



# Annual Holiday Calculations

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## Average Weekly Earnings (AWE)

### 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:

$$\frac{\text{Gross earnings}}{\text{Divisor (52 Weeks)}}$$

#### Worked example:

$$\frac{\$52,000}{52} = \$1000$$



## 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:

(v) any payment of any employer contribution to a superannuation scheme for the benefit of 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).



## 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.



## 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.



## 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.