

UNITE UNION COMMENTARY ON HOLIDAYS ACT 2003 ISSUES

We have become aware of significant systemic problems relating to payment for various types of holidays and leave (primarily annual holidays but also payment for public holidays, alternative holidays and sick leave and bereavement leave).

It appears that a number of major payroll providers (and perhaps most providers to some extent) have applied incorrect rules to the calculation of holidays and leave and these rules have resulted in some significant underpayments to workers.

The purpose of this paper is to outline the likely sources of the most common issues.

The issues discussed in this paper are:

- Accrual of holiday and leave entitlements;
- Calculations and payment for annual holidays; and
- Calculations and payment for other types of holidays and leave (sick and bereavement leave, public holidays (not worked) and alternative holidays.

At appendix one, we append a template letter and questionnaire. This is intended to show up red flags in a given workplace.

1. Accrual of holiday and leave entitlements

One of the subtleties of the Holidays Act 2003 is that holiday and leave entitlements are expressed in different units. Annual holiday entitlement (s 16) is expressed as “not less than 4 weeks’ paid annual holidays.” Sick leave (s 65) and bereavement leave (s 70) entitlements are expressed as days (along with several other entitlements such as public holidays, alternative holidays and EREL leave).

This is a deliberate choice to ensure that all workers receive sufficient annual holidays to take four weeks’ holidays (regardless of whether they work across 3 days or 5 days or 7 days each week). An employee’s annual holiday entitlement is based on what genuinely constitutes a working week for that employee (s 17).

The rationale for expressing sick leave in days (rather than in hours) allows workers who have variable shift lengths to avoid losing larger parts of their sick leave entitlements if they are ill on days with longer shifts. This also applies to an employee’s payment for bereavement leave, public holidays (not worked) and alternative holidays.

It seems however, that many employers (particularly those adapting Australian payroll systems) have adopted an accrual system based on hours (rather than days or weeks).

Hours-based accrual is so simple that even the least-sophisticated payroll system can cope with it but it has the disadvantage of being very unfair to workers. Two illustrations of the problems with hours-based accrual (though there are several others) are:

- All workers currently receive an entitlement of five days sick leave after the first six months of employment, and then at each subsequent 12 month period of employment beginning at the end of the 6 month period, regardless of their full time or part time status. Accrual of sick leave in hours instead of days would mean that sick leave is granted on a pro rata basis. For example an employee who worked two 8-hour days a week could find their sick leave cut to sixteen hours (or two days leave rather than five);
- A worker who changes their hours of work during the year would discover that they had less or more than four week’s annual holidays when they reach their anniversary. For example, a worker who increased their hours from 20 per week to

40 per week halfway through the year would find that they only had 120 hours accrued in a year or three weeks annual holidays

As discussed below, the Holidays Act 2003 does not state that payment and entitlements for annual holidays, public holidays (not worked), alternative holidays or bereavement and sick leave are to be on an hourly basis. An employer who does so is likely to breach the law. Depending on the structure of the work, this may result in significant underpayment.

2. Calculations and payment for annual holidays

The Holidays Act 2003 requires that annual holidays taken (either accrued or taken in advance)¹ should be paid at the **greater** of the employee's:

- Ordinary weekly pay (s 8). Ordinary weekly pay is defined as either the amount of pay an employee receives under their employment agreement for an ordinary working week (including regular productivity or incentive-based payments, regular overtime and employer-provided board or lodging but excluding irregular or one-off payments, discretionary payments and employer superannuation contributions for the benefit of the employee) or if it's not possible to determine this, then an average of the previous four weeks' gross earnings (minus irregular and one off payments) can be used); or
- The employee's average weekly earnings (ss 5, 21-22). This is defined as 1/52 of an employee's gross earnings immediately before the last pay period before the annual holidays. Gross earnings are defined in s 14 and exclude, among other things, discretionary payments, weekly compensation under ACC (apart from the first week), reimbursements for actual costs incurred, employer superannuation contributions for the benefit of the employee and pay out of annual holidays. .

Part-week payments should be determined by dividing the ordinary weekly pay or average weekly earnings calculation outcome by the number of days the employee usually works in a week.

