of a closedown period, is entitled to annual holidays under section 16.

(2) To the extent that the employee has an annual holiday entitlement, the period of the closedown must be taken by the employee as annual holidays.

(3) If an employee does not have an annual holidays entitlement that covers the whole period of the closedown, the employer and employee may agree that the employee—

(a) may take some of the closedown period as annual holidays in advance under section 20; and

(b) be paid for that period in accordance with section 22.

(4) The employer must pay the employee annual holiday pay calculated in accordance with section 21.

Calculation Of Pay During Closedown Period For Employee Not Entitled To Annual Holidays

Section 34. Calculation of pay during closedown period for employee not entitled to annual holidays—

(1) This section applies to an employee who, at the commencement of a closedown period, is not entitled to annual holidays under section 16.

(2) An employer must, in respect of the closedown period, pay the employee 8% of the employee's gross earnings since the commencement of the employee's employment or since the employee last became entitled to annual holidays (as the case may be), less any amount—

(a) paid to the employee for annual holidays taken in advance; or

(b) paid in accordance with section 28.

(3) An employee who is paid annual holiday pay calculated in accordance with subsection (2) is not otherwise entitled—

(a) to any annual holidays for the period of employment up to the date of the beginning of the closedown period; or

(b) to any remuneration for the period of the closure or discontinuance of work.

(4)This section does not prevent an employer and employee from agreeing that the employee may take the period of the closedown as annual holidays in advance under section 20 and be paid for the period in accordance with section 22.

Worked example:

Employer has an annual closedown from the second week of December each year. An employee is employed at the start of August.

August to December = 20 Weeks

Salary per week $1000 per week

$20,000 (Gross earnings) * 8% = Holiday pay of $1600

Effect of Closedown Period On Anniversary Date Of Employee Not Entitled To Annual Holidays

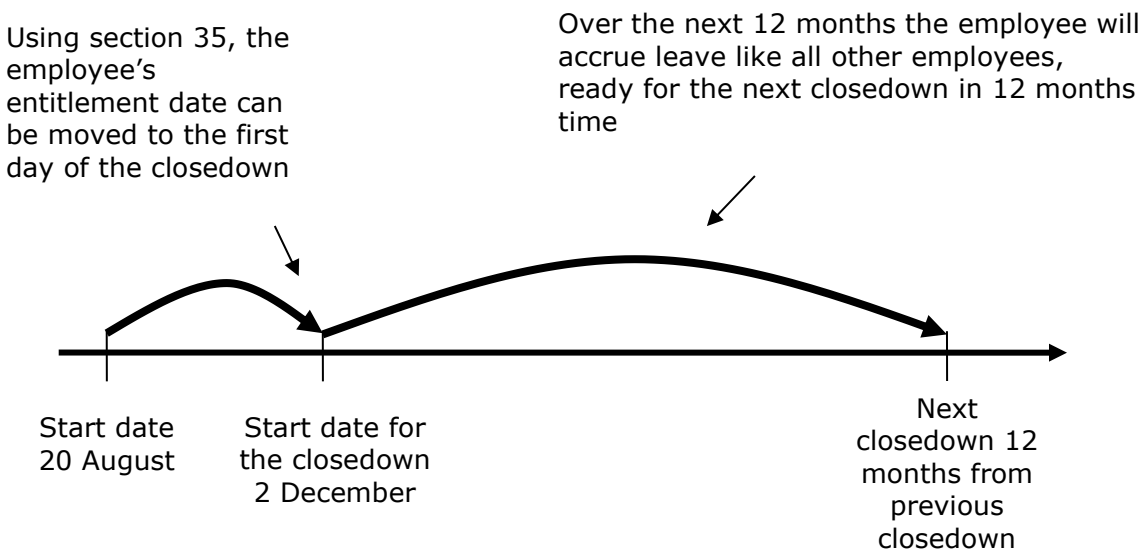
Section 35. Effect of closedown period on anniversary date of employee not entitled to annual holidays—

(1) If an employee is required under section 32(2) to discontinue his or her work during a closedown period, the employee's 12 months of continuous employment must, for the purposes of section 16(1), be treated as commencing on the date on which the closedown began.

(2) However, to avoid having a different date in each year on which the employee becomes entitled to annual holidays, the employer may nominate a date which must be treated as the date on which the closedown begins provided that the date nominated is reasonably proximate to the actual beginning of the closedown period.

Moving employees entitlement date for a closedown

Section 35 allows the employer to move the employee's entitlement date for annual leave to the first day of the closedown, so they will be in line with the rest of the employees that have a closedown period.



Skill Check – Holidays Act 2003: Part 2

1. Can an employer decide not to provide the opportunity to cash up annual leave to employees?

2. Can you cash up more than one week of annual leave (minimum entitlement)?

3. If Peter wants to cash up one week of annual leave, list what the rules are?

4. How is cashed up annual leave taxed (minimum entitlement)?

5. How many closedowns can an employer have in a 12 months period?

6. How many days warning do you have to give before a closedown?

Other Leave (Public, Sick, Bereavement, Alternative, Family Violence Leave)

Relevant Daily Pay

Section 9 Meaning of relevant daily pay

(1) In this Act, unless the context otherwise requires, **relevant daily pay**, for the purposes of calculating payment for a public holiday, an alternative holiday, sick leave, bereavement leave, or family violence leave—

(a) means the amount of pay that the employee would have received had the employee worked on the day concerned; and

(b) includes—

(i) productivity or incentive-based payments (including commission) if those payments would have otherwise been received had the employee worked on the day concerned:

(ii) payments for overtime if those payments would have otherwise been received had the employee worked on the day concerned:

(iii) the cash value of any board or lodgings provided by the employer to the employee; but

(c) excludes any payment of any employer contribution to a superannuation scheme for the benefit of the employee.

(2) However, an employment agreement may specify a special rate of relevant daily pay for the purpose of calculating payment for a public holiday, an alternative holiday, sick leave, or bereavement leave if the rate is equal to, or greater than, the rate that would otherwise be calculated under subsection (1).

(3) To avoid doubt, if subsection (1)(a) is to be applied in the case of a public holiday, the amount of pay does not include any amount that would be added by virtue of section 50(1)(a) (which relates to the requirement to pay time and a half).

Average daily pay

Section 9A Average daily pay

(1) An employer may use an employee's average daily pay for the purposes of calculating payment for a public holiday, an alternative holiday, sick leave, bereavement leave or family violence leave if—

(a) it is not possible or practicable to determine an employee's relevant daily pay under section 9(1); or
(b) the employee's daily pay varies within the pay period when the holiday or leave falls.

(2) The employee's average daily pay must be calculated in accordance with the following formula:

$$\frac{a}{b}$$

where—
a is the employee's gross earnings for the 52 calendar weeks before the end of the pay period immediately before the calculation is made
b is the number of whole or part days during which the employee earned those gross earnings, including any day on which the employee was on a paid holiday or paid leave; but excluding any other day on which the employee did not actually work.

(3) To avoid doubt, if subsection (2) is to be applied in the case of a public holiday, the amount of pay does not include any amount that would be added by virtue of section 50(1)(a) (which relates to the requirement to pay time and a half)."

Example:

Joe went sick on Friday. Joe gets paid on a monthly basis. The last monthly pay was last week. Joe works a 5 day week (Mon-Fri).

- To find out the value of Joes sick day go back to the last pay period
- Calculate the taxable gross earnings for the 12 months from that pay period
- Find out how many days Joe was at work on leave under the act.
- For the 12 months Joe earned $53,450
- For the same period (260 days) Joe worked and was on paid leave for 240 days, Joe was on unpaid leave for 20 days

Gross earnings: 53450

Days worked or on paid leave: 240

= $222.70 ADP

Skill Check – Holidays Act 2003: Part 3

1. What leave entitlements use a relevant daily pay calculation?

2. What is included in relevant daily pay under section 9(1)(a)(b)?

3. What is the divisor for Average Daily Pay?

4. What period does the Average Daily Pay cover?

PUBLIC HOLIDAYS

Section 44. Days that are public holidays—

(1) The following days are public holidays:

(a) Christmas Day:

(b) Boxing Day:

(c) New Year's Day:

(d) 2 January:

(e) Waitangi Day:

(f) Good Friday:

(g) Easter Monday:

(h) ANZAC Day:

(i) the birthday of the reigning Sovereign (observed on the first Monday in June):

(j) Labour Day (being the fourth Monday in October):

(k) the day of the anniversary of a province or the day locally observed as that day.

(2) *[Repealed]*

(3 *[Repealed]*

(4) If 2 or more of the public holidays specified in subsection (1) fall on the same day, the public holidays must, for the purposes of this subpart, be treated as 1 day.

Notes:

Transferring a Public Holiday to Another Day

From the 1 April 2011 there are two new options that apply to public holidays:

- Transferring part of public holiday , and
- Transferring whole of public holiday

Transferring part of a public applies if:

(a) an employee is to start work on a day and finish work on the following day; and

(b) 1 or both of those days are specified in section 44(1)

Example:
An employee is to work from 10 pm on 24 April to 6 am on Anzac Day and from 10 pm on Anzac Day to 6 am on 26 April. The employer and employee can agree to treat 10 pm to midnight on Anzac Day as not part of a public holiday in exchange for treating a period of 24 hours that finishes on Anzac Day as a public holiday. Just when the 24-hour period starts before or finishes after a work period is a matter for the parties to agree on. For instance, they could agree that it runs from midday on 24 April to midday on Anzac Day.

This has to be agreed in writing between employer and employee.

Transferring whole of public holiday:

- that a public holiday specified in section 44(1) is to be observed by the employee on another calendar day or during a period of 24 hours (a **transfer**), if the criteria in subsection (2) are met; and

- the calendar day or period of 24 hours to which the public holiday is transferred is to be treated as the employee's public holiday.

This has to be agreed in writing between employer and employee.

Calculations to use:

(3) Where an agreement to transfer a public holiday applies, the employee's entitlements under sections 50 and 56 apply only if the employee works on the identified or identifiable calendar day or period of 24 hours to which the public holiday has been transferred.

Section 50. Employer must pay employee at least time and a half for working on public holiday—

(1) If an employee works (in accordance with his or her employment agreement) on any part of a public holiday, the employer must pay the employee the greater of—

(a) the portion of the employee's relevant daily pay (less any penal rates) that relates to the time actually worked on the day plus half that amount again; or

(b) the portion of the employee's relevant daily pay that relates to the time actually worked on the day.

(2) In subsection (1)(a), "penal rates''—

(a) means an identifiable additional amount that is payable to compensate the employee for working on a particular day of the week or a public holiday; but

(b) does not include, for example, any additional payment for a sixth or seventh day of work.

(3) This section is subject to section 51.**]**

Section 56. Alternative holiday must be provided if employee works on public holiday—

(1) An employee is entitled to another day's holiday (an "alternative holiday'') instead of a public holiday if—

(a) the public holiday falls on a day that would otherwise be a working day for an employee; and

(b) the employee works (in accordance with his or her employment agreement) on any part of that day.

(2) If subsection (1) applies, an employer must—

(a) provide the employee with an alternative holiday; and

(b) pay the employee for working on the public holiday in accordance with section 50.

(3) The entitlement to an alternative holiday remains in force until—

(a) the employee has taken the holiday; or

(b) the employee has been paid for the holiday in accordance with section 60(2) or section 61.

(4) An employee is not entitled to an alternative holiday under this section if the employee works for the employer only on public holidays.

Transfer of public holidays over Christmas and New Year

Section 45.Transfer of public holidays over Christmas and New Year—

(1) For the purposes of this subpart, if any of the public holidays listed in section 44(1)(a) to (d)—

(a) falls on a Saturday and the day would otherwise be a working day for the employee, the public holiday must be treated as falling on that day:

(b) falls on a Saturday and the day would not otherwise be a working day for the employee, the public holiday must be treated as falling on the following Monday:

(c) falls on a Sunday and the day would otherwise be a working day for the employee, the public holiday must be treated as falling on that day:

(d) falls on a Sunday and the day would not otherwise be a working day for the employee, the public holiday must be treated as falling on the following Tuesday.

(2) To avoid doubt, this section does not entitle an employee to more than 4 public holidays for the days listed in section 44(1)(a) to (d).

Example:

Saturday (Christmas Day)	Sunday (Boxing Day)	Monday	Tuesday
Does not work	Does not work	PH transferred to Monday (relevant daily pay)	PH transferred to Tuesday (relevant daily pay)
Does not work	Does not work	PH transferred to Monday but works (time and a half, and a alternative holiday)	PH transferred to Tuesday but works (time and a half, and a alternative holiday)
Does work on this day (time and a half, and a alternative holiday)	Does work on this day (time and a half, and a alternative holiday)	Normal day	Normal day
Does work but takes public holiday (relevant daily pay)	Does work but takes public holiday (relevant daily pay)	Normal day	Normal day

Employer Must Pay Employee At Least Time And A Half For Working On Public Holiday

Section 50. Employer must pay employee at least time and a half for working on public holiday—

(1) If an employee works (in accordance with his or her employment agreement) on any part of a public holiday, the employer must pay the employee the greater of—

(a) the portion of the employee's relevant daily pay (less any penal rates) that relates to the time actually worked on the day plus half that amount again; or

(b) the portion of the employee's relevant daily pay that relates to the time actually worked on the day.

(2) In subsection (1)(a), "penal rates''—

(a) means an identifiable additional amount that is payable to compensate the employee for working on a particular day of the week or a public holiday; but

(b) does not include, for example, any additional payment for a sixth or seventh day of work.

(3) This section is subject to section 51.**]**

Worked example (Double time):

If an employee in their employment agreement gets double time for working on a public holiday that is all they will get for working on a public holiday.

8 hours x $22 an hour (double time $44) worked on a public holiday = $352

Workers example (Time and a quarter):

If an employee in their employment agreement gets time and quarter time for working on a public holiday the employer will need to top it up so they get time and half for actual hours worked.

8 hours x $22 an hour (time and quarter $27.50) = $220
8 hours x $22 an hour (time and a half $33) = $264

When Payment For Public Holiday Must Be Made

Section 55. When payment for public holiday must be made

An employer must pay an employee for a public holiday in the pay that relates to the pay period in which the holiday occurs.

Alternative Holiday Must Be Provided If Employee Works On Public Holiday

Section 56. Alternative holiday must be provided if employee works on public holiday—

(1) An employee is entitled to another day's holiday (an "alternative holiday'') instead of a public holiday if—

(a) the public holiday falls on a day that would otherwise be a working day for an employee; and

(b) the employee works (in accordance with his or her employment agreement) on any part of that day.

(2) If subsection (1) applies, an employer must—

(a) provide the employee with an alternative holiday; and

(b) pay the employee for working on the public holiday in accordance with section 50.

(3) The entitlement to an alternative holiday remains in force until—

(a) the employee has taken the holiday; or

(b) the employee has been paid for the holiday in accordance with section 60(2) or section 61.

(4) An employee is not entitled to an alternative holiday under this section if the employee works for the employer only on public holidays.

Requirements Of Alternative Holiday

57 Requirements of alternative holiday

(1) An alternative holiday provided under section 56 must—

(a) be taken by the employee on a day that is agreed between the employer and employee; and
(b) be a day that would otherwise be a working day for the employee; and
(c) be a whole working day off work for the employee, regardless of the amount of time the employee actually worked on the public holiday; and
(d) not be taken on a public holiday.

(2) If an employer and employee cannot agree under subsection (1)(a) on when an alternative holiday is to be taken, the day must be taken on a date determined, on a reasonable basis, by the employer.

(3) If subsection (2) applies, the employer must give the employee at least 14 days' notice of the requirement to take the alternative holiday.

Payment for alternative holiday

60. Payment for alternative holiday—

(1) An employer must pay an employee not less than the employee's relevant daily pay for the day which is taken as the alternative holiday.

(2) Payment for an alternative holiday must be made—

(a) in the pay that relates to the pay period in which the alternative holiday is taken; or

(b) if the employee has not taken the alternative holiday before the date on which his or her employment ends,—

(i) at the rate of the employee's relevant daily pay for his or her last day of employment; and

(ii) in the pay that relates to the employee's final period of employment.

Alternative Holiday May Be Exchanged For Payment

Section 61. Alternative holiday may be exchanged for payment—

(1) An employee may request the employer to exchange the employee's entitlement to an alternative holiday for a payment.

(2) A request under subsection (1)—

(a) may be made only if 12 months have passed since the employee's entitlement to the alternative holiday arose; and

(b) may be made whether or not the employee has been required to take the alternative holiday under section 58.

(3) If the employer agrees to the employee's request, the employer must pay the employee the amount agreed between the employer and the employee in exchange for the alternative holiday.

(4) The employer must make the payment for the alternative holiday as soon as practicable after the employer has agreed under subsection (3).

Please Note:
The calculation for exchanging an alternative holiday for payment is by agreement; there is no calculation under the act that has to be used.

It is recommended to that the RDP calculation is used because the agreed amount has to be recorded in your holiday and leave record and that would be seen as the minimum amount by law.

Sickness, Injury, or Bereavement On Public Holiday

Section 61A. Sickness, injury, or bereavement, or family violence on public holiday

(1) This section applies to an employee who is required, or has agreed, to work on a public holiday but who does not work on the day because—

(a) the employee—

(i) becomes or remains sick or injured; or

(ii) has a spouse or dependant who becomes or remains sick or injured; or

(b) the employee suffers or has suffered a bereavement as described in section 69(2); or

(c) the employee becomes entitled to take family violence leave under section 72C.

(2) If this section applies,—

(a) the public holiday must continue to be treated as a public holiday and not as sick leave or bereavement leave, or family violence leave for the employee; and

(b) to avoid doubt, the employee—

(i) must be paid for the day in accordance with section 49 and is not entitled to be paid at time and a half in accordance with section 50(1)(a); and

(ii) is not entitled to an alternative holiday under section 56.

Example:

An employee is rostered to work on a public holiday but rings their manager to tell them they are going sick.

Result: They only get paid RDP or ADP (if RDP cannot be determined), the day does not come off their sick leave entitlement and they do not get paid time and a half or get an alternate holiday.

Skill Check – Holidays Act 2003: Part 4

1. How many public holidays are there under the Act?

2. What public holidays transfer to another day?

3. If you work on a public holiday, what payment do you receive?

4. To get an alternative holiday, what is the criteria to use?

5. How is the value of an alternative holiday determined?

6. When can you cash up an alternative holiday?

7. How are cashed up alternative holidays on termination calculated?

SICK LEAVE AND BEREAVEMENT LEAVE

Entitlement to sick leave and bereavement leave

Section 63. Entitlement to sick leave and bereavement leave—

(1) An employee is entitled to sick leave and bereavement leave in accordance with this subpart—

(a) after the employee has completed 6 months' current continuous employment with the employer; or

(b) if, in the case of an employee to whom subsection (1)(a) does not apply, the employee has, over a period of 6 months, worked for the employer for—

(i) at least an average of 10 hours a week during that period; and

(ii) no less than 1 hour in every week during that period or no less than 40 hours in every month during that period.

(2) Sick leave and bereavement leave must be provided—

(a) to an employee to whom subsection (1)(a) applies, for—

(i) the 12-month period of continuous employment beginning at the end of the 6-month period specified in that subsection; and

(ii) each subsequent 12 months of current continuous employment:

(b) to an employee to whom subsection (1)(b) applies, for—

(i) the 12-month period of employment beginning at the end of the 6-month period specified in that subsection; and

(ii) each subsequent 12-month period of employment as long as the circumstances referred to in subparagraphs (i) and (ii) of that subsection continue to apply.

