



New Zealand  
Payroll Practitioners  
Association

Developing and Supporting  
Payroll Professionals

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## **NZPPA Special webinar:**

**CONVERTING HOLIDAYS ACT  
ENTITLEMENT AND ACCRUAL  
TO OTHER TIME  
MEASUREMENTS**

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## Introduction

The Holidays Act is a nightmare for payroll with the act focusing on weeks for annual holidays and days for FBAPS leave but payroll systems on the whole are still in hours and/or days. Another factor that impacts on this are employment agreements that often state leave provided in hours, days or weeks in direct conflict to what the payroll system used in the business actually can do and in relation to what the act requires.

Along with this one of the fundamental concepts of the Holidays Act is “what genuinely constitutes a working week for the employee” and when the week changes it means any entitlement will need to change to reflect the new week. For payroll this is not a standard activity for the payroll system to do (in most systems) and it means the payroll practitioner would need to undertake the conversion of entitlement and accrual to the new week for the employee.

This special webinar will cover the background on how a week is defined in regard to annual holidays and a day for FBAPS leave, along with changing a week and a day and converting from one time measurement to another.

## Contents

- What leave entitlements are provided under the act.
- Defining a week and a day for an employee.
- What options can be used when an employee works variable hours to define their week and day.
- Steps to follow if an employee’s week or day is changed by agreement.
- Converting existing entitlement to the new week or day.
- Converting existing entitlement from one time measurement to another (hours/days/weeks).

## Steps to follow if an employee's week or day is changed by agreement

### The Big Picture on Converting Leave

It is not as simple as just converting leave from one time measurement to another there are a number of considerations to be understood and undertaken before any conversion should be done or done at all.

#### Changing leave to a week is it worth it?

- Changing annual holiday entitlement to weeks does not resolve the issues with the Holidays Act as leave is not just taken in weeks.
- An employee may want to take a day or days or even half days (if agreed with their employer).
- So, you still have to know what a week is for the employee, you still have to know days in a week and hours in a day.
- There is no getting away from this!
- Changing to a week does help in defining a week because a week is still a week **even** when the week changes but that is all.

#### You must fully understand the impact and reasons for the following:

1. Why are you wanting to convert leave (what is the driver)?
  - Your payroll provider
  - MBIE
  - The Act
  - Company policy (driven by management or HR)
  - Your view (Payroll)
  - The new Holidays Act
  - Something else?
2. What was agreed in regard to the week and how has leave been stated (in the employee's employment agreement, IEA or CEA)
  - What were the reasons for leave to be stated in the way it has been stated at the time it was agreed? (And is that still a valid reason)

3. What can your payroll system actually do in regard to holding leave in different time measurements (now and in the near future)?
  - Very important: Can your payroll system work in the new time measurement you want to move too?
4. Are employees present leave balances and work week or pattern, clear and workable to be converted?
5. Do you have the resources to do the conversion or understand the work involved in doing this?
  - Can your payroll provider provide help on this? (And at what cost)

Please note: there is NO NEW Holidays Act at this point, no bill, no select committee process. There is a project but that provides nothing in law that impacts on payroll NOW!

## **What leave entitlements are provided under the act**

### **First things first!**

There is no such thing as accrual in the Holidays Act 2003 except for the 8% for annual holidays.

It is misunderstood that an employee accrues time from day one (as they don't). All they can get is the 8% being MONEY (only for annual holidays).

For ease of understanding and for the financials in regard to liability the payroll system covertes the 8% into time BUT this is not from the Holidays Act but can be seen as standard practice in most if not all payroll systems.

### **Definition of the terms NZPPA will use:**

- **Accrual** is anything before 12 months of the entitlement date for the leave type (if taken before 12 months would be provided as leave in advance).
  - In general think of this as only being MONEY
- **Entitlement** is that the employee has achieved the requirements (usually continuous employment for a set period of time) and has now gained entitled leave provided by law.
  - In general think of this as being TIME and MONEY

***Table of statutory employee leave entitlements***

The following table covers the full range of current minimum statutory legislation in relation to employee leave.