Employers may underpay in a number of ways. The most common failings are likely to be:

- We suspect many employers ignore these requirements and simply pay annual holidays based on a number of hours usually worked (perhaps including allowances and overtime, perhaps not);
- Other employers may calculate one or other of the ordinary weekly pay or average weekly earnings calculations but not both. Because the two calculations favour employees in different situations, one or other group of employees is likely to be underpaid;
- Which payments are included in the calculations of ordinary weekly pay and average weekly earnings will affect the overall quantum of pay. For example, an employer who treats regular weekly overtime as irregular overtime is likely to underpay their workers. Another example would be the treatment of a bonus payment as discretionary when it is a contractual entitlement; and

¹ There are small differences between the two calculations in ss 21-22 to reflect the pro rata nature of annual holidays taken in advance. Other calculations (ss 23-25) arise in calculating payment for annual holidays at the end of employment. Miscalculation of these payments is probably also common but outside the scope of this paper.

- The employer may not be keeping an accurate record of the worker's gross earnings over the previous 52 weeks. This is a rolling average calculated at the time of entitlement (not by tax year or anniversary).

Workers who work either variable hours each week or receive variable remuneration (such as commission or bonuses) are particularly likely to be underpaid significantly. Workers with more regular hours and remuneration may also be affected but the differences are likely to be smaller.

3. Calculations and payment for other types of holidays and leave (sick and bereavement leave, public holidays (not worked) and alternative holidays)

There is another cluster of issues which relate to the calculation of payment for public holidays (on which the worker does not work), alternative holidays, sick leave, bereavement leave, employment relations education leave (s 79 Employment Relations Act 2000), health and safety representative education leave (cl 12 sch 2 Health and Safety at Work Act 2015) and perhaps others.

The calculation for each of these holidays and leave types is the same. A worker gets their relevant daily pay (s 9) for each day of holiday or leave unless it is impracticable or not possible to calculate this payment **or** the employee's daily pay varies within the pay period when the leave or holiday falls in which case their holiday/leave should be calculated on the basis of their average daily pay (s 9A)

Relevant daily pay means the amount of pay that a worker would have received if they had worked on the day concerned and includes productivity or incentive payments and overtime if these would have been received on the day in question,² and the value of any employer provided board or lodgings. It excludes any employer superannuation contributions for the benefit of the worker and the payment of time-and-a-half for working a public holiday. What constitutes relevant daily pay can only properly be answered after the day in question, in case an unexpected event changes the amount an employee would have received had they worked that day. Relevant daily pay is specific to the particular employee and the particular day concerned.

The fall-back calculation of average daily pay³ is determined by dividing the employee's gross earnings⁴ for the 52 calendar weeks before the end of the pay period immediately before the calculation is made by the number of whole or part days during which the employee earned those gross earnings including any day the worker was on a paid holiday or paid leave in that 52 week period.

² For a discussion of the correct approach to overtime see *Postal Workers Union of Aotearoa Inc v New Zealand Post Ltd* [2012] NZCA 481. In essence, if an employee would usually work overtime and it is possible to determine how much, then the employer should pay them that amount. If the amount of overtime is uncertain then the employer should use the average daily pay calculation.

³ To make things more difficult, average daily pay calculations were introduced on 1 April 2011 to replace an averaging formula within relevant daily pay based on the last four weeks of work. Because this is within the six year statute of limitations, employers who got the previous calculation wrong are also liable. Our suggestion would be that if the other issues are throwing up warning signs, you may also need to look back at the pre-2011 Holidays Act 2003 definition of relevant daily pay as well.

⁴ Remembering again that gross earnings are defined in s 14 and exclude discretionary payments, weekly compensation under ACC, reimbursements for actual costs incurred, superannuation payments and pay out of annual holidays

The list of ways that an employer can fail is similar to that for annual holidays. The most common failings are likely to be:

- We suspect many employers ignore these requirements and simply pay holidays/leave based on a number of hours usually worked (perhaps including allowances and overtime, perhaps not);
- Many employers may fail to add incentive payments (such as commission) or overtime into these calculations even where these are regularly worked. If the employer cannot predict how much overtime is worked, they must default to average daily pay;
- The employer may not be recording and keeping an accurate record of the worker's gross earnings over the previous 52 weeks. This is a rolling average calculated at the time of entitlement (not by tax year or anniversary).