(3) However, an employer and employee may agree that—

(a) the employee may take sick leave or bereavement leave in advance; and

(b) in the case of sick leave taken in advance, the amount of leave taken is to be deducted from the employee's entitlement under this section.

Sick Leave

Section 65. Sick leave—

(1) An employee may take sick leave if—

(a) the employee is sick or injured; or

(b) the employee's spouse is sick or injured; or

(c) a person who depends on the employee for care is sick or injured.

(2) An employee is entitled to 5 days' sick leave for each of the 12-month periods specified in section 63(2).

Sick Leave May Be Carried Over

Section 66. Sick leave may be carried over—

(1) An employee may carry over, to any subsequent 12-month period of employment, any sick leave that has not been taken by the end of the period to which the leave relates.

(2) For the purposes of subsection (1), an employee may carry over up to 15 days' sick leave to a maximum of 20 days' current entitlement in any year.

(3) To avoid doubt, subsection (2) does not prevent an employer from allowing an employee to carry over any enhanced or additional sick leave entitlement.

Proof of Sickness

Under the act there are two ways an employer can ask an employee to provide proof of sickness:

3 calendar days

Three days from when the employee was last at work until they return to work.

> **For instance:** the employee was at work on Friday but rings in sick on Monday, Saturday to Monday are three calendar days from the last day at work. The employer can request a medical certificate but is under no obligation to pay the employee for getting the medical certificate.

1 day

One day from when the employee was last at work until they return to work.

> **For instance:** the employee was at work on Tuesday but rings in sick on Wednesday, Wednesday is one day until they return to work. The employer can request a medical certificate but can be asked by the employee to pay for the cost in obtaining the proof.

Bereavement Leave

Section 69. Bereavement leave—

(1) An employee may take bereavement leave in accordance with sections 63 and 70 if the employee suffers a bereavement.

(2) An employee suffers a bereavement—

(a) on the death of the employee's—

(i) spouse:

(ii) parent:

(iii) child:

(iv) brother or sister:

(v) grandparent:

(vi) grandchild:

(vii) spouse's parent; or

(b) on the death of any other person if the employer accepts, having regard to relevant factors such as those set out in subsection (3), that the employee has suffered a bereavement as a result of the death.

(3) For the purposes of subsection (2)(b), relevant factors include—

(a) the closeness of the association between the employee and the deceased person:

(b) whether the employee has to take significant responsibility for all or any of the arrangements for the ceremonies relating to the death:

(c) any cultural responsibilities of the employee in relation to the death.

Duration Of Bereavement Leave

Section 70. Duration of bereavement leave—

(1) An employer must allow an employee to take—

(a) 3 days' bereavement leave for each type of bereavement described in section 69(2)(a); and

(b) 1 day's bereavement leave for a bereavement described in section 69(2)(b).

(2) If an employee suffers more than 1 bereavement at the same time, he or she may take the amount of bereavement leave specified in subsection (1) in respect of each bereavement.

Family Violence Leave

Subpart 5—Family violence leave

72A Purpose of this subpart

The purpose of this subpart is to provide employees who are people affected by family violence with a minimum entitlement to paid leave for the purpose of assisting the employees to deal with the effects on the employees of being people affected by family violence.

The Act includes a definition of family violence that requires at least one if not two of the following criteria to be met.

72B Meaning of person affected by family violence

(1) In this subpart, a person affected by family violence means a person who is 1 or both of the following:

(a) a person against whom any other person is inflicting, or has inflicted, family violence:

(b) a person with whom there ordinarily or periodically resides a child against whom any other person is inflicting, or has inflicted, family violence.

(2) In this section, **child** has the meaning given to it in section 2 of the Family Violence Act 1995.

Entitlement to FVL is not just about a family violence situation. It can be for a situation that happened in the past prior to employment with the current employer that has received the application.

72C Entitlement to family violence leave

An employee may take family violence leave—

a) if the employee is a person affected by family violence (regardless of how long ago the family violence occurred, and even if the family violence occurred before the person became an employee); and

b) in accordance with sections 72D and 72H.

FVL uses the same timeframe as used for sick and bereavement leave, starting at the 6-month point. The employer can always provide better than the Act or provide it from day one (this would be an agreed term and is up to the employer).

72D When entitlement to family violence leave arises

(1) An employee is entitled to family violence leave—

(a) after the employee has completed 6 months' current continuous employment with the employer; or

(b) if, in the case of an employee to whom subsection (1)(a) does not apply, the employee has, over a period of 6 months, worked for the employer for—

i. at least an average of 10 hours a week during that period; and

ii. no less than 1 hour in every week during that period or no less than 40 hours in every month during that period.

(2) Family violence leave must be provided—

(a) to an employee to whom subsection (1)(a) applies, for—

i. the 12-month period of continuous employment beginning at the end of the 6-month period specified in that subsection; and

ii. each subsequent 12 months of current continuous employment:

(b) to an employee to whom subsection (1)(b) applies, for—

i. the 12-month period of employment beginning at the end of the 6- month period specified in that subsection; and

ii. each subsequent 12-month period of employment as long as the circumstances referred to in subparagraphs (i) and (ii) of that sub- section continue to apply.

(3) However, an employer and employee may agree that—

(a) the employee may take family violence leave in advance; and

(b) in the case of family violence leave taken in advance, the amount of leave taken is to be deducted from the employee's entitlement under this section.

Can FVL be provided in advance?

Just like sick and bereavement leave there is a provision in the Holidays Act that allows for the employer to provide FVL in advance if the employee requests and the employer agrees (this is up to the employer).

> **72D When entitlement to family violence leave arises**
>
> (3) However, an employer and employee may agree that—
>
> (a) the employee may take family violence leave in advance; and
>
> (b) in the case of family violence leave taken in advance, the amount of leave taken is to be deducted from the employee's entitlement under this section.

If FVL is provided in advance this will come off the entitlement when the employee receives it from that entitlement period.

Of course, an employer can always provide better than the act and if that is done it is important to clearly state in writing what the "better" is and how it will be paid so payroll can action it.

The employee must tell the employer of their intention to take FVL.

The employee has a responsibility to contact the employer with their intention to take FVL, but the section does not put a defined timeframe on this requirement.

> **72E Employee must notify employer of intention to take family violence leave**
>
> An employee who intends to take family violence leave must notify the employer of that intention—
>
> (a) as early as possible before the employee is due to start work on the day that is intended to be taken as family violence leave; or
>
> (b) if that is not practicable, as early as possible after that time.

FVL is not to be paid out on termination if not used.

Just like sick and bereavement leave, FVL is not paid out on termination and unlike annual holiday entitlement, does not extend forward if it is not used by termination.

> **72F Family violence leave need not be paid out**
>
> An employee is not entitled to be paid for any family violence leave that has not been taken before the date on which the employee's employment ends.

Proof of FVL

The employer can ask for proof of family violence. The Act does not, however, specify what can be considered as proof.

With sick leave it states a medical certificate from a registered medical practitioner constitutes proof, and this could also be appropriate for FVL.

Under the MBIE website in the Policy Builder section there is now a template to help an employer in building a FVL policy. NZPPA considers this to be very vague.

To see the FVL policy builder go to:
https://wpb.business.govt.nz/workplacepolicybuilder/familyViolence/whyWeHaveThisFamilyViolencePolicy

Under this policy section MBIE has stated that proof when requested by the employer could come from any of the following:

- police, government departments, a health professional or a family violence support service.

As with sick leave, when proof is requested and the employee does not provide the proof, the employer does not have to provide paid FVL.

72G Proof of family violence

An employer may require proof that an employee is a person affected by family violence to be produced for family violence leave taken under section 72C.

Duration of FVL

If the employee meets the criteria to get FVL at the 6-month point, they can take up to 10 days of FVL. In the first year, the 10 days can be accessed from 6 months up to the 18-month mark.

The employee then would get a new entitlement of 10 days at the 18-month mark and every 12 months thereafter.

6 mths to qualify	**< 12 Mths >** 10 days	**18 mths**	**< 12 Mths >** 10 days	**30 mths**

Unlike sick leave, FVL does not roll over or accumulate from one period of entitlement to the next period of entitlement.

72H Duration of family violence leave

An employee—

(1) may take up to 10 days' family violence leave in each of the 12-month periods specified in section 72D(2); and

(2) cannot carry forward any family violence leave not taken in any of those 12-month periods.

What to pay for FVL?

FVL is paid in the same way as sick, bereavement, alternative and public with the default calculation being relevant daily pay (RDP) under section 9. RDP is what would have been paid on the day if the employee had worked that day.

RDP includes not only the employee's ordinary rate of pay, but also overtime, productivity, and other payments that are taxable and would have been paid to the employee as part of the day.

If the day is variable and cannot be easily defined, then average daily pay (ADP) can be used which is the gross earnings over 52 weeks divided by days worked and paid leave taken during the period.

If the employee is receiving compensation payments while on ACC leave, then the employer does not have to pay FVL.

Section 4 below is a little different on what payroll currently does with the employer being able to top up ACC (as an agreed term) or the employee requests to use their own sick leave. Sub-section 4 below states that if an employer tops up this can be done, but sick leave does not seem to be an option.

72I Payment for family violence leave
(1) An employer must pay an employee an amount that is equivalent to the employee's relevant daily pay or average daily pay for each day of family violence leave taken by the employee that would otherwise be a working day for the employee.

(2) Despite subsection (1), an employer is not required to pay an employee for any time for which the employee is paid weekly compensation under the Accident Compensation Act 2001 or former Act.

(3) An employer must not require an employee to take as family violence leave any time for which the employee is being paid—

(a) first week compensation by the employer under section 97 of the Accident Compensation Act 2001 or former Act; or
(b) weekly compensation for a work-related injury within the meaning of that Act or former Act.

(4) However, if an employer pays the difference between the employee's first week compensation or weekly compensation and ordinary weekly pay, the employer may agree with the employee that the employer may deduct from the employee's family violence leave entitlement 1 day for every 5 whole days that the employer makes that payment.

When payment for FVL can be made

When the employee takes FVL, they must be paid in the pay period that relates to when the FVL was taken.

As stated previously, if the employer asks for proof and proof is not provided, then the employer is not obliged to pay anything to the employee.

72J When payment for family violence leave must be made
(1) An employer must pay an employee for family violence leave in the pay that relates to the pay period in which the leave is taken.

(2) However, if an employee is required to provide proof under section 72G and fails, without reasonable excuse, to do so, the employer is not required to pay the employee for any family violence leave in respect of which the proof is required until the employee complies with that requirement.

Holiday and Leave Record

Section 81. Holiday and leave record—

(1) An employer must keep a holiday and leave record that complies with this section.

(2) The holiday and leave record must contain the following information for each employee:

(a) the name of the employee:
(b) the date on which the employee's employment commenced:
(c) the days on which the employee actually works, if the information is relevant to the calculation of entitlements or payment for entitlements under this Act:
(d) the employee's current entitlement to annual holidays:
(e) the date on which the employee last became entitled to annual holidays:
(f) the employee's current entitlement to sick leave:
(g) the dates on which any annual holiday, sick leave, or bereavement leave, or family violence leave has been taken:
(h) the amount of payment for any annual holiday, sick leave, or bereavement leave that has been taken:
(ha) the portion of any annual holidays that have been paid out in each entitlement year (if applicable):
(hb) the date and amount of payment, in each entitlement year, for any annual holidays paid out under section 28B (if applicable):
(i) the dates of, and payments for, any public holiday on which the employee worked:
(j) the number of hours that the employee worked on any public holiday:
(ja) the day or part of any public holiday specified in section 44(1) agreed to be transferred under section 44A or 44B and the calendar day or period of 24 hours to which it has been transferred (if applicable):
(k) the date on which the employee became entitled to any alternative holiday:
(l) the details of the dates of, and payments for, any public holiday or alternative holiday on which the employee did not work, but for which the employee had an entitlement to holiday pay:
(m) the cash value of any board or lodgings, as agreed or determined under section 10:
(n) the details of any payment to which the employee is entitled under section 61(3) (which relates to payment in exchange for an alternative holiday):
(o) the date of the termination of the employee's employment (if applicable):
(p) the amount paid to the employee as holiday pay upon the termination of the employee's employment (if applicable):
(q) any other particulars that may be prescribed.

(3) The holiday and leave record must be kept—

(a) in written form; or

(b) in a form or in a manner that allows the information in the record to be easily accessed and converted into written form.

(3A) If an employee's number of hours worked each day in a pay period and the pay for those hours are agreed and the employee works those hours

(the **usual hours**), it is sufficient compliance with subsection (2)(c) if those usual hours and pay are stated in—

(a) the employee's wages and time record kept under section 130 of the Employment Relations Act 2000; or
(b) the employee's employment agreement; or
(c) a roster or any other document or record used in the normal course of the employee's employment.

(3B) In subsection (3A), the **usual hours** of an employee who is remunerated by way of salary include any additional hours worked by the employee in accordance with the employee's employment agreement.

(3C) Despite subsection (3B), the employer must record any additional hours worked that need to be recorded to enable the employer to comply with the employer's general obligation under section 4B(1) of the Employment Relations Act 2000.

(4) Information entered in the holiday and leave record must be kept for not less than 6 years after the date on which the information is entered.

(5) The holiday and leave record may be kept so as to form part of the wages and time record required to be kept under section 130 of the Employment Relations Act 2000.

Skill Check – Holidays Act 2003: Part 5

1. What period of continuous employment needs to be met to get sick leave and bereavement leave under the act?

2. If an employee works two days a week (4 hours a day) at the six month mark how many days sick leave would they receive?

3. How many days of sick leave can be accumulated under the act?

4. What are the two ways a medical certificate can be requested?

5. How many days of bereavement leave would an employee get for a close family member?

6. What are the three factors that the employer has to take in account when deciding to give 1 day of bereavement leave?

7. How long does a holiday and leave record need to be kept?

Parental Leave and Employment Protection Act 1987

This act provides for unpaid leave from work for a birth mother and her partner/spouse either on the birth of a child, or the adoption of a child under the age of six.

The purpose of this act is to—

- set minimum entitlements with respect to parental leave for male and female employees; and
- protect the rights of employees during pregnancy and parental leave; and
- entitle certain persons to up to 26 weeks of parental leave payments.

All leave provided under this act by the employer is **unpaid** leave unless the employer has agreed otherwise. The government provides a government-funded scheme (see later in this section), but that has nothing to do with the employer.

Employee eligibility for parental leave

To take parental leave the employee must either meet the 6 month or 12 month test criteria.

- **6 month test criteria**

  The employee must have worked for the same employer for an average of at least 10 hours a week for the 6 months immediately before their baby's due date (or the date the employee assumes responsibility for the care of a child under 6 years on a permanent basis).

- **12 month test criteria**

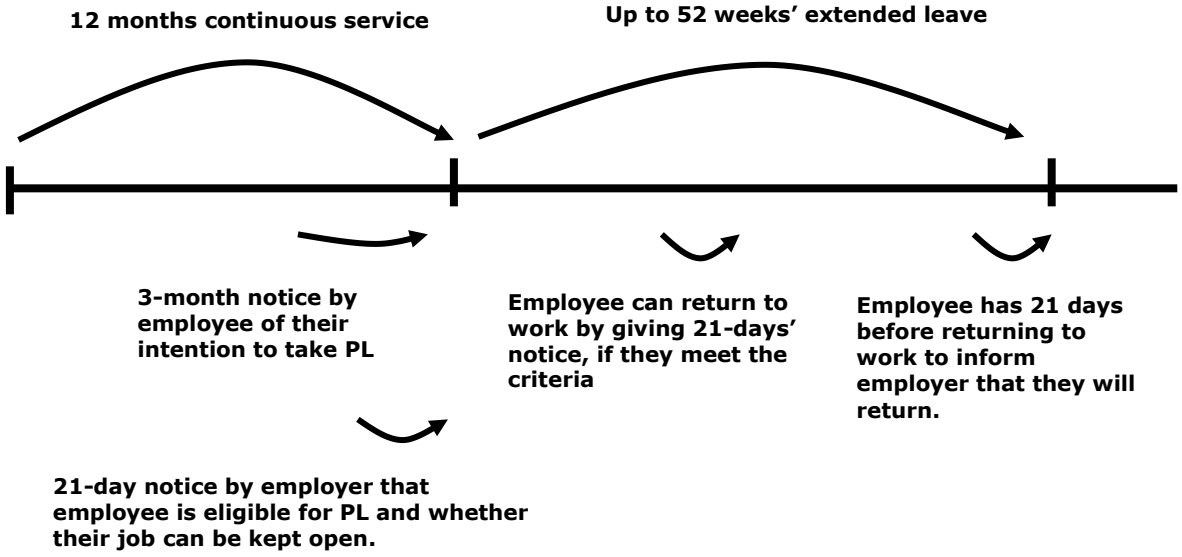
  The employee must have worked for the same employer for an average of at least 10 hours a week for the 12 months immediately before their baby's due date (or the date the employee assumes responsibility for the care of a child under 6 years on a permanent basis).

Eligibility criteria for parental leave

To be eligible for different types of parental leave, two different timeframes must be met.

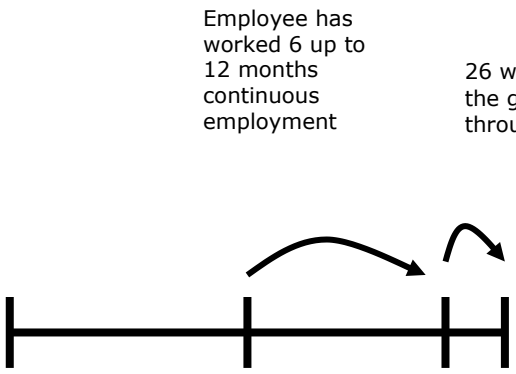
To be able to take up to 52 weeks, the employee must meet this criterion:

To be eligible, the employee must have worked at least an average of 10 hours each week, including at least one hour per week or 40 hours per month, for the same employer, for 12 months before the expected date of birth or adoption.



To be able to take 6 months, the employee must meet the following criteria:

To be eligible, the employee must have worked for their employer for at least an average of 10 hours a week for between 6 and 12 months, however, these employees are not entitled to extended leave.



The change to qualify for parental leave

The change from the old act (prior to the 1 April 2016) and the updated act is that previously to qualify for parental leave the employee had to work at least an hour every week during the period. Now the employee only has to meet the average of 10 hours a week.

This change opens the door for employees that in the past were not eligible such as fixed term employees or even casuals. Payroll will need to understand this as they may be asked to confirm if an employee is eligible under the new criteria.

Requirement to provide notice to employer if planning to take parental leave

If the employee wants to take parental leave they are to give their employer 3 months' notice. Details of what needs to be provided to the employer is detailed in Section 31 (see below).

31 Obligation to notify employer

(1) An employee who wishes to take parental leave under this Act shall give written notice to the employee's employer of the employee's wish to take that leave.
(2) The notice under subsection (1) shall state the proposed date on which the employee wishes to commence leave, and the duration of the leave.
(3) If the employee wishes to take parental leave in respect of a child to be born to the employee or to the employee's spouse or partner, the notice under subsection (1)—

(a) shall be given at least 3 months before the expected date of delivery; and
(b) if given by a pregnant employee, shall be accompanied by a certificate from a medical practitioner or a midwife—
(i) certifying that the female employee is pregnant; and
(ii) stating the expected date of delivery; or
(c) if given by the pregnant woman's spouse or partner shall be accompanied by—
(i) a certificate or a copy of a certificate from a medical practitioner or a midwife certifying that the woman named in the certificate is pregnant and stating the expected date of delivery; and
(ii) a written assurance from the woman named in the medical certificate that the employee is her spouse or partner and that the employee intends to assume care of the child to be born to her.

