

SUPPLEMENTARY: INTERFACE WITH PARENTAL LEAVE & EMPLOYMENT PROTECTION ACT 1987

S.1 Effect of parental leave on the calculation of annual holidays

Section 42 of the Parental Leave & Employment Protection Act 1987 (the PL Act) provides that an employer provides for the employee's entitlement to annual holiday pay where, for part of the period of entitlement, the employee is on parental leave. The taking of parental leave affects the amount of payment that an employee receives when they take their annual holiday.

Holiday entitlements under the Holidays Act are calculated by comparing the employee's average weekly earnings over the previous 12 months immediately before the annual holiday is taken (s21(2)(b)(ii)), to their ordinary weekly pay (s21(2)(b)(i)). However, Section 42(2) expressly provides that for any annual holiday entitlement falling due while the employee is on parental leave or in the twelve months following any parental leave shall, when it is taken, be calculated only by calculating the employee's average weekly earnings over the previous 12 months immediately before the annual holiday is taken. Ordinary weekly pay is not to be considered.

Example:

An employee is employed by their employer for a period of 1½ years when they begin a period of 52 weeks parental leave on 1 February. As their position is considered a key position, they are on a preference period for 26 weeks, at the end of which a substantively similar position is offered to and accepted by the employee. Their anniversary date for calculating holiday entitlements is 1st July. Upon their return to work they take some of the holidays they have owing to them; they have now been employed 4½ years and have 4 years worth of holiday entitlement to use.



The first year's entitlement will be calculated as per normal, as it has not been earned during a period of parental leave. The second year's entitlement will be calculated looking at the average weekly earnings only, as the employee has become entitled to the leave during a period of parental leave (section 42(2)(a)). The third year's entitlement is also calculated using average weekly earnings, as it falls within the period of preference (section 42(2)(b)). The fourth year's entitlement is also calculated using average weekly earnings only, as this falls in the period of 12 months after the employee returns to work after either the period of parental leave or the preference period (section 42(2)(c)). Only when the employee takes their fifth year's entitlement will their holidays be calculated normally.