<b>Leave Name/ Type of Leave</b>	<b>Criteria</b>	<b>No. of days entitled</b>
<b>Annual Holidays</b>	12 months continuous employment.	4 weeks
<b>Sick Leave</b>	6 months continuous employment or at least an average of 10 hours a week during that period; and no less than 1 hour in every week during that period or no less than 40 hours in every month during that period.	10 days, cap 20 days
<b>Bereavement Leave</b>	6 months continuous employment or at least an average of 10 hours a week during that period; and no less than 1 hour in every week during that period or no less than 40 hours in every month during that period.	3 days for close family members, 1 day for everyone else, if the employer accepts
<b>Family Violence Leave</b>	6 months continuous employment or at least an average of 10 hours a week during that period; and no less than 1 hour in every week during that period or no less than 40 hours in every month during that period.	10 days per entitlement year
<b>Public Holiday</b>	13 public holidays.	Up to 12 days per year
<b>Alternative Holiday</b>	Entitled if employee works on the PH that is an otherwise working day for the employee.	NA

### ***Unpaid Leave***

Any unpaid leave mentioned under the Holidays Act is not entitlement but if provided becomes an agreed term. The types of unpaid leave in the Holidays Act are:

1. Unpaid Sick
2. Unpaid bereavement
3. Unpaid family violence leave
4. Unpaid leave

The first three if provided by agreement are counted as continuous employment. Unpaid leave (the first week is counted as continuous employment) any time after the 1st week is a matter of agreement.

### ***Additional leave provided by agreement***

- Always separate leave provided by law away from leave provided by agreement as they are two different things.
- Converting agreed leave is a matter of agreement and for that reason is not covered in this webinar.
- Bottomline if you want to undertake this you must fully consult with your employee and get their agreement (in writing).

## **Defining a week and a day for an employee**

The Holidays Act does not define a week for an employee so a week is defined by agreement. The first point of call is always the employee's employment agreement when trying to define the agreed working week for the employee.

### ***How the employment agreement impacts on the week for the employee***

How the employment agreement has been written and agreed between the parties is important and is one of the issues that impacts on payroll systems and converting leave.

#### **Example 1: a typical employment agreement clause:**

- The employee will work Monday to Friday from 8am to 5pm each day

So, the working week is Mon to Fri, what breaks the employee has depends on what was agreed or the requirements stated under the Employment Relations Act (section 69ZD), once this is known then the employees working hours can be defined (some breaks are paid as well).

#### **Example 2: a more defined employment agreement clause:**

- Employee will work Mon to Fri, working 8 hours per day (8am to 4pm) for a total of 40 working hours per week.

So, the working week is Mon to Fri, the working day is 8 hours and the total worked hours per week is 40 Hours

### ***What should happen when the week changes***

When a week changes the employees employment agreement should change to reflect the new week. This does not mean a brand-new employment agreement needs to be provided (unless totally needed) but a variation to agreement that would detail the new week (hopefully with days of work, hours per day etc) and from what date this new week applies from.

Once the new week has been agreed then whatever entitlement has been earned (based on the past agreed week) will now need to be converted to the new week.

### ***One issue with an agreed week***

The more detailed the week is described in the employment agreement could mean that the employee can challenge the conversion of entitlement earned to another week. This will most often happen when the employee is reducing their week (for example: from 40 hours to 20 hours) and have earned entitlement based on the 40-hour week up to the date of the change. Meaning they could oppose reducing their week when the employment agreement states they receive a week based on a higher number of hours.

#### **Using example 2 (from previous section):**

- Employee will work Mon to Fri, working 8 hours per day (8am to 4pm) for a total of 40 working hours per week.

This states the employee gets a 40-hour week (agreed). If the employee has worked for 12 months continuous employment, then they would have earned 4 weeks of 40 hours for a total of 160 hours. If for whatever reason the week needed to be reduced (by agreement) the employee could argue they keep the hours earned (160 hours) as there is nothing in the clause that states it reduces when the week changes.

### ***Creating a more workable annual holiday leave clause that may help***

- Employee will work Mon to Fri, working 8 hours per day (8am to 4pm) for a total of 40 working hours per week.

#### **Rewritten examples:**

- The employees working work will be Mon to Fri, working 8 hours per day (8am to 4pm). If the employee's week changes by agreement, then any annual holiday entitlement earned prior to the change will be converted to the new agreed working week.

#### **OR**

- The employee will receive 4 weeks of annual holiday after completing 12 months of continuous employment. If the employee week changes any annual holiday entitlement that had been earned prior to the change will be converted to the new agreed week.

## **What options can be used when an employee works variable hours to define their week and day**

The aim of defining a week for an employee that works variable hours is to define a base week so the calculations under the Holidays Act can actually be applied.

### **If the week cannot be defined (variable work patterns)**

This is one of the major issues with the current Holidays Act as there is no method included in the act to determine a week for an employee where a week varies from week to week.

The act does not have a method to average time to determine an average week or day for an employee. It does use averages to determine the value of the day but this is about money and not time.

