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Holidays Act 2003: Gross earnings, payments and discretionary

- **Different periods of gross earnings**
- **Section 14 Gross Earnings**
- **Section 5 Discretionary Payment**



Different periods of gross earnings

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:

- 12 months taken for the last pay period back 52 weeks.
- 4 weeks taken from the last pay period back 4 weeks.
- From start date to end date (less that 12 months)
- From last entitlement date to end date (less than 12 months)
- If there is special standard pay cycle different to above then gross earnings can be also taken for that period.



Section 14 Gross Earnings

(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 volunteers leave 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.



Section 5: 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