Types of parental leave

Under the Parental Leave and Employment Protection Act 1987 there are five types of leave available. All parental leave is unpaid by the employer.

- **Special leave** of up to 10 days for a pregnant female before primary carer leave begins. This is for pregnancy-related reasons such as antenatal classes, scans or appointments with a doctor or midwife.

- **Primary carer leave** up to 26 weeks for the female, their spouse or partner and is taken as one continuous period. This can also be the employee who assumes responsibility for the care of a child under 6 years on a permanent basis. The leave can be started earlier if the baby is preterm, or the doctor or midwife directs them.

- **Partner's leave** can be 1 week based on the 6 month criteria and 2 weeks based on the 12 month criteria for the primary carer's spouse or partner on the birth or adoption of a child.

- **Extended leave** based on the eligibility period can be either 6 months or 12 months, less any primary or negotiated carer's leave taken, that can be shared between the primary carer; and the spouse or partner, if they are both eligible.

- **Negotiated carer leave** can be agreed to be provided to an employee that meets the work time criteria to obtain leave but does not meet the primary carer leave criteria. If accepted the employee will receive the leave and be eligible for payment from the government-funded scheme.

Please note: All leave must be taken in the first year after the birth or adoption.

Special leave

In addition to any parental leave taken, females who are pregnant can also take up to 10 days unpaid special leave for pregnancy-related reasons such as antenatal classes, scans or midwife appointments.

15 Special leave

1. A female employee who is pregnant is entitled, before taking primary carer leave, to take a total of up to 10 days' special leave without pay for reasons connected with her pregnancy.
2. No period of special leave taken under subsection (1) by a female employee shall be taken into account in assessing the period of primary carer leave or the period of extended leave to which that female employee or her spouse or partner is entitled in accordance with this Act.

Primary carer leave

A primary carer is defined under Section 7 of the act as:

7 Meaning of primary carer

(1) In this Act, unless the context otherwise requires, **primary carer** means—

(a) a female (the **biological mother**) who is pregnant or has given birth to a child:

(b) the spouse or partner of the biological mother, only if—

(i) the spouse or partner has succeeded under section 72B to all or part of the biological mother's entitlement to a parental leave payment; or

(ii) the biological mother has transferred all or part of her entitlement to a parental leave payment to that spouse or partner under section 71E (in which case the spouse or partner is the primary carer for the period of time in relation to which the entitlement is transferred); or

(c) a person, other than the biological mother or her spouse or partner, who takes permanent primary responsibility for the care, development, and upbringing of a child who is under the age of 6 years (and if there is more than 1 such person, the person nominated in accordance with subsection (2)).

(2) If 2 or more persons meet the criterion in subsection (1)(c),—

(a) those persons must jointly nominate which one of them is to be the primary carer; and

(b) only the nominated person is entitled to primary carer leave and parental leave payments under this Act.

(3) Subsection (2)(b) does not limit sections 71E and 71EA (both of which relate to the transfer of entitlements to parental leave payments to a spouse or partner) or section 72B (which relates to succession to entitlements by a spouse or partner).

The employee can start their primary carer leave up to 6 weeks (or earlier with the employer's consent) before the baby's due date or the date on which the employee will become the primary carer of the child.

Examples (included under Section 7)
If a child under the age of 6 years goes to live with their aunt, who intends to raise the child in place of the child's biological parents, the aunt is the child's primary carer.
If a couple formally adopt a child under the age of 6 years, or undertake to care for the child permanently, the member of the couple that is nominated under subsection (2) is the child's primary carer.
If a child under the age of 6 is temporarily placed with a foster parent, that person is not a primary carer because the placement is not permanent.
If a child's grandmother minds the child every day while his or her parents are at work, the grandmother is not a primary carer, because the child's parents still have primary responsibility for the child's upbringing.

Under Section 8 the entitlement to primary carer leave is stated as:

8 Entitlement to primary carer leave

(1) An employee may take primary carer leave if the employee—
(a) is the primary carer in respect of a child; and
(b) meets the 6-month employment test or the 12-month employment test.

(2) No employee may take primary carer leave under subsection (1) in respect of a child if the employee has previously taken a period of leave in respect of that child, being—
(a) parental leave under this Act; or
(b) a period of leave in the nature of parental leave under any Act other than this Act or under any employment agreement.

Duration of primary carer leave

Primary carer leave can be taken for up to 26 weeks and must be taken in one continuous period. Primary carer leave can't be taken if the employee has already taken any period of parental leave or similar leave in relation to that child.

9 Duration of primary carer leave

(1) Primary carer leave must be taken in 1 continuous period not exceeding 26 weeks, subject to subsection (2).

(2) If a female employee begins her primary carer leave—

(a) on a date specified, pursuant to section 13(1), in a certificate; or

(b) on a date appointed, pursuant to section 14, by her employer,—

the female employee shall be entitled to take at least 20 weeks of her primary carer leave after the expected date of delivery and, if necessary for that purpose, to extend the duration of her primary carer leave.

(3) A period of primary carer leave in excess of 26 weeks taken by a female employee under subsection (2) is to be treated as primary carer leave for the purposes of this Act, but must not be taken into account in assessing under section 26 any period of extended leave to which the female employee or her spouse or partner may be entitled under this Act.

Commencement of primary carer leave

Primary carer leave begins on the date of confinement if the child is born to the employee, or in any other case, the date that the employee becomes the primary carer in respect of the child.

10 Date of commencement of primary carer leave

Primary carer leave begins,—

(a) in the case of a child born to the employee, on the date of confinement; or

(b) in any other case, on the date on which the employee becomes the primary carer in respect of the child; or

(c) on such earlier date—

(i) as is determined in accordance with section 11 or section 12 or section 13; or

(ii) as is appointed by the employer pursuant to section 14.

Partner's leave

The spouse or partner of the mother can take leave to support them based on the 6 or 12 month employment test as stated in Section 17.

17 Entitlement of spouse or partner of primary carer to partner's leave

(1) An employee may take partner's leave if the employee—

(a) is the spouse or partner of the primary carer in respect of a child; and

(b) assumes or intends to assume responsibility for the care of that child; and

(c) meets the 6-month employment test or the 12-month employment test.

(2) Despite subsection (1), an employee may not take partner's leave in respect of a child under subsection (1) if—

(a) the employee has previously taken, in respect of that child, a period of leave, being—

(i) partner's leave under this Act; or

(ii) a period of leave in the nature of partner's leave under any Act other than this Act or under any employment agreement; or

(b) the employee is the biological mother of the child and transferred her parental leave payment entitlements to her spouse or partner under section 71E.

Based on which employment test the partner meets, they can get either 1 week or 2 weeks of partner's leave, defined under Section 19.

19 Duration of Partner's leave

Partner's leave must be taken in 1 continuous period not exceeding—

(a) 2 weeks if the employee meets the 12-month employment test; or

(b) 1 week if the employee meets the 6-month employment test.

Extended leave

Under the act an eligible employee can take a period of up to 6 months or 12 months based on the employment test. This is a period of unpaid leave, but is counted as continuous employment under the Holidays Act 2003.

For payroll it is important that this is not treated as a termination as employment is continuous. Also, annual holiday entitlement may be taken prior to going on extended leave depending on what the employee plans to do. In addition, accrual should not be paid out as this would be leave in advance and the rate for annual holidays would be lower on their return to work (based on their entitlement date).

23 Entitlement of employee to extended leave

(1) Except as otherwise provided in this Act, an employee is entitled to extended leave if—

(a) the employee—
(i) is the primary carer in respect of a child; or
(ii) is the spouse or partner of the primary carer in respect of a child and assumes or intends to assume responsibility for the care of that child; and
(b) the employee meets—
(i) the 6-month employment test (in which case the maximum duration of extended leave is 26 weeks, as set out in section 26(1)(a)); or
(ii) the 12-month employment test (in which case the maximum duration of extended leave is 52 weeks, as set out in section 26(1)(b)).

(2) An employee is not entitled to extended leave in respect of a child under subsection (1) if that employee has previously taken, in respect of that child, 1 or more periods of leave that in total amount to the employee's maximum entitlement under section 26(1)(a) or (b), whether that leave is—

(a) extended leave under this Act; or
(b) a period of leave in the nature of extended leave under any Act other than this Act, or any employment agreement.

Multiple periods of extended leave

From the change that was implemented on the 1 April 2016 the employee can now take multiple periods of extended leave within the overall period without stopping extended leave.

For an employee to be able to undertake multiple periods of extended leave their employer must agree.

Example:

Joan has met the employment test to be able to take 6 months of extended leave. Joan is a Project Manager with a major project on track to be completed. Joan has her baby and then goes on extended leave.

At the 4 month mark she returns to the workplace for a month as her employer agreed so she can cover off a crucial part of the project. Once Joan completes the month back in the workplace, she leaves to finish her last month on extended leave before returning to work fully.

What does this mean for payroll?

If the employer agrees for the employee to return to work it could mean they return on different hours compared to what they usually work.

Example:

Linda usually works 40 hours a week and then goes on extended leave after 6 months (she is on extended leave for 12 months). Her employer agrees that she can come back to work but they agree on reduced hours (20 hours).

In payroll this will mean the week will now be defined as 20 hours instead of 40 hours (leave entitlement to be reset in payroll) and the earnings for that period will put value to leave on the employee's return to work after finishing the entire extended leave period.

If the employer agrees, the employee could return to work a number of times during the extended leave period so this will mean payroll will need to monitor these periods and make any adjustments when needed.

Section 27 details how extended leave can be taken during the period.

27 Period during which extended leave may be taken

(1) An employee may take 1 or more periods of extended leave (up to the maximum amount to which the employee is entitled) at any time within the period beginning with the applicable start date and ending with the applicable end date.

(2) If an employee takes more than 1 period of extended leave within the period referred to in subsection (1), each such period of extended leave must be taken on dates agreed between the employee and the employer.

(3) In this section,—

applicable start date means,—

(a) if the employee takes primary carer leave in respect of a child, the date of expiry or earlier termination of the employee's primary carer leave; or

(b) if the employee takes partner's leave in respect of a child, the date of expiry or earlier termination of the employee's partner's leave; or

(c) if the employee is entitled to take primary carer leave or partner's leave in respect of a child, and has not taken any such leave,—

(i) in the case of a child born to the employee or to the employee's spouse or partner, the date of confinement; or

(ii) in any other case, the first date on which either the employee or the employee's spouse or partner becomes the primary carer in respect of the child; or

(d) any other date that is agreed on by the employee and that employee's employer

applicable end date means,—

(a) if the employee, or the employee's spouse or partner, qualifies for extended leave under section 23(1)(b)(i) (which applies to employees who meet the 6-month employment test),—

(i) in the case of a child born to the employee, or to the employee's spouse or partner, the date on which the child attains the age of 6 months; or

(ii) in any other case, the date that is 6 months after the first date on which either the employee, or the employee's spouse or partner, becomes the primary carer in respect of the child; or

(b) if the employee, or the employee's spouse or partner, qualifies for extended leave under section 23(1)(b)(ii) (which applies to employees who meet the 12-month employment test),—

(i) in the case of a child born to the employee, or to the employee's spouse or partner, the date on which the child attains the age of 12 months; or

(ii) in any other case, the date that is the first anniversary of the first date on which either the employee, or the employee's spouse or partner, becomes the primary carer in respect of the child.

(4) No employee is entitled to start or continue any period of extended leave under this Act after—

(a) the applicable end date; or

(b) the date on which the employee ceases to have care of the child in respect of whom the extended leave is taken.

(5) Subsection (1) is subject to subsection (4) and section 28.

(6) Subsection (4) prevails over all other provisions of this Act.

Extended leave can be taken consecutively or concurrently by the employee and their spouse or partner (if they meet the criteria to get the leave)

29 Extended leave may be taken consecutively or concurrently with leave taken by partner
Subject to the provisions of this Act, if an employee takes a period of extended leave in accordance with section 28, the period of leave so taken may be taken—

(a) consecutively with any period of primary carer leave or partner's leave taken by the employee; and

(b) consecutively or concurrently with any period of primary carer leave, partner's leave, or extended leave taken by the employee's spouse or partner, or with any period for which the employee's spouse or partner receives a parental leave payment, as the case may be.

Keeping in touch days

Keeping in touch days is where an employee can return to work during the 22 weeks paid by the government (increasing to 26 weeks from 1/7/20) and it is not considered an actual return to work. The concept behind this is to ensure that the employee is not disadvantaged on their return from parental leave by using "keeping in touch days" to be kept up to date with workplace developments. The employer has to agree to keeping in touch days.

Important to note:

- The employee cannot return to the workplace within 28 days of the date of birth of the child.
- The employee can only work a total of 52 keeping in touch hours. This increases to 64 keeping in touch hours from 1/7/20

If the employee breaks either of these conditions then they are treated as having returned to work, and parental leave stops.

What this will mean for payroll is the number of hours worked must be monitored to ensure the employee does not go over 52 hours (64 hrs from 1/7/20), unless that is wanted, as this will stop parental leave for the employee. The rate for the hours worked would be based on what is stated in the employee's employment agreement.

71CE Keeping-in-touch days

(1) An employee is not to be treated as having returned to work because he or she performs 52 hours or fewer of paid work for his or her employer during the employee's parental leave payment period, if that work is performed on keeping-in-touch days in accordance with subsection (2).

(2) An employee may perform 1 or more hours of paid work for his or her employer on a keeping-in-touch day if—

(a) both the employee and the employer consent to the employee performing work for the employer on that day; and

(b) the day is not within 28 days after the date on which the child in respect of whom the employee took parental leave was born.

(3) An employee is treated as having returned to work, and all parental leave payments received by the employee in respect of a period after the date on which the employee is treated as having returned to work are recoverable under section 713 as an overpayment, if the employee—

(a) performs paid work for his or her employer within 28 days after the date of birth of the child; or

(b) performs more than a total of 52 hours of paid work for his or her employer during a period of paid parental leave.

(4) Subsections (2) (b) and (3) (a) do not apply to an employee if the parental leave payment the employee receives is in respect of a child born before the end of the 36th week of gestation.

Negotiated carer leave

Negotiated carer leave is for an employee that does not fit the requirements under primary carer leave. This could be in regard to a period 3 months before the expected date of delivery of a child or at least 14 days from when the employee expects to become the primary carer in respect of a child.

For example, it could mean an extended family member becomes the primary carer when the parents of the child are unable to do so. This is not about babysitting a child from time to time – this is about the employee becoming the primary carer for the child. So, to get negotiated carer leave the employee must make a formal request to their employer.
Section 30B sets the criteria as to whether an employee is eligible to make a request for negotiated carer leave.

30B Employee may make request

(1) This section applies to an employee who—
(a) is not entitled to primary carer leave; but
(b) is entitled to parental leave payments under section 71D(1) if the employee takes leave from the employee's employment for the period during which the employee intends to receive parental leave payments.
(2) An employee to whom this section applies may make a request to his or her employer for negotiated carer leave.
(3) The request must be made,—
(a) in the case of an employee who wishes to take negotiated carer leave in respect of a child to be born to the employee or to the employee's spouse or partner, at least 3 months before the expected date of delivery; or
(b) in any other case, at least 14 days prior to the date on which the employee intends to become the primary carer in respect of the child.

There are a range of requirements that must be met by the employee when making the request and these are detailed in Section 30C (see below).

30C Requirements relating to request

A request for negotiated carer leave must be in writing and must—
(a) state—
(i) the employee's name; and
(ii) the date on which the request is made; and
(iii) that the request is made under this Part; and
(b) specify the proposed date on which the employee wishes to begin negotiated carer leave and the proposed duration of the leave; and
(c) include a statement that the employee—
(i) will be the primary carer in respect of the child during the specified period; and
(ii) will, if the request for a period of negotiated carer leave is approved, be entitled to receive parental leave payments under the Act for that period; and
(d) explain, in the employee's view, what changes, if any, the employer may need to make to the employer's arrangements if the employee's request is approved.

Once the request has been made, the employer has no later than a month to come back to the employee on whether their application has been accepted or not. Under Section 30E the employer does have a number of grounds for declining an application for negotiated carers leave.

30E Grounds for refusal of request by employer

(1) An employer may refuse a request for negotiated carer leave only if the employer determines that the request cannot be accommodated on 1 or more of the grounds specified in subsection (2).
(2) The grounds are—
(a) inability to reorganise work among existing staff:
(b) inability to recruit additional staff:
(c) detrimental impact on quality:
(d) detrimental impact on performance:
(e) planned structural changes:
(f) burden of additional costs:
(g) detrimental effect on ability to meet customer demand.

Employee returning to work early

Even if an employee has applied for parental leave and then takes it, they can return to work early in certain situations from extended leave.

Section 45 details in what circumstances the employee can return to work from parental leave early.

45 Early ending and extension of parental leave

(1) Subject to compliance with section 39(2), an employee who is on parental leave may,—

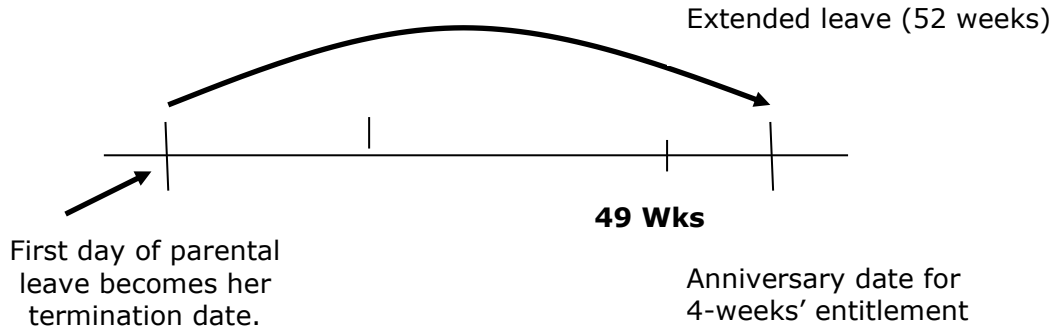
(a) if the employee or the employee's spouse or partner suffers a miscarriage; or
(b) if the child is stillborn or dies; or
(c) if the employee or the employee's spouse or partner fails to become or ceases to be the primary carer in respect of the child; or
(d) [Repealed]
(e) if the employer consents,—
choose—
(f) where the employee's position is being kept open by the employer, to end the parental leave by returning to work before the date on which the employee is required to return to work at the end of the parental leave; or
(g) in any other case, to end the parental leave and begin the period of preference.

Employee not returning to work from parental leave

If an employee does not return from parental leave, the first day of parental leave becomes their termination date. Any annual holiday entitlement earned after that date would be lost. Any annual holiday entitlement and accrual that was present prior to the termination date would need to be paid out to the employee in their termination pay.

Example: Employee does not return to work from parental leave

Hope applies for 52 weeks of extended leave as she has been in the job for 14 months and this has been approved. Forty-nine weeks into her extended leave, she contacts her employer and tells them she won't be returning.



If the employee does not return from parental leave, any entitlement earned while on parental leave is lost, and the termination date becomes the first day of parental leave.

