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Payroll Practitioners  
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# Relationship between annual holidays and other entitlements:

## Section 36 to 40 Holidays Act 2003



## Section 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.



## **Section 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.



## Section 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.



## Section 38 Sickness, injury, 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.



## Section 39 Employer may allow employee to take annual holidays if sick leave, 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.



## Section 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.