One of the best litmus tests will be for workers to look at their pay for these periods of holiday or leave. Those who are paid their base hourly rate for eight hours (or whatever their shift length) whenever they take sick or bereavement leave, alternative holidays or a public holiday (not worked) should treat this as a possible warning sign.

Workers who work either variable hours each week or receive variable remuneration (such as commission or bonuses) are particularly likely to be underpaid significantly. Workers with more regular hours and remuneration may also be affected but the differences are likely to be smaller

APPENDIX ONE: EXAMPLE LETTER TO EMPLOYER AND QUESTIONNAIRE

[Date]

[Payroll manager]

[Address]

HOLIDAYS ACT 2003 COMPLIANCE

As you will be aware, there have been recent revelations that suggest a widespread failure to comply with the Holidays Act 2003 in relation to employee holiday and leave entitlements and payments. In many cases, payroll systems have not been properly configured or applied.

Our union is investigating the scope of these issues. The purpose of this letter is to ascertain some basic information that may indicate either all is well or that a larger problem is indicated.

We are requesting this information in good faith on behalf of our members. Given that any issues are likely to be longstanding, we ask that you reply in writing as quickly as you are able to our questions.

[Sign off]

Encl.

HOLIDAYS ACT 2003 COMPLIANCE QUESTIONNAIRE

General

1. Who provides your payroll software? Have you changed provider in the past six years? Please list all previous providers.
2. Have you audited your payroll systems to ensure compliance with the Holidays Act 2003, the Employment Relations Act 2000, the Minimum Wage Act 1983, the Wages Protection Act 1983 or the Parental Leave and Employment Protection Act 1987 (collectively 'the minimum code legislation') in the past six years? Please provide the results of any audits undertaken including detail of any widespread or systemic breaches of the minimum code legislation.

Annual holiday calculations

3. How does your payroll system record annual holiday accrual? Are annual holidays accrued in hours, days, weeks or some other system? Does the accrual system alter for annual holidays at the point where the holidays become an entitlement (on anniversary date), and if so, how?
4. How do you calculate payment due for annual holidays taken? Please attach anonymised wage and time records and calculations demonstrating the method or methods of calculation. How do you treat allowances, productivity or incentive-based payments and overtime in this calculation?
5. Where an employee requests to take less than a week of annual holidays, how are their holidays deducted from their balance owed? For example, if an employee's working week comprised an eight-hour full day on Monday and a four-hour half day on Tuesday how much holidays would be deducted from the balance owed if they took the Monday off (and in which units)? How much holidays would be deducted from their balance owed if they took the Tuesday off?
6. Please explain with an anonymised wage and time record and calculation how an employee who resigns is paid for outstanding annual holidays?

Sick leave calculations

7. How does your payroll system record sick leave accrual? Is sick leave accrued in hours, days, weeks or some other system?
8. How do you calculate payment due for sick leave taken? Please attach anonymised wage and time records and calculations demonstrating the method or methods of calculation. How do you treat productivity or incentive-based payments and overtime in this calculation?
9. Does your system track the number of days worked by employees? Please provide an anonymised example of how this information is tracked?

Other issues

10. Please explain how you calculate gross earnings for the purposes of the Holidays Act 2003. Please provide anonymised wage and time records and calculations demonstrating how these calculations are made.
11. Have you altered your payroll system settings in relation to any of the questions canvassed in the questions above in the previous six years? If so, please explain and demonstrate the previous setting and the change.

APPENDIX TWO: EXCERPTS FROM THE HOLIDAYS ACT 2003, EMPLOYMENT RELATIONS ACT 2000 AND HEALTH AND SAFETY AT WORK ACT 2015

These are the most directly relevant sections only (and does not include, for example, sections on pay-as-you-go annual leave, cashing up annual leave or the powers of Labour Inspectors to enforce the Act).

Holidays Act 2003

5 Interpretation

(1) In this Act, unless the context otherwise requires,—

average weekly earnings means 1/52 of an employee's gross earnings

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

in advance,—

(a) in relation to an annual holiday, means an annual holiday taken by an employee before the entitlement to the holiday has arisen under section 16:

(b) in relation to sick leave or bereavement leave, means any sick leave or bereavement leave taken by the employee before the entitlement to the leave has arisen under section 63

6 Relationship between Act and employment agreements

(1) Each entitlement provided to an employee by this Act is a minimum entitlement.