Section 46. Failure to return to work
If an employee who takes up parental leave and whose position is kept open by the employer—

(a) fails, without good cause, to return to work at the end of that period of parental leave; or

(b) informs the employer, before the end of that period of parental leave, that the employee has decided not to return to work at the end of the period of parental leave—

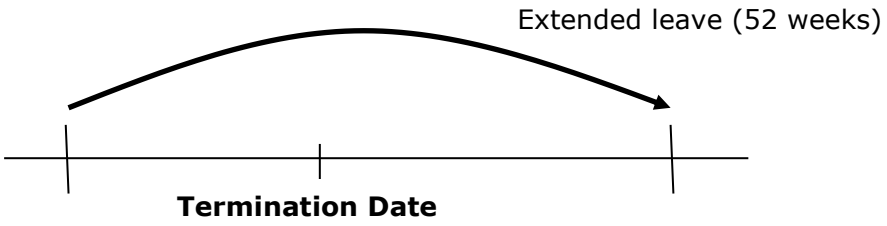
the employee's employment shall, subject to any agreement between the employer and the employee, be deemed to have been at an end as from the day on which the period of parental leave began.

Employee made redundant while on parental leave

If an employee is made redundant while on parental leave (i.e. it is not the person but the position that is no longer needed), any agreed redundancy payment would still be payable even though the employee is on parental at the time of redundancy.

Example: Employee made redundant while on parental leave

Linda has been on parental leave for 26 of the 52 weeks' extended leave she was entitled to take. The company contacts her about a possible redundancy situation, and after the process is completed, Linda's position with the company is made redundant.



The termination date for the employee happens during the parental leave period and the employee will get their notice period and redundancy compensation (if provided for in the employment agreement).

53 Redundancy payments not affected

Nothing in this Act shall affect any redundancy payment payable pursuant to the provisions of any Act or of any order or employment agreement.

Effects of parental leave on annual holidays

In the Holidays Act 2003 section 16, parental leave is counted as continuous employment; this means any staff on parental leave under this act will be accruing annual leave entitlement. This section excludes the use of ordinary weekly pay, so the calculation for holiday pay is based on average weekly earnings over a 12-month period.

Section 42. Employer's obligations with respect to remuneration and holiday pay

(1) Subject to subsections (2) and (3) of this section, the employer of an employee who takes any form of parental leave in accordance with this Act shall not be obliged to pay that employee any remuneration for—

(a) any period of the employee's parental leave under this Act; or

(b) any period during which the employee is entitled under this Act, following any period of parental leave, to preference in obtaining employment with the employer.

(2) If an employee becomes entitled to an annual holiday on pay during—

(a) a period of parental leave under this Act; or

(b) a period of preference in obtaining employment; or

(c) the period of 12 months commencing with the date on which the employee returns to work after a period of parental leave under this Act or a period of preference in obtaining employment—

the employee is, despite anything in section 21 of the Holidays Act 2003, entitled to holiday pay for that holiday only at the rate of the employee's average weekly earnings (as defined in section 5 (1) of the Holidays Act 2003) for the 12 months immediately before the end of the last pay period before the annual holiday is taken or paid out.

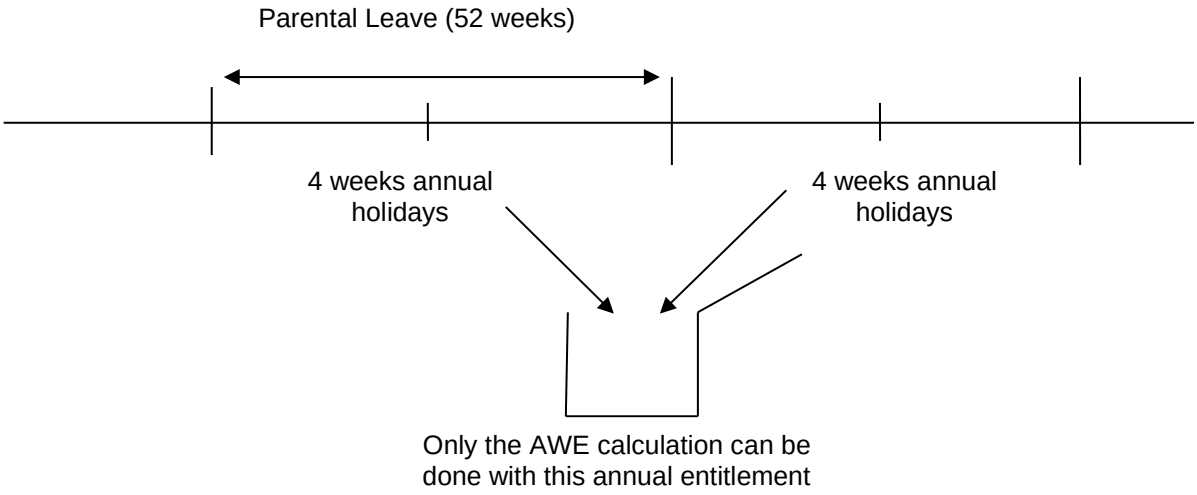
Effects on annual holiday entitlement when returning from parental leave

Section 42 of the Parental Leave and Employment Protection Act stops the use of the ordinary weekly pay calculation for any annual leave entitlement earned while on parental leave or in the 12 months after returning to work. The only calculation that can be done is the average weekly pay calculation (52 weeks).

Annual leave earned prior to going on parental leave is not affected.

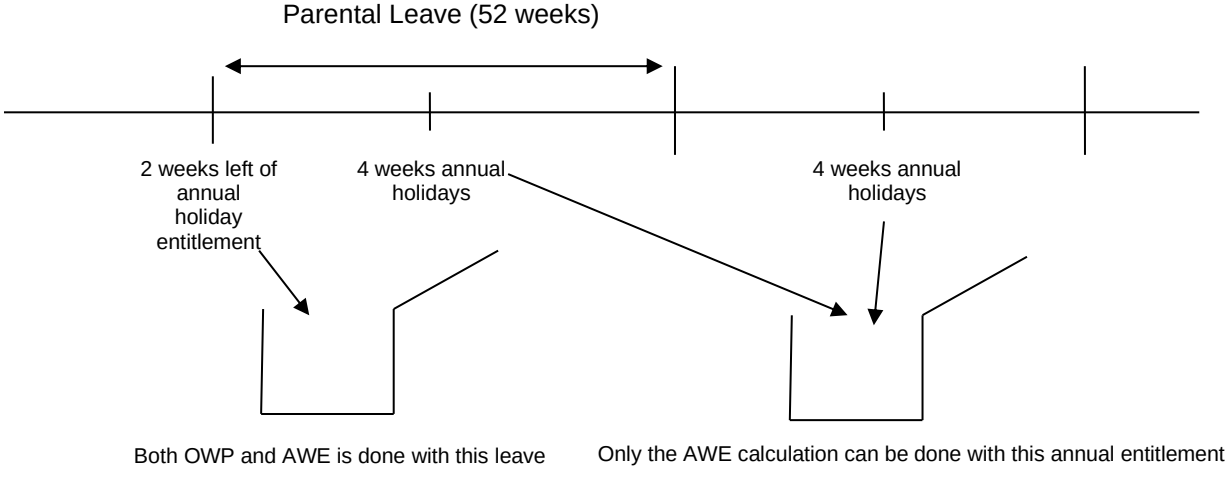
Example 1: Annual leave earned while on parental leave

Any annual holiday pay earned while on parental leave and in the 12 months on return to work cannot use the OWP calculation. This means AWE is used, so that any employee taking this on their return to work could take their annual holiday, but it would have no value.



Example 2: Annual leave earned *before* taking parental leave and not used

Any annual holiday earned prior to going on parental leave is not under the same rules, so both OWP and AWE apply.



Forms used by employers to respond to parental leave requests
There are three forms that employers would use in responding to parental leave requests.

Name of form	Description of form
Form 1 Declaration as to assumption of responsibility for care of child by primary carer	This form must accompany an application for parental leave, or for a parental leave payment, by a primary carer who is not the biological mother or her spouse or partner
Form 2 Notice about entitlement to parental leave	This form is to be given to an employee within 21 days after the employer receives notice that the employee wishes to take parental leave.

Form 1

Form 1 Declaration as to assumption of responsibility for care of child by primary carer

This form must accompany an application for parental leave, or for a parental leave payment, by a primary carer who is not the biological mother or her spouse or partner, if that person does not have—

(a) a court order that has the effect of placing the child in his or her day-to-day care or custody; or

(b) a letter from the chief executive of the Ministry of Social Development, or an organisation approved under section 396 of the Oranga Tamariki Act 1989, confirming the date on which the person became or will become the primary carer in respect of the child.

Declaration
I, [*name*] of [*address, occupation*], solemnly and sincerely declare that I have/will have* permanent primary responsibility for the care, development, and upbringing of the following child:

Child's full name: [*name*]

Child's date of birth: [*date*]

The child came/will come into my care on [*date*].

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Form 2

Form 2 Notice about entitlement to parental leave

Section 36, Parental Leave and Employment Protection Act 1987

This form is to be given to an employee within 21 days after the employer receives notice that the employee wishes to take parental leave.

To [*name and postal address of employee*]

1 Your notice stating that you wish to take parental leave is acknowledged.

2 *For this paragraph select the statement that applies.*

You are entitled to take parental leave commencing on [*date*] and ending on [*date*].

or

You are not entitled to take parental leave because, at the expected date of delivery of the child/at the date on which you will assume responsibility for the care of the child*, you will not have been employed for at least an average of 10 hours a week over the immediately preceding 6 months or 12 months.

*Select one.

or

You are not entitled to take parental leave because [*state reasons why employee is not entitled to take parental leave*].

3 *Select this paragraph if the employee is entitled to take parental leave.*

Your employment can/cannot* be kept open until the end of your parental leave.

*Select one.

4 *If the employment cannot be kept open, select the statement that applies; otherwise, omit this paragraph.*

Your employment cannot be kept open because of the occurrence of a redundancy situation.

or

Your employment cannot be kept open because your period of leave exceeds 4 weeks and a temporary replacement is not reasonably practicable due to your position being a key position.

5 *Omit this paragraph if it does not apply.*

You will, for the period of 26 weeks beginning with the day after the date on which your parental leave ends, be given preference over other applicants for any position that is vacant and that is substantially similar to the position held by you at the beginning of your parental leave.

6 *Omit this paragraph if it does not apply.*

You may, by making a parental leave complaint under section 56 of the Parental Leave and Employment Protection Act 1987, dispute my statement that you are not entitled to take parental leave or that your position cannot be kept open. If you wish to make a complaint, do not delay, because the time for making such a complaint is limited. Your union representative, your solicitor, or the Ministry of Business, Innovation, and Employment will advise you.

Date:

Signature of employer:

Information about parental leave under the Parental Leave and Employment Protection Act 1987

1 Employees are eligible for—

(a) up to 52 weeks' parental leave from their employment with an employer if, on the relevant date, they will have worked for the same employer for at least 12 months for at least an average of 10 hours a week; or

(b) up to 26 weeks' parental leave from their employment with an employer if, on the relevant date, they will have worked for the same employer for the immediately preceding 6 months for at least an average of 10 hours a week.

The relevant date is the expected date of delivery of the child or the date on which the employee first becomes the primary carer in respect of the child.

2

In most cases, the employer must keep the employee's job open until the employee's parental leave ends. The main exceptions to this are if the employer proves that there is a redundancy situation and, in the case of parental leave of more than 4 weeks, if the employer proves

that the employee's position cannot be kept open because a temporary replacement is not reasonably practicable due to the employee's key position. Whether an employee's position is a key position depends on the circumstances of each case, including the size of the employer's enterprise and the training period or skills required for the job. Your union representative, your solicitor, or the Ministry of Business, Innovation, and Employment will be able to advise you further.

Entitlements for employees with 12 months' service

3 Primary carer leave, partner's leave, and extended leave are available to employees who have worked for the same employer for at least an average of 10 hours a week over the immediately preceding 12 months. Primary carer leave and extended leave amount to 52 weeks, which may be shared by the spouses or partners in the child's first year. The period of 52 weeks may be exceeded as follows:

(a) a biological mother may start her primary carer leave early if directed to do so by her lead maternity carer or by her employer:

(b) the biological mother's spouse or partner may take up to 2 weeks of partner's leave.

Primary carer leave must be taken in 1 continuous period not exceeding 22 weeks.

Entitlements for employees with 6 months' service

4 Primary carer leave, partner's leave, and extended leave are available to employees who have worked for the same employer for at least an average of 10 hours a week over the immediately preceding 6 months. Primary carer leave and extended leave amount to 26 weeks, which may be shared by the spouses or partners in the child's first year. The period of 26 weeks may be exceeded as follows:

(a) a biological mother may start her primary carer leave early if directed to do so by her lead maternity carer or by her employer:

(b)

the biological mother's spouse or partner may take up to 1 week of partner's leave.

Primary carer leave must be taken in 1 continuous period not exceeding 22 weeks.

Commencement of primary carer leave

5 Primary carer leave for all employees (whether they qualify on the basis of 6 or 12 months' service) may begin—

(a) up to 6 weeks before the expected date of delivery (in the case of a child born to the employee) if the biological mother gives to her employer not less than 21 days' notice in writing of that date; or

(b) if paragraph (a) does not apply, no earlier than the date on which the employee first becomes the primary carer in respect of the child; or

(c) on any date before the date of confinement that is agreed between the primary carer and his or her employer; or

(d) on a date specified by the biological mother's lead maternity carer if—

(i) the biological mother is pregnant; and

(ii) the lead maternity carer certifies that, in his or her opinion, the biological mother should begin her maternity leave on that date; and

(iii) the biological mother gives the certificate to her employer; or

(e) on a date appointed by the biological mother's employer if—

(i) the biological mother is pregnant; and

(ii) the biological mother is unable, by reason of her pregnancy, to perform her work safely, or is incapable of performing her work adequately; and

(iii) there is no other suitable work available.

A woman who is pregnant is entitled, before taking primary carer leave, to take a total of up to 10 days' special leave without pay for reasons connected with her pregnancy.

If, by reason of pregnancy, a woman is unable to perform her work safely, or is incapable of performing her work adequately, her employer may temporarily transfer her to another job.

Schedule 2 form 2 note 3: amended, on 1 July 2018, by section 15 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Schedule 2 form 2 note 4: amended, on 1 July 2018, by section 15 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

IR880 – Paid parental leave application for an employee

The government-funded paid parental leave scheme is administered through the IRD. When applying for paid parental leave the employee will fill out an IR880 form.

Important note: The parental leave payment is not paid for by the employer, it is a government-funded payment.

It is up to the employee to forward this to the IRD.

This form can be downloaded at:
http://www.ird.govt.nz/forms-guides/number/forms-800-899/ir880-form-paid-parental-leave-app.html

The second page is to be completed by the employer. Once completed give the completed form back to the employee whose responsibility it is to return it to the IRD.

Skill Check – Parental Leave

1. List the five types of leave under the Act?

2. Under carers leave how many weeks can be taken?

3. How long does the employee have to work to be able to take 52 weeks of extended leave?

4. How much notice does the employee have to give the employer when making an application to take parental leave?

5. How many hours can be worked for keeping in touch hours?

6. Can an employee take more than one period of extended leave until the child turns 1?

7. What is the employment test for 6 and 12 month for parental leave?

Other types of leave

In this section we will cover some of the other types of employee leave you may come across or have staff ask about. Some of the types of leave are based on legislative requirements while others are based on agreement.

If the leave provision is based on agreement you must learn what the rules are for your workplace because this will not be a standard entitlement.

The types of leave that are covered in this section are:

- Jury service and witness leave
- Education Leave under the ERA 2000
- Domestic leave & special leave
- Long service leave (LSL)
- Company holidays
- Volunteers Employment Protection Act 1973
- Civil Defence Emergency Management Act 2002
- Discretionary leave
- Time off in lieu (TOIL)
- Stress leave

Jury service and witness leave

When an employee is summoned to appear for Jury Service there is no express statutory requirement to pay employees.

Many employment agreements do contain terms that have the employer paying the employee while on jury service. This is a choice for the employer to make.

Common trends in paying employees while on jury service:

- The employer requests that the employee direct any payment from the court to the employer while the employer continues to pay their usual wage/salary.

- The employer tops up the difference between what is paid by the court and what the employee would have been earning

Please note

> Some cases before the court may require the employee to be away from work for a lengthy period of time. Some employers specify a fixed duration for the payments they are willing to make. For instance, the employer will pay for the first three weeks of jury service only.

A typical clause that may be included in an employee's employment agreement:

Jury duty
Where the Employee is called for jury duty, the Employer shall continue the Employee's full pay for the duration of the jury service for days that would otherwise have been working days, and the Employee will pay to the Employer any juror's fees received by them.

Note: Clause from www.employment.govt.nz

Education leave under the ERA 2000

Only employees who are members of a union are eligible to education leave under the ERA 2000.

The purpose of this leave is to give employees training in employment relations.

The entitlement is based on what is set out in section 74(1) of the Employment Relations Act 2000.

74. Calculation of maximum number of days of employment relations education leave

(1) The maximum number of days of employment relations education leave that a union is entitled to allocate in respect of an employer is based on the number of full-time equivalent eligible employees employed by the employer as at the specified date in a year, and is determined in accordance with the following table:

Full-time equivalent eligible employees as at the specified date in a year	**Maximum number of days of Employment Relations Education leave that union is entitled to allocate**
1-5	3
6-50	5
51-280	1 day for every 8 full-time equivalent eligible employees or part of that number
281 or more	35 days plus 5 days for every 100 full-time equivalent eligible employees or part of that number that exceeds 280

(2) For the purposes of calculating the number of full-time equivalent eligible employees employed by an employer—

(a) an eligible employee who normally works 30 hours or more during a week is to be counted as 1

(b) an eligible employee who normally works less than 30 hours during a week is to be counted as one-half.

Domestic and special leave

Domestic and special leave are extra entitlements and are not covered by legislation.

Domestic leave

It is important to clearly understand if this is actually extra entitlement or just a clause that links to the minimum entitlement that the employee already gets.

For instance a typical domestic leave clause could read as the following:

> *"After six months continuous employment with the employer the employee can take up to 5 days of domestic leave to support their partner or family member who is sick or injured. The 5 days of domestic leave will come off the employee's sick leave entitlement."*

If domestic leave is not linked to minimum entitlement you will need to look for how it is calculated. You may have to look at the history of the payment to see how it has been paid in the past. If not detailed, typically it would be an average daily rate calculation.

Special leave

Special leave was mentioned earlier—it is an old term that combines sick and bereavement leave under one entitlement.

Some employers used the term "special leave" for other types of leave. If you see it being used, look at the employment agreement or leave policy to get an understanding of its purpose, criteria and hopefully how it is calculated.

If you come across special leave that is about sick and bereavement leave entitlement, it is important that the employment agreement is reviewed as this does not meet legislative requirements.

Notes

Long service leave

This is not a statutory entitlement. The only time an employee has the right to long service leave is when it has been negotiated between the parties.

Long service entitlement is linked to service. This means if the employee stays in the position to a point in time defined in the employment agreement or policy the employee will become eligible for long service leave. The amount of leave and what the employee is paid is by agreement.

Things to consider

Long service leave is based on length of service and is seen as a reward. Clearly understand what the criteria are for this.

Take a long-term view of how this will work, because changing it later on can seriously affect employer and employee relationships.

Employment agreements that provide for long service leave generally provide for either an additional week or weeks of leave:

1. Every year after a prerequisite number of years of service; or
2. For the year at specified anniversaries of service.

Decide what the rules are in relation to long service leave, for instance:

- Can it be cashed up?
- When can it be taken and if not taken does the employee lose it?
- Can it be cashed up if the employee leaves?
- What will the rate for it be based on?

Company holidays

Some organisations give extra days as company holidays to its employees; these are not covered by legislation—they are considered extra entitlements.

For instance the Department of Defence gives its employees three days between the Christmas and New Year statutory holidays. These are called defence force holidays and are written into employee employment agreements.

Study leave

There is no statutory requirement to provide study leave to employees. There may be a continual entitlement based in the employment agreement or even an agreement made at the beginning of employment.

There are two things to consider in regard to study leave:

- Actual time off work to attend study
- Reimburse or repayment of course fees

If the employee plans to include study leave provisions for employees, here are some pointers:

If you are offering to reimburse employees for studies undertaken ensure it is clearly stated that reimbursement will be given on successful completion of the studies.

Include a bond mechanism so the employee will have to repay study leave if they leave soon after completing their studies.

A typical clause that may be included in an employee's employment agreement:

Study entitlements
Where the Employee is undertaking study approved by the Employer, the Employee shall be entitled to the following:
(i) a contribution towards course fees of **[insert amount]**;
(ii) paid time off to attend examinations, provided such time is reasonable having regard to the Employer's operational requirements;
(iii) reasonable assistance with child care, as agreed in advance.

Personal development
At the completion of each 12 month period of service with the Employer the Employee shall be entitled to [insert amount] by way of a grant to attend a course or training which has been approved by the Employer, such approval not to be unreasonably withheld.

Note: Clauses from www.ers.govt.nz

Volunteers Employment Protection Act 1973

The Volunteers Employment Protection Act 1973, an Act to make provision for the protection of the employment of volunteers to Her Majesty's Armed Forces was introduced in 1973 when New Zealand abolished compulsory military training.

When employment protection is available

Unpaid "volunteers' leave" is available to members of the territorial or reserve forces in the following three circumstances:

- Protected voluntary service or training
- Declaration of national interest (look at the act for the criteria)
- War and emergency (look at the act for the criteria)

Protected voluntary service or training

The most common of the three types of military service leave would be the first. The main points to consider are:

- For periods of whole and part-time voluntary service or training of, respectively, 3 months and 3 weeks, in any training year.
- An employee who takes 3 months "whole-time" service is entitled to an extended leave period not exceeding 7 days when service ends.
- Employee has to give not less than 14 days' notice of their intention to go on 3 months' or 3 weeks' voluntary service or training.

Important section of the act:

[7B Contributions to superannuation schemes

Nothing in section 7A(b)(ii)—

(a) entitles an employee to have any period counted as service for the purposes of a superannuation scheme if the employee is required to pay contributions in respect of that period and has not done so; or

(b) relieves an employee from any obligation under a superannuation scheme to pay contributions in respect of any period during which the employee is on leave under this Part.**]**

8 Annual holidays

(1) For the purpose of ascertaining the rights of any **[**employee**]** to annual or periodical holidays or leave with pay, and the obligations of his employer in relation thereto, whether under the [Holidays Act 2003] or otherwise, where the time served by the **[**employee**]** in the employment of that employer is interrupted by the **[**employee's**]** protected voluntary service or training, the period of the leave of absence to which he is entitled under section 4 of this Act in respect of that service or training shall be deemed to be time served in that employment.

(2) Where an employer is required to allow annual or periodical holidays or leave to any **[**employee**]**, the holidays or leave shall not, except at the request of the **[**employee**]**, be allowed at times comprised within any period of protected voluntary service or training.

9 Other holidays

Where any **[**employee**]** who is employed by any employer performs or undergoes any protected voluntary service or training, the rights of the **[**employee**]** to be allowed any day as a holiday on full pay during the period of that service or training, and the obligations of his employer in relation thereto, shall be ascertained as if the **[**employee**]** had ceased to be employed by the employer at the beginning of that service or training.

Notes

14P Employer's obligations in respect of remuneration and holiday pay

(1) Subject to subsection (2), the employer of an employee who takes leave under Part 2 or Part 3 is not obliged to pay that employee any remuneration for—

(a) any period of the employee's leave under Part 2 or Part 3; or

(b) any period during which the employee is entitled under this Act, following any period of leave under Part 2 or Part 3, to preference in obtaining employment with the employer.

(2) If an employee becomes entitled to an annual holiday on pay during—

(a) a period of leave under Part 2 or Part 3; or

(b) a period of preference in obtaining employment; or

(c) the period of 12 months commencing with the date on which the employee returns to work after a period of leave under Part 2 or Part 3 or a period of preference in obtaining employment—

the employee is, despite anything in section 21 of the Holidays Act 2003, entitled to holiday pay for that holiday only at the rate of the employee's average weekly earnings for the 12 months immediately before the end of the last pay period before the annual holiday.**]**

Employment agreement clause to cover military service

There is no legal requirement to have a clause to cover this type of leave but here is an example of what the clause could look like:

Volunteers Employment Protection
Leave for training or service in the Reserve Forces shall be covered by the Volunteers Employment Protection Act 1973.

Note: Clause from www.ers.govt.nz

Civil Defence Emergency Management Act 2002

The Civil Defence Emergency Management Act 2002 makes provision for the protection of the employment of volunteers during a declared state of emergency.

112. Absence on duty not to affect employment rights

(1) No person who is required by the Director or a Controller to be absent from his or her accustomed employment on civil defence emergency management duties during a state of emergency is liable to dismissal from that employment merely because of his or her absence on civil defence emergency management duties, whether or not his or her accustomed employer has consented to that absence.

(2) A person is to be treated as having been required by the Director or a Controller to be absent from his or her employment on civil defence emergency management duties if the person was so required personally or was required to participate in the duties performed by an organisation so required.

(3) Nothing in this section is to be construed as imposing on the employer of any person any obligation to pay to him or her any remuneration in respect of any period of absence from his or her employment on civil defence emergency management duties.

Stress leave

It is a requirement of the Health and Safety in Employment Act to provide a safe working environment. This also includes ensuring staff are not exposed to stress to the point that it becomes a health concern.

There is no such thing as stress leave!

The employer that includes a stress leave clause in their employee's employment agreement or in policy or procedures is admitting that the workplace causes stress to the employees working in it. If an employee makes a claim of stress in the workplace this express reference to stress by the employer would not aid in its defence.

The employer should be actively ensuring that stress is managed in the workplace so it does not impact in an adverse way on its employees. Reduce or remove causes of stress in the workplace and make sure staff take their leave.

If a person is suffering stress and is unable to work they should be placed on sick leave (if they have entitlement) not stress leave. If they have no entitlement it would be in the best interest of the employer to put them on leave and pay them until the cause can be identified (quickly) if this is workplace stress.

Notes

Discretionary leave

Discretionary leave is just what it means—leave that is discretionary. It has no set nature and employees should not expect it as a given. It is at the complete sole of the employer to give it at all.

There is no legislative requirement to have or give discretionary leave to employees.

If the employer decides to give an employee discretionary leave it should be in writing stating it is confidential and not to be discussed with other employees, how many days/weeks will be provided and at what rate it will be paid.

The most important point to keep in mind when deciding to give an employee discretionary leave is: **does it set a precedent in the workplace**?

For instance

> The employer that gives an employee two days off to mourn the death of their pet dog because the employee considers their pet to be their child because of being childless.

This may set a precedent that will see other employees approach the employer on the same grounds. Potentially the employer could be faced with a personal grievance if they refused to give leave to other employees under an unjustifiable disadvantage.

Time Off In Lieu (TOIL)

Time Off In Lieu (TOIL) is used by a number of employers so they don't have to pay overtime, instead the employee takes time off.

For this reason the payroll practitioner might not make any payments for this type of leave, but instead may be involved in recording any TOIL and reporting totals to managers.

If TOIL is used in the workplace it may be identified in three ways:

- It is a clause in the employee's employment agreement
- It is included in a policy
- It is a verbal agreement (worst case for a payroll practitioner)

If TOIL is used

For an employer, if the employee agrees, it is a good way to reduce overtime but it will still mean that the employee will be absent from the workplace at some stage.

Things to consider:

- Have a policy in place that any TOIL to be undertaken must be approved by management prior to it being worked.
- That any TOIL accumulated is used within a specific timeframe to stop large balances from developing (taken within 2 weeks).
- Rules on when TOIL can be taken and how it must fit in with other workplace activities.

Skill Check – Other Types of Leave

1. Does an employer have to pay anything by law to an employee while on Jury Service?

2. How is Education Leave calculated?

3. Is domestic leave a legal requirement?

4. Does an employer need to provide long service leave to an employee?

5. Is leave under the Volunteers Employment Protection Act 1973 counted as continuous employment under the Holidays Act 2003?

6. If a person is stressed and cannot work what type of leave would this be?

Employment Relations Act 2000

In 2000 the Employment Relations Act was passed, replacing the Employment Contracts Act 1991. This was a major shift away from the employer – employee contract relationship, pushing it back to collective negotiations between the employer and a union. Employment contracts were now to be called employment agreements and a new concept of good faith was introduced to set guidelines on how the relationship between employer and employee would be managed.

In this section some of the main sections of the ERA will be covered but this is only an overview.

3 Object of this Act

The object of this Act is---

(a) to build productive employment relationships through the promotion of mutual trust and confidence in all aspects of the employment environment and of the employment relationship:

(i) by recognising that employment relationships must be built on good faith behaviour; and

(ii) by acknowledging and addressing the inherent inequality of bargaining power in employment relationships; and

(iii) by promoting collective bargaining; and

(iv) by protecting the integrity of individual choice; and

(v) by promoting mediation as the primary problem-solving mechanism; and

(vi) by reducing the need for judicial intervention; and

(ab) to promote the effective enforcement of employment standards, in particular by conferring enforcement powers on Labour Inspectors, the Authority, and the court; and

(b) to promote observance in New Zealand of the principles underlying International Labour Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively.

Good faith

The concept of good faith governs how parties who are planning to enter into an agreement deal with each other. It requires open discussion and not misleading or undermining the process of negotiation by their actions (whether employer or employee).

4 Parties to employment relationship to deal with each other in good faith

(1) The parties to an employment relationship specified in subsection (2)

(a) must deal with each other in good faith; and

(b) without limiting paragraph (a), must not, whether directly or indirectly, do anything

(i) to mislead or deceive each other; or

(ii) that is likely to mislead or deceive each other.

Who is an employee?

6 Meaning of employee

(1) In this Act, unless the context otherwise requires, **employee**—

(a) means any person of any age employed by an employer to do any work for hire or reward under a contract of service; and

(b) includes—

(i) a homeworker; or

(ii) a person intending to work; but

(c) excludes a volunteer who—

(i) does not expect to be rewarded for work to be performed as a volunteer; and

(ii) receives no reward for work performed as a volunteer; and

(d) excludes, in relation to a film production, any of the following persons:

(i) a person engaged in film production work as an actor, voice-over actor, stand-in, body double, stunt performer, extra, singer, musician, dancer, or entertainer:

(ii) a person engaged in film production work in any other capacity.

Collective agreements

A collective agreement can be between the employer and one or more parties (unions that represent members who do the same type of work). Employees can form their own union if they form an incorporated society or they can become a member of a union and be represented in negotiations by the union.

In some workplaces you may find that there are a number of unions wanting to represent employees present in the workplace. There is a range of rules involved with the management and application of a collective. Let's have a look at some of the key ones:

If more than one union applies to negotiate for the same group of workers the employer has the right to ask them to consolidate and become parties to one collective agreement.

50 Consolidation of bargaining

(1) This section applies if---

(a) an employer receives 2 or more notices under section 42 from different unions; and

(b) the notices relate, in whole or in part, to the same type of work.

(2) The employer may, within 40 days after receiving the first notice, request each union concerned to consolidate the bargaining initiated by each notice into bargaining for a single collective agreement.

(3) Each union receiving a request under subsection (2) must, within 30 days after receiving the request, ---

(a) agree to the request; or

(b) withdraw the notice given under section 42.

(4) A union that does not comply with subsection (3) is to be treated as if it had withdrawn the notice given under section 42.

(5) If all the unions concerned agree to the request, the bargaining initiated by each notice is consolidated into bargaining for a single collective agreement.

A collective agreement can run from between one and three years—that is a choice that the business needs to make and then reach agreement with the other parties. If a collective agreement expires the agreement's terms and conditions will still apply for 12 months after its expiry. If after that it still has not been renewed then all employees will be deemed to be on individual employment agreements based on the same terms and conditions.

53 Continuation of collective agreement after specified expiry date

(1) A collective agreement that would otherwise expire as provided in section 52(3) continues in force---

(a) if subsection (2) is complied with; and

(b) for the period specified in subsection (3).

(2) This subsection is complied with if the union initiated collective bargaining before the collective agreement expired and for the purpose of replacing the collective agreement.

(3) The period is the period (not exceeding 12 months) during which bargaining continues for a collective agreement to replace the collective agreement that has expired.

An employee can only belong to one collective agreement for the same type of work.

Form and content of a collective agreement

For a collective agreement to be valid the following requirements need to be met.

54 Form and content of collective agreement

(1) A collective agreement has no effect unless---

(a) it is in writing; and

(b) it is signed by each union and employer that is a party to the agreement.

(2) A collective agreement may contain such provisions as the parties to the agreement mutually agree on.

(3) However, a collective agreement---

(a) must contain---

(i) a coverage clause; and

(ii) the rates of wages or salary payable to employees bound by the agreement; and

(ii) [Repealed]

(iii) a plain language explanation of the services available for the resolution of employment relationship problems, including a reference to the period of 90 days in section 114 within which a personal grievance must be raised; and

(iv) a clause providing how the agreement can be varied; and

(v) the date on which the agreement expires or an event on the occurrence of which the agreement is to expire; and

(b) must not contain anything---

(i) contrary to law; or

(ii) inconsistent with this Act.

Coverage clauses

The coverage clause is a compulsory clause in any collective agreement. The coverage clause essentially describes the group of employees that the collective covers. It does this by reference to:

- Work; or
- Type of work; or
- Employees; or
- Type of employees.

57 Employee bound by only 1 collective agreement in respect of same work
If an employee is a member of more than 1 union, the employee is bound by only 1 collective agreement covering the same work done by the employee, being the collective agreement resulting from the bargaining first initiated which covered the employee's work.

Section 58 is an important section because it basically states that you cannot jump from one collective agreement to another covering the same type of work until 60 days before it expires. There is no problem in an employee resigning from the collective and accepting an individual employment agreement at any time.

58 Employee who resigns as member of union but does not resign as employee
(1) A member of a union who is bound by a collective agreement and who resigns as a member of the union but does not resign from his or her employment, may not be subject to any other bargaining for a collective agreement or bound by any other collective agreement until the 60th day before the expiry date of the collective agreement binding on the member before resigning as a member of the union.
(2) For the purposes of subsection (1), the expiry date of a collective agreement is determined under section 52(3) without taking section 53 into account.

30-day rule

If there is a collective agreement that covers the type of work an employee does when starting employment with an employer under a IEA the employee must be paid under the terms of the collective agreement for the first 30 days. If they have any additional terms not covered in the collective agreement these terms can be applied during this period.

62 Terms and conditions for first 30 days of employment of new employee who is not member of union

(1) This section—

(a) applies to a new employee who—

(i) is not a member of a union that is a party to a collective agreement that covers the work to be done by the employee; and

(ii) enters into an individual employment agreement with an employer that is a party to a collective agreement that covers the work to be done by the employee; but

(b) does not apply to an employee who—

(i) resigns as a member of a union and enters into an individual employment agreement with the same employer; or

(ii) enters into a new individual employment agreement with the same employer.

(2) For the purposes of subsection (1)(a), a collective agreement that includes a coverage clause referring to named employees, or the work done by named employees, to whom the collective agreement applies must be treated as covering the work or type of work done by the named employees (whether done by those employees or any other employees).

(3) For the first 30 days after the new employee commences employment with the employer, the employee's terms and conditions of employment comprise—

(a) the terms and conditions in the collective agreement that would bind the employee if the employee were a member of the union (other than any bargaining fee payable under Part 6B); and

(b) any additional terms and conditions mutually agreed to by the employee and employer that are no less favourable to the employee than the terms and conditions in the collective agreement.

(4) If the work to be done by the new employee is covered by more than 1 collective agreement, subsection (3)(a) applies to the collective agreement that binds the greatest

number of the employer's employees in relation to the work the employee will be performing.

(5) No term or condition of employment may be expressed to alter automatically after the 30-day period in a way that makes it less favourable to the employee than the collective agreement.

(6) For an employee who holds a minimum wage exemption permit under section 8 of the Minimum Wage Act 1983, the terms and conditions under subsection (3) are subject to the terms of the permit relating to the wages to be paid.

Obligations for the employer in regard to a collective agreement

- Inform the employee of any applicable employment agreement
- Give the employee a copy of any collective agreement
- Provide information about how they may join the unions that are parties to the collective agreement
- Provide them with the union contact details
- If they join the union they will be bound by the existing collective agreement
- That the 30 day rule applies for all new employees covered by an CEA.

Skill Check: Employment Relations Act Part 1

1. What are the two main responsibilities under Good Faith?

2. What type of employment agreement is a union party to?

3. What is the name of the clause that identifies who belongs to a collective?

4. List three sections that are found in a collective?

5. How long can a collective run for?

6. What happens if a collective expires and then after 12 months?

7. If a new employees work is not covered by a CEA does the 30 day rule apply?

Individual employment agreements

The negotiation of an individual employment agreement is between the employer and employee.

It is important that the potential employee is given a copy of the employment agreement and given the time to seek advice on it. Concerning good faith: you cannot make potential employees a take-it-or-leave-it offer. You must keep an open mind if they come back and want to bargain.

60 Object of this Part

The object of this Part is—

(a) to specify the rules for determining the terms and conditions of an employee's employment; and

(b) to require new employees, whose terms and conditions of employment are not determined with reference to a collective agreement, to be given sufficient information and an adequate opportunity to seek advice before entering into an individual employment agreement; and

(c) to recognise that, in relation to individual employees and their employers, good faith behaviour is—

(i) promoted by providing protection against unfair bargaining; and

(ia) required when entering into and varying individual employment agreements; and

(ii) consistent with, but not limited to, the implied term of mutual trust and confidence in the relationship between employee and employer.

It is very important that you give an employee the chance to take the employment agreements away to get advice. Failure to do so may in effect cause the agreement to become void.

63A Bargaining for individual employment agreement or individual terms and conditions in employment agreement

(2) The employer must do at least the following things:

(a) provide to the employee a copy of the intended agreement under discussion; and

(b) advise the employee that he or she is entitled to seek independent advice about the intended agreement; and

(c) give the employee a reasonable opportunity to seek that advice; and

(d) consider any issues that the employee raises and respond to them.

(3) Every employer who fails to comply with this section is liable to a penalty imposed

The next section covers what needs to be included in an individual employment agreement.

65 Form and content of individual employment agreement

(1) The individual employment agreement of an employee—

(a) must be in writing; and

(b) may contain such terms and conditions as the employee and employer think fit.

(2) However, the individual employment agreement—

(a) must include—

(i) the names of the employee and employer concerned; and

(ii) a description of the work to be performed by the employee; and

(iii) an indication of where the employee is to perform the work; and

(iv) any agreed hours of work specified in accordance with section 67C or, if no hours of work are agreed, an indication of the arrangements relating to the times the employee is to work; and

(v) the wages or salary payable to the employee; and

(vi) a plain language explanation of the services available for the resolution of employment relationship problems, including a reference to the period of 90 days in section 114 within which a personal grievance must be raised; and

(b) must not contain anything—

(i) contrary to law; or

(ii) inconsistent with this Act.

Fixed term agreements

Fixed-term agreements are now a common type of employment agreement used in business. They can be for short-term periods of time or longer depending on the purpose of the work.

Important points to consider if deciding to go into a fixed-term agreement is to clearly include the reasons for the fixed term agreement and the reasons the agreement will come to an end. A fixed-term agreement is not for the purpose of assessing if the person would be suitable for full-time employment.