(2) This Act does not prevent an employer from providing an employee with enhanced or additional entitlements (whether specified in an employment agreement or otherwise) on a basis agreed with the employee.

(3) However, an employment agreement that excludes, restricts, or reduces an employee's entitlements under this Act—

(a) has no effect to the extent that it does so; but

(b) is not an illegal contract under the Illegal Contracts Act 1970.

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).

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, or bereavement 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).

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, or bereavement 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).

10 Cash value of board or lodgings included in ordinary weekly pay and relevant daily pay

(1) For the purposes of section 8 and section 9, the ordinary weekly pay or relevant daily pay (as the case may be) of an employee includes the cash value of any board or lodgings provided by an employer to the employee—

- (a) as agreed by the employer and employee; or
- (b) as determined by a Labour Inspector if the employer and employee cannot agree on the cash value.

(2) Despite subsection (1), the ordinary weekly pay or relevant daily pay of an employee does not include the cash value of any board or lodgings provided by an employer to the employee—

- (a) if the work done by the employee requires the employee to stay overnight in a residence other than the employee's usual place of residence; or
- (b) if the board or lodgings are provided because of special circumstances.

11 Labour Inspector may determine ordinary weekly pay, relevant daily pay, and average daily pay

- (1) This section applies if an employer and employee cannot agree on the amount of the employee's—
- (a) ordinary weekly pay under section 8; or
 - (b) relevant daily pay under section 9; or
 - (c) average daily pay under section 9A.
- (2) A Labour Inspector may determine the amount of the employee's ordinary weekly pay, relevant daily pay, or average daily pay (as the case may be).
- (3) In making a determination, a Labour Inspector must apply the provisions of section 8, 9, or 9A (as the case may be) to the circumstances of the employee as determined by the Labour Inspector.

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, or bereavement 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 Injury Prevention, Rehabilitation, and 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 Injury Prevention, Rehabilitation, and 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.

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.

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.

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.

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.

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.

49 Payment if employee does not work on public holiday

If an employee does not work on a public holiday and the day would otherwise be a working day for the employee, the employer must pay the employee not less than the employee's relevant daily pay or average daily pay for that day.

60 Payment for alternative holiday

(1) An employer must pay an employee not less than the employee's relevant daily pay or average 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 or average 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.

71 Payment for sick leave and bereavement 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 sick leave or bereavement 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 Injury Prevention, Rehabilitation, and Compensation Act 2001 or former Act.

(3) An employer must not require an employee to take as sick leave any time for which the employee is being paid—

- (a) first week compensation by the employer under section 97 of the Injury Prevention, Rehabilitation, and 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 he or she may deduct from the employee's current sick leave entitlement 1 day for every 5 whole days that the employer makes that payment.

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 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.
- (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.

82 Requests for access to holiday and leave record

- (1) The following persons may request an employer to provide access to, or a copy of, or a certified extract from, information in the holiday and leave record relating to an employee:
 - (a) the employee:
 - (b) an authorised representative:
 - (c) a representative of a union of which the employee is a member:
 - (d) a Labour Inspector.
- (2) An employer who receives a request under subsection (1) must comply as soon as practicable with the request by—
 - (a) allowing the employee, authorised representative, representative of the union, or Labour Inspector to view the record; or
 - (b) providing a copy or certified extract of the information concerned.

Employment Relations Act 2000

79 Eligible employee taking employment relations education leave entitled to ordinary pay

(1) An employer must pay to an eligible employee the employee's relevant daily pay as defined in section 9 of the Holidays Act 2003 or average daily pay calculated in accordance with section 9A of that Act (as the case may be) for every day or part of a day taken by the employee as employment relations education leave.

(2) However, an employer is not required to comply with subsection (1) in respect of any day for which the eligible employee is paid weekly compensation under the Accident Compensation Act 2001.

Health and Safety at Work Act 2015, Schedule 2

12 Requirement to allow health and safety representatives to attend certain training

...(3) The PCBU must pay a health and safety representative for every day or part of a day that the health and safety representative is given time off work to attend training,—

(a) in the case of a health and safety representative who is an employee of the PCBU, the health and safety representative's relevant daily pay, as defined in section 9 of the Holidays Act 2003, or average daily pay calculated in accordance with section 9A of that Act (as the case may be):....