66 Fixed term employment

(1) An employee and an employer may agree that the employment of the employee will end—

(a) at the close of a specified date or period; or

(b) on the occurrence of a specified event; or

(c) at the conclusion of a specified project.

(2) Before an employee and employer agree that the employment of the employee will end in a way specified in subsection (1), the employer must—

(a) have genuine reasons based on reasonable grounds for specifying that the employment of the employee is to end in that way; and

(b) advise the employee of when or how his or her employment will end and the reasons for his or her employment ending in that way.

(3) The following reasons are not genuine reasons for the purposes of subsection (2)(a):

(a) to exclude or limit the rights of the employee under this Act:

(b) to establish the suitability of the employee for permanent employment:

(c) to exclude or limit the rights of an employee under the Holidays Act 2003.

Probationary clauses

Some employers like to add a probationary clause into their employment agreement. The purpose of a probationary clause is to include a timeframe that covers the employee's initial period of employment when they are being assessed. If the employee does not reach the required standards set for the period it may result in termination of their employment.

The problem with probationary periods is that if performance problems are discovered you have to use the same process you would use for any other employee. In a lot of ways there is no real benefit to the business in having a probationary clause included in an employment agreement.

> ***67 Probationary arrangements***
> *Where the parties to an employment agreement agree as part of the agreement that an employee will serve a period of probation or trial after the commencement of the employment, ---*
> *(a) the fact of the probation or trial period must be specified in writing in the employment agreement; and*
> *(b) neither the fact that the probation or trial period is specified, nor what is specified in respect of it, affects the application of the law relating to unjustifiable dismissal to a situation where the employee is dismissed in reliance on that agreement during or at the end of the probation or trial period.*

90 Day Trial Period

90-day trial periods are restricted to businesses with 19 or fewer employees, to restore protections from unjustified dismissal for most employees when they start a new job.

Businesses with 20 or more employees can continue to use probationary periods to assess an employee's skills against the role's responsibilities. A probationary period lays out a fair process for managing performance issues and ending employment if the issues aren't resolved.

Any trial period must be agreed to by the employer and employee in good faith and in writing as part of the employment agreement. The employer and employee must both bargain in a fair way about a proposed trial period. This includes considering and responding to any issues raised by the new employee.

An employer and employee may agree to a trial period only if the employee has not previously been employed by the employer.

An employee who is given notice of dismissal before the end of a trial period cannot raise a personal grievance on the grounds of unjustified dismissal. He or she may, however, raise a personal grievance on other grounds, such as discrimination or harassment or an unjustified action by the employer that disadvantaged the employee.

If an employee agrees to a trial period, this does not affect his or her entitlements to holidays and leave.

When employment agreement may contain provision for trial period for 90 days or less

67A When employment agreement may contain provision for trial period for 90 days or less

(1) An employment agreement containing a trial provision may be entered into by a small-to-medium-sized employer and an employee who has not previously been employed by the small-to-medium-sized employer.

(2) For the purposes of this section and section 67B,—

> **small-to-medium-sized employer** means an employer who employs fewer than 20 employees at the beginning of the day on which the employment agreement is entered into
>
> **trial provision** means a written provision in an employment agreement that states, or is to the effect, that—
>
> > (a) for a specified period (not exceeding 90 days), starting at the beginning of the employee's employment, the employee is to serve a trial period; and
> >
> > (b) during that period, the small-to-medium-sized employer may dismiss the employee; and
> >
> > (c) if the small-to-medium-sized employer does so, the employee is not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.

Effect of trial provision under section 67A

67B Effect of trial provision under section 67A

(1) This section applies if a small-to-medium-sized employer terminates an employment agreement containing a trial provision under section 67A by giving the employee notice of the termination before the end of the trial period, whether the termination takes effect before, at, or after the end of the trial period.

(2) An employee whose employment agreement is terminated in accordance with subsection (1) may not bring a personal grievance or legal proceedings in respect of the dismissal.

(3) Neither this section nor a trial provision prevents an employee from bringing a personal grievance or legal proceedings on any of the grounds specified in section 103(1)(b) to (j).

(4) An employee whose employment agreement contains a trial provision is, in all other respects (including access to mediation services), to be treated no differently from an employee whose employment agreement contains no trial provision or contains a trial provision that has ceased to have effect.

(5) Subsection (4) applies subject to the following provisions:

> (a) in observing the obligation in section 4 of dealing in good faith with the employee, the small-to-medium-sized employer is not required to comply with section 4(1A)(c) in making a decision whether to terminate an employment agreement under this section; and
>
> (b) the small-to-medium-sized employer is not required to comply with a request under section 120 that relates to terminating an employment agreement under this section.

Employee Hours of work

Under this section the employment agreement must specify hours of work. Sub section 2 is very helpful to payroll on what the employee's days of the week and hours worked each day.

67C Agreed hours of work

(1) Hours of work agreed by an employer and employee must be specified as follows:

(a) in the case of an employee covered by a collective agreement,—

(i) in the collective agreement; and

(ii) if section 61 applies, in the employee's additional terms and conditions of employment included under that section; or

(b) in the case of an employee covered by an individual employment agreement, in the employee's individual employment agreement.

(2) In subsection (1), **hours of work** includes any or all of the following:

(a) the number of guaranteed hours of work:

(b) the days of the week on which work is to be performed:

(c) the start and finish times of work:

(d) any flexibility in the matters referred to in paragraph (b) or (c).

Cancellation of shifts

Section 67G is for the purpose on providing a timeframe and compensation to the employee is a shift has been cancelled by their employer.

67G Cancellation of shifts

(1) This section applies in relation to an employee who is required under the employee's employment agreement to undertake shift work.

(2) The employer must not cancel a shift of the employee unless the employee's employment agreement specifies—

(a) a reasonable period of notice that must be given before the cancellation of a shift; and

(b) reasonable compensation that must be paid to the employee if the employer cancels a shift of the employee without giving the specified notice.

(3) In cancelling a shift of an employee, the employer must—

(a) give the employee the notice specified in the employee's employment agreement under subsection (2)(a); or

(b) if that notice is not given, pay to the employee the compensation specified in the employee's employment agreement under subsection (2)(b).

(4) The period of notice specified under subsection (2)(a) must be determined having regard to all relevant factors, including—

(a) the nature of the employer's business, including the employer's ability to control or foresee the circumstances that have given rise to the proposed cancellation; and

(b) the nature of the employee's work, including the likely effect of the cancellation on the employee; and

(c) the nature of the employee's employment arrangements, including whether there are agreed hours of work in the employee's employment

agreement and, if so, the number of guaranteed hours of work (if any) included among those agreed hours.

(5) Compensation specified under subsection (2)(b) must be determined having regard to all relevant matters, including the following:

(a) the period of notice specified in the employee's employment agreement under subsection (2)(a):

(b) the remuneration that the employee would have received for working the shift:

(c) whether the nature of the work requires the employee to incur any costs in preparing for the shift.

(6) Without limiting subsection (5), an employee is entitled to what he or she would have earned for working a shift if—

(a) the shift is cancelled and the employee's employment agreement does not comply with this section; or

(b) the shift is cancelled, but the employee has not been notified of the cancellation until the commencement of the shift; or

(c) the remainder of a shift is cancelled after the shift has begun.

(7) If an employee whose shift is cancelled is entitled, under his or her employment agreement or under subsection (6), to the remuneration that he or she would have earned for working the shift, that remuneration is a part of the employee's ordinary weekly pay and relevant daily pay for the purposes of sections 8 and 9 of the Holidays Act 2003.

(8) To avoid doubt, nothing in this section enables an employer to cancel an employee's shift if that cancellation would breach the employee's employment agreement.

(9) In this section, **shift** means a period of work performed in a system of work in which periods of work—

(a) are continuous or effectively continuous; and

(b) may occur at different times on different days of the week.

Rest and meal breaks

Employees must have paid rest and unpaid meal breaks. The number and duration will depend on the hours worked.

Employees are entitled to paid rest and unpaid meal breaks that:

- give them a reasonable chance during work periods to rest, refresh and take care of personal matters
- are appropriate for the length of their working day with the employer.

69ZD Employee's entitlement to, and employer's duty to provide, rest breaks and meal breaks

Entitlement and duty

(1) An employee is entitled to, and the employee's employer must provide the employee with, rest breaks and meal breaks in accordance with this Part.

Work period between 2 hours and 4 hours

(2) If an employee's work period is 2 hours or more but not more than 4 hours, the employee is entitled to one 10-minute paid rest break.

Work period between 4 hours and 6 hours

(3) If an employee's work period is more than 4 hours but not more than 6 hours, the employee is entitled to—

(a) one 10-minute paid rest break; and

(b) one 30-minute meal break.

Work period between 6 hours and 8 hours

(4) If an employee's work period is more than 6 hours but not more than 8 hours, the employee is entitled to—

(a) two 10-minute paid rest breaks; and

(b) one 30-minute meal break.

Work period over 8 hours

(5) If an employee's work period is more than 8 hours, the employee is entitled to the rest breaks and meal breaks in accordance with subsections (6) and (7).

(6) During the work period of 8 hours, the employee is entitled to—

(a) two 10-minute paid rest breaks; and

(b) one 30-minute meal break.

(7) During the work period beyond 8 hours (the **subsequent period**), the employee is entitled to the following:

(a) if the subsequent period is 2 hours or more but not more than 4 hours, to one 10-minute paid rest break:

(b) if the subsequent period is more than 4 hours but not more than 6 hours, to—

(i) one 10-minute paid rest break; and

(ii) one 30-minute meal break:

(c) if the subsequent period is more than 6 hours but not more than 8 hours, to—

(i) two 10-minute paid rest breaks; and

(ii) one 30-minute meal break.

Summary of what breaks an employee gets based on hours worked?

Length of employee's	Minimum number of rest and/or meal breaks
2.00 - 4.00	1 x 10 minute paid rest break
4.01 - 6.00 hours	1 x 10 minute paid rest break
	1 x 30 minute unpaid meal break
6.01 - 10.00 hours	1 x 10 minute paid rest break
	1 x 30 minute unpaid meal break
	1 x 10 minute paid rest break
10.01 – 12 hours	1 x 10 minute paid rest break
	1 x 30 minute unpaid meal break
	1 x 10 minute paid rest break
	1 x 10 minute paid rest break
12.01 to 14 hours	1 x 10 minute paid rest break
	First 30 minute unpaid meal
	1 x 10 minute paid rest break
	1 x 10 minute paid rest break
	Second 30 minute unpaid meal
14.01 to 16 hours	1 x 10 minute paid rest break
	First 30 minute unpaid meal
	1 x 10 minute paid rest break
	1 x 10 minute paid rest break
	Second 30 minute unpaid meal
	1 x 10 minute paid rest break

When do the breaks need to be taken?

The employer and employee can agree when the rest and meal breaks are to be taken. Both employers and employees have an obligation to act in good faith when negotiating timing for breaks.

The duty of good faith requires parties to be active and constructive in maintaining a productive employment relationship. It also requires the parties to be responsive and communicative.

Good faith is a two way street. We would expect parties to use their best endeavours to come up with a flexible solution that works for them. The parties can agree any flexibility that is required around the timing of breaks i.e. "that their first 10 minute paid rest break can be taken at the end point of a service delivery run within the first four hours of the work period".

Employers would need to consider their health and safety obligations in agreeing to the timing of breaks (for example, managing the risks that may arise from worker fatigue).

If an employer and employee cannot agree on when breaks must happen, then this applies (summary of Section 69ZE):

Length of employee's work period	Minimum number of rest and/or meal breaks	If the employer and employee cannot agree to the timing of breaks, an employer must provide breaks at the following times, so far as is reasonable and practicable.[i]
2.00 - 4.00 hours	1 x 10 minute paid rest break	In the middle of the work period
4.01 - 6.00 hours	1 x 10 minute paid rest break	One-third of the way through the work period
	1 x 30 minute unpaid meal break	Two-thirds of the way through the work period
6.01 - 10.00 hours	1 x 10 minute paid rest break	Halfway between the start of work and the meal break
	1 x 30 minute unpaid meal break	In the middle of the work period
	1 x 10 minute paid rest break	Halfway between the meal break and the finish of the work period
10.01 – 12 hours	1 x 10 minute paid rest break	Halfway between the start of work and the meal break
	1 x 30 minute unpaid meal break	In the middle of the first 8 hours of work
	1 x 10 minute paid rest break	Halfway between the meal break and the end of the first 8 hours of work
	1 x 10 minute paid rest break	Halfway between the end of the first 8 hours of work and the end of the work period
12.01 to 14 hours	1 x 10 minute paid rest break	Halfway between the start of work and the first meal break
	First 30 minute unpaid meal break	In the middle of the first 8 hours of work
	1 x 10 minute paid rest break	Halfway between the meal break and the end of the first 8 hours of work
	1 x 10 minute paid rest break	One third of the way between the end of the first 8 hours of work and the end of the work period
	Second 30 minute unpaid meal break	Two thirds of the way between the end of the first 8 hours of work and the end of the work period.
14.01 to 16 hours	1 x 10 minute paid rest break	Halfway between the start of work and the first meal break
	First 30 minute unpaid meal break	In the middle of the first 8 hours of work
	1 x 10 minute paid rest break	Halfway between the first meal break and the end of the first 8 hours of work
	1 x 10 minute paid rest break	Halfway between the end of the first 8 hours and the second meal break
	Second 30 minute unpaid meal break	Halfway between the end of the first 8 hours and the end of work
	1 x 10 minute paid rest break	Halfway between the second meal break and the end of work

Wages and time record

One of the two employment records that must be kept by law is the Wages and time record under Section 130 of the ERA.

There is no requirement by law that this information is contained in a payroll system but elements if not all may usually be found within a typical payroll system.

With the changes to focus more on record keeping and enforcement that came from the passing of the Employment Standards Bill the Wages and time record has had some additional sections added.

It is important for payroll to know if requested where to locate this information going back six years and it is important if there are gaps to fix and sort out how this missing information will be collected and stored moving forward. If this record is not held or can be provided by an employer, the employer could face prosecution and or substantial fines.

130 Wages and time record

(1) Every employer must at all times keep a record (called the **wages and time record**) showing, in the case of each employee employed by that employer,—

(a) the name of the employee:

(b) the employee's age, if under 20 years of age:

(c) the employee's postal address:

(d) the kind of work on which the employee is usually employed:

(e) whether the employee is employed under an individual employment agreement or a collective agreement:

(f) in the case of an employee employed under a collective agreement, the title and expiry date of the agreement, and the employee's classification under it:

In section (g) if you have an employee that only works the set hours agreed from their wage and time record, employment agreement or roster then no additional record keeping is required.

> (g) the number of hours worked each day in a pay period and the pay for those hours:

In section (h) the employee and other parties have the right to ask how calculations are undertaken so it is important that payroll practitioners fully understand all calculations that are run in the payroll system or that are done externally to the system. It will not be enough to state "the system does it", you need to show how it is done.

> (h) the wages paid to the employee each pay period and the method of calculation:
>
> (i) details of any employment relations education leave taken under Part 7:
>
> (j) such other particulars as may be prescribed.
>
> (1A) The wages and time record must be kept—
>
> (a) in written form; or
>
> (b) in a form or in a manner that allows the information in the record to be easily accessed and converted into written form.
>
> (1B) If an employee's number of hours worked each day in a pay period and the pay for those hours are agreed and the employee works those hours (the **usual hours**), it is sufficient compliance with subsection (1)(g) if those usual hours and pay are stated in—
>
> (a) the wages and time record; or
> (b) the employment agreement; or
> (c) a roster or any other document or record used in the normal course of the employee's employment.
>
> (1C) In subsection (1B), the **usual hours** of an employee who is remunerated by way of salary include any additional hours worked by the employee in accordance with the employee's employment agreement.

In Section 1D the requirement is to record any additional hours outside those agreed even for employees on salary.

(1D) Despite subsection (1C), the employer must record any additional hours worked that need to be recorded to enable the employer to comply with the employer's general obligation under section 4B(1).

(2) Every employer must, upon request by an employee or by a person authorised under section 236 to represent an employee, provide that employee or person immediately with access to or a copy of or an extract from any part or all of the wages and time record relating to the employment of the employee by the employer at any time in the preceding 6 years at which the employer was obliged to keep such a record.

(3) [Repealed]

(4) Every employer who fails to comply with any requirement of this section is liable to a penalty imposed by the Authority.

(5) An action to recover a penalty under subsection (4) may also be brought by a Labour Inspector.

Skill Check: Employment Relations Act: Part 2

1. Does an IEA have to be in writing?

2. List five sections that must be part of an IEA?

3. What are the three ways a fix term agreement can come to an end?

4. What is the difference between a probationary and a 90 trial?

5. How long must a Wage and Time record be kept?

6. List three sections that are part of a Wage and Time record?

7. Who can request a Wage and Time record?

8. How can you show usual hours of work for an employee to meet the requirements of the Wages and time record?

Employment agreements

Underpinning all employment agreements are the requirements included in the Employment Relations Act 2000. This Act is the main piece of employment legislation in New Zealand.

For a payroll practitioner you will come across the following types of employment agreements:

Type of agreement	**Description**
Permanent	This is for your continuing employees' working hours that have been defined as permanent. The relationship will go indefinitely until either party terminates the agreement.
Part time	Part-time is defined by the agreement. It can state the days and times the part-time employee will work or the number of hours in any one week.
Casual	Even if you have a person working one day they should have an employment agreement. A casual employee is one who works as and when required. They do not have set hours and do not have a pattern of continuous employment like other employees.
Fixed	This type of agreement is for a set period of time, or event or project. Once the agreement reaches the set criteria the relationship finishes.
Collective	To have a collective in a workplace there must be a union as a party to the agreement. One of the most important sections of a collective is the coverage clause because it defines who the agreement applies to.

* One of the most important activities for a payroll practitioner to do is to read and understand the contents of the employment agreements that are present in the workplace.

Golden rules for payroll practitioners in regard to employment agreements:

- Always read the employment agreement as a whole (start to finish).
- Write notes on what you find out and create a guide for payroll.
- Never give advice on its contents if you do not know.
- Clearly define which agreement applies to which employee.

Employment agreement clauses

When reading employment agreements for the first time there are some clauses that payroll practitioners should look out for because they detail how to deduct monies owed to the business from the employee if they do not meet the requirements set in their employment agreement.

Type of clause	**Description**
Start date	This is their actual start date so annual and the other types of leave can be set up to accrue. It also defines what will be the first pay date.
Salary or wages	Are they paid an annual salary or an hourly rate? This may be the difference between paying them the same every week or paying on a timesheet submitted.
Pay date	The day defined in the employment agreement for this employee to be paid (weekly, fortnightly, monthly or something else).
Leave	What has this person been given in regard to leave entitlement—the minimum or something greater? If it is greater what is the agreement on how it will be calculated and paid?
Additional payments (reimbursements, commission, etc.)	What are these—are they payroll-related or accounts? If payroll, what has to be provided as evidence and when are the payments made?
Notice period	The notice period that this employee must give if they resign. If not in the employment agreement it is based on the pay period.
Forfeiture of earnings	This could be a clause that states if the employee does not give the required notice period the notice period will come out of the final pay.
Deduction from wages	For any monies to be taken out of an employee's wages the employer must have written consent. This clause would cover this type of situation. For instance, staff accounts or valuable property not returned.

Mandatory clauses

In order for an individual employment agreement to meet the minimum requirements by law, it must contain at least the clauses listed below, or a derivation thereof.

The text below may not reflect the nature of your agreement (i.e. you may be on an hourly rate rather than a salary, or may be part-time rather than full-time).

Individual employment agreement between an employer and an employee

The parties to this employment agreement are:
1. [insert employer's name], the "Employer"; and
2. [insert employee's name], the "Employee".

Position

The Employee is being employed as [insert title of position].

Duties

The Employee shall perform the duties set out in the Job Description attached to this agreement.

Place of work

The parties agree that the Employee shall perform their duties at [insert location of Employer's premises].

Working hours

The Employee's hours of work shall be [insert number] hours per week on [insert days], between the hours of [insert start and finish times].

Types of pay

The Employee's salary shall be $[insert figure] per annum, which shall be paid [insert pay period] on [insert day on which payment will be made] [insert payment method].

Public holidays

Example - Payment for work on a Public Holiday
The Employee shall be entitled to be paid for the time actually worked on a Public Holiday at the rate of time and a half of their relevant daily pay.

Employment Protection

In the event of a restructuring, as defined in the Employment Relations Amendment Act (No 2) 2004 (being the sale, transfer, or contracting out of all or part of our business), that may affect your future employment, your employer will:
As soon as is reasonably practicable, taking into account the commercial requirements of the business, commence negotiations with the potential new employer concerning the impact of the restructuring on your position and agree on how those negotiations will be conducted.

Negotiate with the potential new employer regarding:

- whether or not it proposes to offer employment to you;
- if so, the terms and conditions on which it proposes to offer employment to you; and
- the proposed date for commencement of employment with the potential new employer.

Resolving employment relationship problems

All employment relationship problems, as defined in the Employment Relations Act 2000, will be dealt with in accordance with the Employment Relations Act 2000.

Equal Pay Act 1972

An employer cannot pay men and women different pay rates for doing the same or substantially similar work if the only difference is their sex (Equal Pay Act 1972).

2A. Unlawful discrimination-

(1) No employer shall refuse or omit to offer or afford any person the same terms of employment, conditions of work, fringe benefits, and opportunities for training, promotion, and transfer as are made available for persons of the same or substantially similar qualifications employed in the same or substantially similar circumstances on work of that description by reason of the sex of that person

(2) Where an employee would be entitled to make a complaint in respect of a breach of this section or make a complaint under the Human Rights Act 1993, the employee may choose one of those entitlements but not both.

3. Criteria to be applied

(1) Subject to the provisions of this section, in determining whether there exists an element of differentiation, based on the sex of the employees, in the rates of remuneration of male employees and female employees for any work or class of work payable under any instrument, and for the purpose of making the determinations specified in subsection (1) of section 4 of this Act, the following criteria shall apply:

(a) For work which is not exclusively or predominantly performed by female employees—

(i) The extent to which the work or class of work calls for the same, or substantially similar, degrees of skill, effort, and responsibility; and

(ii) The extent to which the conditions under which the work is to be performed are the same or substantially similar:

(b) For work which is exclusively or predominantly performed by female employees, the rate of remuneration that would be paid to male employees with the same, or substantially similar, skills, responsibility, and service performing the work under the same, or substantially similar, conditions and with the same, or substantially similar, degrees of effort.

(2) In determining whether there exists an element of differentiation, based on the sex of the employees, in the rates of remuneration for male employees and female employees for any work or class of work, no account shall be taken of any provision in any Act or Order in Council which limits the work female employees may perform.

(3) Subject to any such provision in any Act or Order in Council and to sections 4 to 8 of this Act, no instrument coming into force after the 31st day of March 1973 shall contain classifications of work that differentiate, on the basis of the sex of the employees, in the work which male employees or female employees may perform.

Minimum Wage Act 1983

The minimum wage rates are reviewed every year (if increased it will happen on the 1st April).

From the 1st April 2020 the minimum wage rate will be:

Adult:	$18.90
Starting Out wage workers:	$15.12

The adult minimum wage rates (before tax) that apply for employees aged 16 or over are past, present and future are:

Minimum wage rates from 1st April 2018 to 1 April 2021:

Period	Rate per hour:	for an 8-hour day:	for a 40-hour week:
1st Apr 2021 - 31 Mar 2022	$20.00	$160.00	$800.00
1st Apr 2020 - 31 Mar 2021	$18.90	$151.20	$756.00
1st Apr 2019 - 31 Mar 2020	$17.70	$141.60	$708.00
1st Apr 2018 - 31 Mar 2019	$16.50	$132.00	$660.00

Starting Out Wage Workers & Training

The minimum rates that apply to starting-out workers, and employees on the training minimum wage (before tax), are:

Minimum wage rates from 1st April 2018 to 1 April 2021:

Period	Rate per hour:	for an 8-hour day:	for a 40-hour week:
1st Apr 2021 - 31 Mar 2022	$16.00	$128.00	$640.00
1st Apr 2020 - 31 Mar 2021	$15.12	$120.96	$604.80
1st Apr 2019 - 31 Mar 2020	$14.16	$113.28	$566.40
1st Apr 2018 - 31 Mar 2019	$13.20	$105.60	$528.00

There are three minimum wage rates:

- The **adult minimum wage** applies to all employees aged 16 and over who are not starting-out workers or trainees, and all employees who are involved in supervising or training other employees.

- The **starting-out wage** applies to starting-out workers. Starting-out workers are:

    - **16- and 17-year-old** employees who have not yet completed six months of continuous employment with their current employer.
    - **18- and 19-year-old** employees who have been paid a specified social security benefit for six months or more, and who have not yet completed six months continuous employment with any employer since they started being paid a benefit. Once they have completed six months continuous employment with a single employer, they will no longer be a starting-out worker, and must be paid at least the adult minimum wage rate.
    - **16- to 19-year-old** employees who are required by their employment agreement to undertake industry training for at least 40 credits a year in order to become qualified.

- The **training minimum wage** applies to employees aged 20 years or over who are doing recognised industry training involving at least 60 credits a year as part of their employment agreement, in order to become qualified.

More on the Starting Out Wage

What is the starting-out wage?

The starting out wage is focused on 16 and 17 year olds starting out in the workforce; 18 and 19 year olds who have been on a benefit for six months or more; and 16 to 19 year olds in training in a recognised industry training course involving at least 40 credits a year.

Is the employee eligible? If the employee fits into one of these three groups then they may be eligible for the starting-out wage:	**16- to 17-year-olds** They are eligible for the starting-out wage if they are **hired by any new employer**, until they: • have completed six months of work for that same employer; or • are involved in training or supervising other workers. **Note:** 16- to 17-year-olds remains eligible for a starting-out wage every time they begin work with a new employer.
	16- to 19-year-olds in training They are eligible for the starting-out wage if they are **training for at least 40 credits a year** with an approved provider as part of their employment agreement. People over 16 years old were previously eligible for the training minimum wage if they were training for at least 60 credits a year with an approved provider as part of their employment agreement. The starting-out wage simply means that they will be eligible with a lighter workload than those aged over 20.
	18- to 19-year-olds on a benefit They are eligible for the starting-out wage if they have been **on a benefit for six months or more**, until they: • have completed six months of work (from the time they started on benefit) for that same employer; or • are involved in training or supervising other workers. **However**, once they have completed six months' work they will not be eligible for the starting-out wage for future jobs.

Is the starting-out wage compulsory?

No. It is an option for employers to use if they want to take on a young person. The employee also has to agree to being paid a starting-out wage as part of their employment agreement.

What if an employee who is on a starting out wage starts a new job with a different employer?

16- and 17-year-olds remain eligible for the starting-out wage with every new employer until they complete six months with that same employer. This is regardless of whether they have worked for six months in a different job already. Eligible 18- and 19-year-olds who had been on a benefit and have completed six months of work with the same employer must be paid at least the full adult minimum wage even if they later change employers.

Eligible 18- and 19-year-olds who had been on a benefit and have not yet completed six months continuous work with the same employer are eligible for the starting-out wage. They will remain eligible until they have completed six months continuous work with an employer.

How is 'six months' continuous employment' defined?

It is from the first day of work, until six calendar months are up – regardless of how many hours are worked per week. This is to keep the system simple and easy to administer for employers and workers.

How much is the starting-out wage worth?

The starting-out wage is set at 80 per cent of the adult minimum wage. This includes the 'training rate' element of the starting-out wage for 16- to 19-year-olds which is set at the same rate as the previous new entrants' and training minimum wages.

40 Hours, 5 Days a Week Clause

The Minimum Wage Act states employment agreements should not be set at more than 40 hours and that employees should work no more than five days. This is seen as more of a concept because the clauses under this section state that by agreement the employee can do more.

[11B 40-hour 5-day week

(1) Subject to subsections (2) and (3), every employment agreement under the Employment Relations Act 2000 must fix at not more than 40 the maximum number of hours (exclusive of overtime) to be worked in any week by any worker bound by that employment agreement.

(2) The maximum number of hours (exclusive of overtime) fixed by an employment agreement to be worked by any worker in any week may be fixed at a number greater than 40 if the parties to the agreement agree.

(3) Where the maximum number of hours (exclusive of overtime) fixed by an employment agreement to be worked by any worker in any week is not more than 40, the parties to the agreement must endeavour to fix the daily working hours so that those hours are worked on not more than 5 days of the week.**]**

Notes

Minimum wage exemption permits

An under-rate worker is an employee with a physical or mental disability that is not performing at the standard rate, as a result of which an employer can (if approved by a Labour Inspector) pay them less than the minimum wage under the Act.

[8 Minimum wage exemption permit

(1) A Labour Inspector may issue a minimum wage exemption permit to a worker if the Inspector is satisfied that—

(a) the worker is significantly and demonstrably limited by a disability in carrying out the requirements of his or her work; and

(b) any reasonable accommodations that could have been made to facilitate carrying out the requirements of the work have been considered by the employer and the worker; and

(c) it is reasonable and appropriate to grant the permit

(2) To avoid doubt, nothing in subsection (1)(b) limits or affects any legal obligations that the employer has towards a worker.

(3) A permit—

(a) comes into force on the date it is issued or any other date as stated in the permit;

(b) remains in force for the period stated in the permit

(4) While a permit remains in force, the rate of wages stated in the permit is taken to be the minimum rate of wages prescribed under this Act for the worker.

(5) A Labour Inspector may revoke a permit at any time if the Inspector considers it is no longer reasonable and appropriate for the permit to remain in force.

(6) in this section, **disability** has the same meaning as in section 21(1)(h) of the Human Rights Act 1993.**]**

Wage and time record for minimum wage employees

There is a wage and time record under the Employment Relations Act 2000 (Section 130) and also for minimum wage employees. Payroll only needs to record this if there is not a wage and time record already meeting the requirements of the ERA 2000 (s130).

[8A Wages and time records

(1) Every employer who employs any worker whose wages or rates of wages are prescribed or paid pursuant to this Act shall keep a record (called the wages and time record) showing, in the case of each such worker,—

(a) The name of the worker:

(b) The worker's age, if under 20 years of age

(c) The worker's postal address:

(d) The kind of work on which the worker is usually employed

[[(e) The contract of service under which the worker is employed:**]]**

[[(f) The classification or designation of the worker according to which the worker is paid:**]]**

(g) The hours between which the worker is employed on each day, and the days of the worker's employment during each week:

(h) The wages paid to the worker each week and the method of calculation

(i) Such other particulars as are prescribed

(2) Every employer shall, upon request made at any reasonable time by **[[**a Labour Inspector**]]**, produce forthwith for inspection by **[[**that Labour Inspector**]]** every wages and time record that is, or at any time during the preceding 6 years was, in use under this Act in respect of any worker employed by that employer at any time in those 6 years.

[[(3) Where an employer keeps a wages and time record in accordance with the Employment Relations Act 2000, the employer is not required to keep a wages and time record under this Act in respect of the same matters.**]]]**

Notes

Skill Check – Minimum Wage

1. What are the current minimum wage rates?

2. If a 16 year old starts work, how long are they on the starting out wage?

3. What is the working week described under the Minimum wage Act 1983?

4. Can you pay less than the minimum wage?

Time Act 1974

The Time Act 1974 set the rules in regard to daylight saving and what an employer needs to paid employees working during that time.

5. Effect of commencement and cessation of New Zealand daylight time on pay and allowances

(1) Where, by reason of the commencement of New Zealand daylight time on the day specified in any Order in Council made under subsection (1) of section 4 of this Act, the hours worked by any person on that day are less than the hours he would otherwise have worked, the pay and allowances of that person for those hours shall be an amount equal to the amount of the pay and allowances for the hours he would otherwise have worked.

(2) Where, by reason of the cessation of New Zealand daylight time on the day specified in any Order in Council made under subsection (1) of section 4 of this Act, the hours worked by any person on that day are in excess of the hours he would otherwise have worked, the pay and allowances of that person for the excess shall be calculated and paid at the appropriate rates for work performed in excess of normal hours.

In a nutshell what this section means is:

- When time is put back in **April** and if the employee works an additional hour they must be paid for the additional time.

- When time is put forward in **September** and if the employee works an hour less they must be paid for the hour lost.

Privacy Act 1993

The Privacy Act came into force in 1993. Its objective is to promote and protect individual privacy in relation to the collection, use, access, correction and disclosure of personal information held by any public and private sector agency.

It has considerable impact on the power of companies to collect and handle personal information about employees.

The act is administered by the Privacy Commissioner. The privacy commissioner has an excellent resource available online on their website at: www.privacy.org.nz

Notes

Privacy officers

All agencies must have a "privacy officer"
Section 23 of the Privacy Act states that all agencies must have at least one privacy officer - a person in the agency who knows about privacy. So this is the law.

But there's no penalty for failing to have a privacy officer. So why should an agency bother?

Good privacy builds trust with clients and employees. It also enhances an agency's reputation. Good privacy is good business whatever the business is. So an internal privacy adviser, who is familiar with the business as well as with privacy law, can add value to the agency's business.

A privacy officer can prevent problems from arising. This can save expense, or lost business, further down the line.

If someone complains that the agency has breached their privacy, the privacy officer can handle things quickly and effectively. This is particularly important if the agency wants to have, or needs to have, an ongoing relationship with the person (for example if they are a client, or an employee). Again, this can save money and time.

Of course, people can complain to the Privacy Commissioner. But we always try to get people to resolve things with the agency first. And we usually advise people to ask for the privacy officer!

So having a privacy officer is useful for agencies, as well as being required by law.

What does a privacy officer do?

A privacy officer:

- is familiar with the privacy principles in the Privacy Act
- is familiar with any other legislation governing what the agency can and cannot do with personal information
- deals with any complaints from the agency's clients about possible breaches of privacy
- trains other staff at the agency to deal with privacy properly
- advises managers on how to ensure the agency's business practices comply with privacy requirements
- advises managers on the privacy impacts (if any) of changes to the agency's business practices

- advises managers if improving privacy practices might improve the business
- deals with requests for access to personal information, or correction of personal information
- acts as a liaison person for the agency with the Privacy Commissioner. (This is particularly important if the Privacy Commissioner is investigating whether the agency has breached privacy).

Privacy Requests

If an employee asks for access to their personal information the employer has 20 working days to provide the information (not calendar days).

Electronic Files

Under the Electronic Transactions Act 2002 an employer can have all employee records as an electronic record. The employee still has right of access under the Privacy Act 1993.

Definitions

Personal Information means:	Information about an identifiable individual.
Individual means:	A natural person, other than a deceased person.
Agency means:	Any person or body of persons whether corporate or unincorporated; whether in the public or private sectors; and for the avoidance of doubt includes a department.
It does *not* include:	• Sovereign • Governor General or Administrator of Government • House of Representatives • Member of Parliament • Parliamentary Service Commission • Parliamentary Service (except regarding personal information about any employee) • Court or Tribunal (in relation to judicial functions) • Ombudsman • Royal Commission • Commission of Inquiry under Commission of Inquiry Act 1908 • Commission/Board/Court/Committee of Inquiry appointed pursuant to an Act • Any news medium
Unique Identifier means:	An identifier that is assigned to an individual by an agency for the purposes of the operations of that agency. An identifier that uniquely identifies that individual in relation to that agency but for the avoidance of doubt does not include an individual's name used to identify that individual.
Evaluative Material means:	Evaluative or opinion material compiled solely: (a) For the purposes of determining the suitability, eligibility, or qualifications of the individual to whom the material relates (i) For employment or for appointment to office; or (ii) For promotion in employment or office or for continuance in employment or office; or (iii) For removal from employment or office; or (iv) For the awarding of contracts, awards, scholarships, honours, or other benefits; or (b) For the purpose of determining whether any contract, award, scholarship, Honour, or benefit should be continued, modified, or cancelled; or (c) For the purpose of deciding whether to insure any individual or property or to continue or renew the insurance of any individual or property.

The 12 principles are:

Principle 1 Purpose of collection of personal information.

Personal information shall not be collected by any agency unless:

(a) The information is collected for a lawful purpose connected with a function or activity of the agency; and

(b) The collection of the information is necessary for that purpose.

Principle 2 Source of personal information.

Where an agency collects personal information, the agency shall collect the information directly from the individual concerned.

Principle 3 Collection of information from subject.

Where an agency collects personal information directly from the individual concerned, the agency shall take such steps (if any) as are, in the circumstances, reasonable to ensure that the individual concerned is aware of:

(a) The fact that the information is being collected; and

(b) The purpose for which the information is being collected; and

(c) The intended recipients of the information; and

(d) The name and address of:

(i) The agency that is collecting the information; and

(ii) The agency that will hold the information; and

(e) If the collection of the information is authorised or required by or under law:

(i) The particular law by or under which the collection of the information is so authorised or required; and

(ii) Whether or not the supply of the information by that individual is voluntary or mandatory; and

(f) The consequences (if any) for that individual if all or any part of the requested information is not provided; and

(g) The rights of access to, and correction of, personal information provided by these principles.

Principle 4 Manner of collection of personal information.

Personal information shall not be collected by an agency:

(a) By unlawful means; or

(b) By means that, in the circumstances of the case, -

(i) Are unfair; or

(ii) Intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Principle 5 Storage and security of personal information.

An agency that holds personal information shall ensure -

(a) That the information is protected, by such security safeguards as it is reasonable in the circumstances to take, against -

(i) Loss; and

(ii) Access, use, modification or disclosure, except with the authority of the agency that holds the information; and

(iii) Other misuse; and

(b) That if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or unauthorised disclosure of the information.

Principle 6 Access to personal information.

(1) Where an agency holds personal information in such a way that it can readily be retrieved, the individual concerned shall be entitled -

(a) To obtain from the agency confirmation of whether or not the agency holds such personal information; and

(b) to have access to that information.

(2) Where, in accordance with subclause (1)(b) of this principle, an individual is given access to personal information, the individual shall be advised that, under principle 7, the individual may request the correction of that information.

Principle 7 Correction of personal information.

Where an agency holds personal information, the individual concerned shall be entitled -

(a) To request correction of the information; and

(b) To request that there be attached to the information a statement of the correction sought but not made.

Principle 8 Accuracy, etc., of personal information to be checked before use.

An agency that holds personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date, complete, relevant and not misleading.

Principle 9 Agency not to keep personal information longer than necessary.

An agency that holds personal information shall not keep that information for longer than is required for the purposes for which the information may lawfully be used.

Principle 10 Limits on use of personal information.

An agency that holds personal information that was obtained in connection with one purpose shall not use the information for any other purpose.

Principle 11 Limits on disclosure of personal information.

An agency that holds personal information shall not disclose the information to a person or body or agency unless the agency believes, on reasonable grounds -

(a) That the disclosure of the information is one of the purposes in connection with which the information was obtained or is directly related to the purposes in connection with which the information was obtained; or

(b) That the source of the information is a publicly available publication; or

(c) That the disclosure is to the individual concerned; or

(d) That the disclosure is authorised by the individual concerned;

Principle 12 Unique identifiers.

An agency shall not assign a unique identifier to an individual unless the assignment of that identifier is necessary to enable the agency to carry out any one or more of its functions efficiently.

Notes

Skill Check – Privacy Act

1. What is the purpose of a Privacy Officer?

2. Explain what Principle 1 "Lawful purpose" means?

3. Explain what Principle 5 "Security" means?

4. What are two unique identifiers used in payroll system?

5. Can an employee ask to access their personal file; is there any part of their file they cannot see?

6. If a request is made under the act what is the timeframe to provide information?

Wages Protection Act 1983

The traditional role of this type of legislation was to ensure that employees receive their wages in full from their employer without deduction, and are paid in cash rather than in kind.

For instance you would not be able to pay an employee with vouchers to be used in the company shop instead of cash.

It is fair to say, however, that employees today are no longer paid in goods, or in "company tokens" able to be spent only at the employer's own shop. In this sense, the Act's intention (to protect employees from the oppressive practices of some employers) is now rather outdated.

Purpose

The Act's purpose is to protect an employee's wage or salary payments from unauthorised deductions by an employer, to affirm an employee's right to receive payment in cash, and to give the employee the right to spend his or her wages or salary as he or she pleases.

The Wages Protection Act applies to **all** people in employment in New Zealand.

Wages payable in money only

Section 7	*Wages to be payable in money – subject to Sections 8 to 10 of this Act, an employer shall pay the wages of every worker in money only.*

Notes

Section 9 of the Act requires that written consent be obtained for the payment of wages in a form other than in money. This consent may be varied or withdrawn by the worker with two weeks' written notice of cancellation or change of the previous authority.

Where the agreement does not prohibit payment other than in money, the employer may make such alternative methods of payment a condition of employment. Where this is the case, the worker may not withdraw authority other than with the employer's agreement.

9. *Agreement as to manner of payment of wages -*

(1) An employer may:

(a) with the written consent of a worker; or

(b) on the written request of a worker:

pay to that worker by postal order, money order, specified cheque, or lodgement at a financial institution to the credit of an account standing in the name of that worker or in the name of that worker and some other person or persons jointly, any wages that have become payable to that worker.

(2) A worker may vary or withdraw a consent given or request made by that worker under subsection (1) of this section by giving the employer written notice to that effect, and in that case, that employer shall -

(a) Within 2 weeks of receiving that notice, if practicable; and

(b) As soon as is practicable, in every other case, -

commence paying that worker in money, or in some other manner in accordance with subsection (1) of this section.

Payment when absent

Section 10 *Where any wages become payable to a worker who is for the time being absent from the proper or usual place for their payment, that worker's employer may pay them to that worker by postal order, money order, or specified cheque.*

Please note: There is no requirement under this circumstance for the worker's written authority to receive wages in other than money.

Payment, time and frequency of payment

Section 4 of the act clearly states that an employee's pay must be paid to that employee. Payroll must ensure that written consent is obtained so an employee's pay in paid into the bank account they want it to go into. If paid in cash, a signing process would be used to ensure the correct employee gets the correct pay.

Section 4 also states that an employee's pay must be paid at the correct time, date, etc. This is usually stated in the employee's employment agreement.

Example

> "The employee's monthly salary payment will be made on the 20th of each month into their nominated bank account."

Statutory holidays

Where a statutory holiday falls on the usual day for payment, the day for payment is to be advanced.

Payment when on strike

The fact that the worker may be on strike on the usual day of payment does not negate the employee's obligation to pay any wages due to that worker on the due day. Workers on strike are still "employed" and thus attract the protection and benefit of the Act.

Payment on termination

Unless the agreement provides otherwise, wages are payable **on** termination.

Example agreement clause:

> "Where the agreement is terminated by the worker without the required notice, or the worker is instantly dismissed, wages are to be paid within X working days of termination of the agreement.

Payment in full

*Section 4 ..... an employer shall, when any wages become payable to a worker, pay **the entire amount** of wages to that worker without deductions.*

Allowable deductions

Section 5(1) allows for deduction from wages payable by providing that:

Section 5: ***Deductions with worker's consent***

(1) An employer may, for any lawful purpose:

*(a) With the **written consent** of a worker,*

or

*(b) On the **written request** of a worker,*

make deductions from wages payable to that worker.

(2) A worker may vary or withdraw a consent given or request made by that worker for the making of deductions from that worker's wages, by giving the employer written notice to that effect, and in that case, that employer shall:

(a) Within 2 weeks of receiving that notice, if practicable; and

(b) As soon as is practicable, in every other case;

cease making or vary, as the case requires, the deduction concerned.

Section 5A is an additional clause to stop reasonable deduction being deducted from an employee wage or salary. For example a deduction to cover losses caused by a third party through breakages or theft may be unreasonable, particularly if the employee had no control over the third party conduct.

5A Unreasonable deductions

An employer must not make a deduction under section 5 from wages payable to a worker if the deduction is unreasonable.

Sections 15 and 16 make provision for compliance with other statutes i.e.: Income Tax Act, or agreements i.e. deductions for absence for sickness.

Section 15: ***Act subject to other enactments*** *- Subject to sections 6(2) and 16 of this Act shall be read subject to the provisions of any other Act.*

Section 16: ***Provisions in collective employment agreements -*** Subject to section 6(2), nothing in this Act derogates from or makes it unlawful to comply with –

(a) Any provision of any collective agreement within the meaning of the Employment Relations Act 2000; or

(b) Any provision of any order of the Employment Court or the Employment Relations Authority established by the Employment Relations Act 2000.

Employer may recover overpayments resulting from strike action or default

Section 6 of the Act essentially provides that recovery may occur where the overpayment:

- results from strike action or default.
- Where the method or equipment used in paying the worker concerned made it impractical to avoid the overpayment.
- Notice of intention to recover overpayment must be given not later than the first day upon which that worker attends work after the next pay day during normal working hours.
- A period of 2 months may be allowed to recover wages.
- No written consent required since the deduction is in accordance with the Act.

Section 6: ***Employer may recover overpayments in certain circumstances***

(1) In this section,-
"Next pay-day", in relation to any overpayment, means the day next following the day on which that overpayment was made upon which the worker to whom it was made would, in the normal course of events, be paid: "Overpayment" means any wages paid to a worker in respect of a recoverable period:
"Recoverable period" in respect of any employer and any worker, means a period in respect of which that employer is not required by law to pay any wages to that worker, by virtue of that worker's having-

a) Been absent from work without that employer's authority; or
b) Been on strike (within the meaning of section 81 of the Employment Relations Act 2000); or
c) Been locked out (within the meaning of that subsection); or
d) Been suspended.

2) Notwithstanding anything to the contrary in any collective agreement within the meaning of the Employment Relations Act 2000 but subject to subsection (3) of this section, an employer who has made an overpayment to any worker may recover the amount of that overpayment from any wages to the payment of which by that employer that worker subsequently becomes entitled.

3) No employer shall recover an overpayment under subsection (2) of this section unless -

a) By virtue of the methods or equipment normally used by that employer in arranging the payment of, or paying, wages to the worker concerned, it was not reasonably practicable for that employer to avoid making that overpayment, and
(b) Before recovering that overpayment, that employer gives that worker notice of that employer's intention to recover it, and
(c) That notice is given -

(i) Not later than 10 days after the next pay-day, in the case of a worker who has no fixed workplace.

(ii) Not later than the first day upon which that worker attends that worker's workplace after the next pay-day during normal working hours, in the case of a worker with one fixed workplace who did not attend that workplace during normal working hours on the next pay day:

(iii) Not later than the first day upon which that worker attends one of that worker's workplaces after the next pay-day during normal working hours, in the case of a worker with 2 or more fixed workplaces who did not attend any of them during normal working hours on the next pay-day:

(iv) Not later than the next pay-day, in every other case, and

(d) That overpayment is recovered not later than 2 months after that notice is given.

(4) The validity of a notice purportedly given under subsection (3) (b) of this section shall not be affected by the fact that:-

(a) It does not specify the amount of the overpayment concerned but specifies only the day on which that overpayment was made and the actions that led to its being an overpayment.

(b) It is one of a number of identical notices given to a group of workers to only some of whom an overpayment has been made, and provides that it applies to the worker to whom it has been given only if an overpayment has been made to that worker.

Deductions against attachment orders

Where the employer is in receipt of an attachment order made under the Family Proceedings Act of the Court under the District Court Amendment Act (adjudged debtor) the employer is required to make and remit the deduction so ordered.

In such cases there is no requirement that the employee gives written consent, the deduction being permissible under Section 15 of the Wages Protection Act.

Notes:

Skill Check – Wages Protection Act

1. How can wages be paid to an employee?

2. Can an employee ask to be paid in cash?

3. Can you pay wages in something other than money?

4. If a public holiday happens before a payday when should payroll be processed?

5. When should an employee's final pay be paid?

6. Can an employer deduct money owed to them from an employee's wages?

7. What is the timeframe an employee has to repay an overpayment?

Actioning attachment orders (District Courts Act 1947 & Amendments)

An attachment order is an order issued by the District Court for an employer to deduct from an employee's wages money the employee owes to a third party by way of a proven debt.

The attachment order will specify the person to whom the payments are to be made and the amount (known as the protected earnings rate), below which the net earnings of the employee cannot be reduced in relation to the deduction.

An employer must deduct the sum specified in an attachment order issued by the District Court from the salary or wages of an employee who is in debt, and pay this to the specified person by the 20th of the following month.

An employer cannot dismiss or treat prejudicially an employee to whom an attachment order requiring deductions from wages for debt repayment has been made.

The maximum fine for dismissing an employee, or treating the employee prejudicially in the six months following the issue of an attachment order, is $1,000. If the dismissal was for some other reason, the employer is required to prove that that was the case.

The following pages contain a brochure from the courts department discussing how to deal with attachment orders.

FREQUENTLY ASKED QUESTIONS

What is a Party Profile Number (PPN)?

This is a unique number allocated to a defendant by the Ministry of Justice. It enables us to keep a record of all payments against a defendant's fine.

Why was my employee fined?

The majority of fines are the result of traffic or other minor offences. Serious criminal offences do not commonly result in a fine.

Why should employers help the Ministry of Justice collect fines?

Employers are legally obliged to ensure that the instructions in an Attachment Order are followed. Attachment Orders are an important tool to help ensure that Court penalties are respected and that fines are collected.

The Ministry of Justice recognises that Attachment Orders increase the administrative burden on employers and appreciates your assistance.

Why is it important that employers deal with Attachment Orders quickly and accurately?

Mistakes or omissions when making payments by any of the above methods could mean that payments are not credited to your employee's fine. The consequences for your employee are potentially very serious as failing to pay an overdue fine could lead to the seizure of their property or their arrest. Any such action could result in your employee being absent from work through no fault of their own, or could cause you extra work in trying to rectify the problem.

Please ensure that you that you check that all details of payments in respect of an Attachment Order are correct before you send the payment.

Contact Us

If you have any difficulties, please contact the Court that issued the Attachment Order. Before you call, make sure you have the name and PPN of the employee and any other information that may be useful in helping with your enquiry.

Produced by the Collections Unit, Ministry of Justice, New Zealand. COLL/005 (Revised 2004)

MINISTRY OF JUSTICE
Tāhū o te Ture

Dealing with
Attachment Orders for Fines

A guide for employers

COLLECTIONS

WHAT IS AN ATTACHMENT ORDER?

An Attachment Order is issued by a Court. It will only be issued when a fine is overdue and the employee has not made other arrangements to pay it.

It is a legal document that instructs an employer to deduct regular payments from an employee's salary, wages, bonuses, commissions or contracts for service etc in order to pay an overdue fine.

This guide explains what you, as an employer, must do when you receive an Attachment Order for an employee and answers some frequently asked questions. You should also read the Notes attached to the Attachment Order.

MAKING PAYMENTS

An employer can make payments authorised by an Attachment Order in either of two ways: by cheque or by direct credit.

By Cheque

An employer can send a cheque, with a detailed schedule of payments, to the Court that issued the Attachment Order. The cheque can include payments covering Attachment Orders for one or more employees. The accompanying schedule must include the following information:

- the full name of every employee for whom deductions have been made;
- the PPN (Party Profile Number) of each employee. The PPN will be stated on the Attachment Order(s);
- the amount of money deducted from each employee's pay.

Direct Credit

Alternatively, an employer can set up a direct credit into the Ministry of Justice Fines AP Trust bank account. A direct credit can be set up using an automated payroll system or by sending a signed Automatic Payment (AP) authority to the Court that issued the Attachment Order. In either case, a separate direct credit must be completed for each employee.

When setting up the direct credit, employers must provide the following information and, where relevant, ensure that it appears in the correct column on the bank statement (use the boxes on the AP authority as a guide):

- the full name of the employee (as shown in the Attachment Order).

  This should appear in either the 'Particulars' or 'Other Party' field.

- the PPN (Party Profile Number) of the employee.

  Employers must enter the letter 'P' followed by the ten-digit number in the 'Code' field (e.g. P0123456789).

  The amount of money deducted from the employee's pay must be entered in the 'Amount' field.

- frequency of the payment.

  Employers must ensure that the frequency of the payment agrees with the instructions on the Attachment Order.

- the bank account to be credited.

  All direct credits for fines must be paid into the following bank account.

  03-0049-0001055-01

  Employers may wish to use the 'Reference' field on the form to record information that is of use to them, for example, an employee's staff number.

Websites useful for payroll

Name	Description	Website address:
Ministry of Business, Innovation and Employment (MBIE)	The Ministry of Business, Innovation and Employment (MBIE) is the government's lead business-facing agency. Our purpose is to grow the New Zealand economy to provide a better standard of living for all New Zealanders. We deliver policy, advice, regulation and services that have a real impact on New Zealand businesses and the environment they operate in.	http://www.mbie.govt.nz/
Employment New Zealand	The leading source of information on employment in New Zealand. Employment New Zealand is part of the Ministry of Business, Innovation and Employment.	https://www.employment.govt.nz/
Inland Revenue Department (IRD)	Inland Revenue has over **5,500** staff based in **17** cities and towns. To find out about payroll-related requirements use the following link.	http://www.ird.govt.nz/payroll-employers/make-deductions/
Accident Compensation Corporation (ACC)	ACC provides comprehensive, no-fault work and personal injury cover for all New Zealand residents. To access business-related information from ACC, use the following link.	http://www.acc.co.nz/publications/index.htm?ssBrowseCategory=Business
New Zealand Legislation	This website provides Acts, Bills, Supplementary Order Papers, and Statutory Regulations, and links to Deemed Regulations.	http://legislation.govt.nz/default.aspx

KiwiSaver	This site has been designed to provide easy access to information and tools about KiwiSaver for employees.	http://www.kiwisaver.govt.nz/
Privacy Commissioner	The Privacy Commissioner administers the Privacy Act 1993. The Privacy Act applies to almost every person, business or organisation in New Zealand.	http://privacy.org.nz/
Sorted: Building Wealthy Lives	Sorted is brought to you by the Commission for Financial Literacy and Retirement Income (CFLRI) which was formerly known as the Retirement Commission.	https://www.sorted.org.nz/
Human Rights Commission	This website is owned by the New Zealand Human Rights Commission. The aim of this website is to promote and educate the New Zealand public on human rights in an accessible and user-friendly format.	http://www.hrc.co.nz/
Statistics New Zealand	Statistics New Zealand Tatauranga Aotearoa is a government department and New Zealand's national statistical office. It's New Zealand's major source of official statistics and is the leader of the Official Statistics System.	http://www.stats.govt.nz/
Immigration Service (VisaView)	VisaView allows New Zealand employers to check whether a person who is not a New Zealand citizen can work in New Zealand for that employer.	https://www.immigration.govt.nz/about-us/our-online-systems/visaview

Appendix B: 2019-2021 National & Province holidays observed in New Zealand.

Month (Actual)	Public Holiday Name	Actual Date	Observed Date		
			2019	2020	2021
Jan	New Year's Day	1 Jan	Tue 1 Jan	Wed 1 Jan	Fri 1 Jan
	Day after New Year's Day	2 Jan	Wed 3 Jan	Thu 2 Jan	Sat 2 Jan or Mon 4 Jan
	Southland Anniversary	17 Jan	Tue 23 Apr	Tue 14 Apr	Tue 6 Apr
	Wellington Anniversary	22 Jan	Mon 21 Jan	Mon 20 Jan	Mon 25 Jan
	Auckland Anniversary	29 Jan	Mon 28 Jan	Mon 27 Jan	Mon 1 Feb
Feb	Nelson Anniversary	1 Feb	Mon 4 Jan	Mon 3 Feb	Mon 1 Feb
	Waitangi Day	6 Feb	Wed 6 Feb	Thu 6 Feb	Sat 6 Feb or Mon 8 Feb
Mar	Otago Anniversary	23 Mar	Mon 25 Mar	Mon 23 Mar	Mon 22 Mar
	Good Friday	Varies	Fri 19 Apr	Fri 10 Apr	Fri 2 Apr
	Easter Monday	Varies	Mon 22 Apr	Mon 13 Apr	Mon 5 Apr
	Taranaki Anniversary	31 Mar	Mon 11 Mar	Mon 9 Mar	Mon 8 Mar
Apr	ANZAC Day	25 Apr	Thu 25 Apr	Sat 25 Apr or Mon 27 Apr	Sun 25 Apr or Mon 26 Apr
May	No Public Holidays in this month				
Jun	Queen's Birthday	1st Mon in Jun	Mon 3 Jun	Mon 1 Jun	Mon 7 Jun
Jul	No Public Holidays in this month				
Aug	No Public Holidays in this month				
Sep	No Public Holidays in this month				
Oct	Labour Day	4th Mon in Oct	Mon 28 Oct	Mon 26 Oct	Mon 25 Oct
Nov	Hawkes' Bay Anniversary	1 Nov	Fri 25 Oct	Fri 23 Oct	Fri 22 Oct
	Marlborough Anniversary	1 Nov	Mon 4 Nov	Mon 2 Nov	Mon 1 Nov
	Chatham Islands Anniversary	30 Nov	Mon 2 Dec	Mon 30 Nov	Mon 29 Nov
Dec	Westland Anniversary	1 Dec	Mon 2 Dec	Mon 30 Nov	Mon 29 Nov
	Canterbury Anniversary	16 Dec	Fri 15 Nov	Fri 13 Nov	Fri 12 Nov
	Canterbury (South) Anniversary	16 Dec	Mon 23 Sep	Mon 28 Sep	Mon 27 Sep
	Christmas Day	25 Dec	Wed 25 Dec	Fri 25 Dec	Sat 25 Dec or Mon 27
	Boxing Day	26 Dec	Thu 26 Dec	Sat 26 Dec or Mon 28	Sun 26 Dec or Tues 28

Document management

Version history

The following table shows the history of this document

Version	Date	Author	Reason
27-28	Jan 2019	D Jenkins	1st April changes, Payday filing
29	Apr 2019	D Jenkins	Final 1st April changes
30	Apr 2019	D Jenkins	Updated IRD changes 1 April
31	Jul 2019	D Jenkins	Updated Km rate
32	Jul 2019	D Jenkins	Updated formatting
33	Oct 2019	D Jenkins	Changed DVL to FVL
34	Apr 2020	J Brinkmann, D Jenkins	Updated with 1st April 2020 changes.
35-36	Jun 2020	D Jenkins	SL and regular bonus changes/corrections
37	Jun 2020	D Jenkins	KS changes with IR346K
38	Jul	D Jenkins	Parental Leave changes