So, the act uses Section 17 as the fall-back position:

#### **Section 17 How employee's entitlement to annual holidays may be met**

- (1)** An employer and employee may agree on how an employee's entitlement to 4 weeks' annual holidays is to be met based on what genuinely constitutes a working week for the employee.
- (2)** If an employer and employee cannot agree on how an employee's entitlement to 4 weeks' annual holidays is to be met, a Labour Inspector may determine the matter for them.
- (3)** In making a determination, the Labour Inspector may take into account any matters that the Labour Inspector thinks fit, including the matters specified in [section 12\(3\)](#).

**Important point:** Bottomline if you cannot determine the week, a week is determined at the time leave is taken.

### ***Problems with using averages for time***

As stated, the act does not provide the option of an average to work out an average day or week for an employee.

NZPPA sees averages being used but there are some major limitations and risk in their use, being:

- If an average is used for time (a week or day), it must be agreed with the employee not just done in payroll or the payroll software.
- If the employees work pattern changes the average would need to be reassessed especially if any period of unpaid leave occurs.
- The average must provide the same or better than what the act would provide and you still need to be able to show this in relation to the requirements of the act.
- Even if an average was agreed the act cannot be contracted out of. This could mean an employee or union could challenge that an averaged week or day does not meet the requirements of the act. This is even after the employee or union agreed to it and especially if MBIE becomes involved (with their view of the world).

For the above reasons this is why using averages comes with risk and must be carefully considered before being used.

## **Converting existing entitlement to the new week or day**

Section 16(1) of the Act states:

“After the end of each completed 12 months of continuous employment, an employee is entitled to not less than 4 weeks paid annual holidays.”

### **Changing an agreed week in hours and the impact on existing entitlement**

#### **Example:**

- Employee works a 40-hour week (Mon to Fri) and after 12 months of continuous employment the employee gets 4 weeks of annual holiday entitlement.
- In the payroll system, this would be stated as 160 hours.
- The employee requests to reduce their working week from 40 hours to 20 hours for family reasons and the employer accepts.
- This now means the employee will have an agreed 20-hour week of work.
- The employee did not take any annual holiday prior to the change so as of Monday the employee will now have 4 weeks of 20 hours.
- By using hours, it seems as though the employee has lost 80 hours!

#### **What has actually happened:**

- On Friday the employee had 4 weeks and on Monday they still have 4 weeks.
- If the employee takes their annual holiday on or just after the change, the value will still be based on a 40-hour week through the use of Average Weekly Earnings (AWE). Ordinary Weekly Pay (OWP) now reflects a 20-hour week and would be the lesser of the two.

- If the employee does not take the 4 weeks at the change, in 12 months the 4 weeks of entitlement will reflect the value of a 20-hour week based on the greater of AWE or OWP.

**Simple calculation to convert existing entitlement in same time measurement (hours to hours)**

Employee works a 40 week and has for 12 months and has not used any annual holidays so the system has entitlement of:

- 160 hours

Employer and employee agree to move to a 20-hour week so to convert the 160 hours of entitlement to now reflect the entitlement under the 20-hour week the following calculation is undertaken:

1. Current entitlement balance (hours) / Current agreed week (hours) = entitlement balance in weeks to be converted.

- $160 \text{ hours} / 40 \text{ hours} = 4 \text{ weeks}$

2. Entitlement balance (x New agreed week (hours) = New converted entitlement under new agreed week.

- $4 \text{ weeks} \times 20 \text{ hours} = 80 \text{ hours (4 weeks of 20 hours)}$

### **Example 1: Changing from a 44-hour week to a 37.5-hour week**

Employee works a 44-hour week and has asked to reduce to a 37.5-hour week. They have 242 hours of entitlement (earned over the last two years):

- $242 / 44 = 5.5$  weeks
- $5.5 \times 37.5 = 206.25$  hours (Check:  $206.25 \text{ hours} / 37.5 = 5.5$  weeks)

### **Example 2: Changing from a 24-hour week to a 38-hour week**

Employee works a 24-hour week and has asked to increase to a 38-hour week. They have 47 hours of entitlement remaining:

- $47 / 24 = 1.95$  weeks
- $1.95 \times 38 = 74.1$  hours (Check:  $74.1 \text{ hours} / 38 = 1.95$  weeks)

### **Example 3: Changing hours with a negative leave balance**

Employee works a 37.5 week and has asked to increase to a 40 hour a week. The employee has used all of their leave entitlement and actually in in a negative of -52.5 hours.

- $-52.5 / 37.5 = -1.4$  weeks
- $-1.4 \times 40 = -56$  hours (Check:  $-56 \text{ hours} / 40 = -1.4$  weeks)

### **Converting leave to a new week to the new days in the week**

Just like a week has to be known to covert hours from a week to days the days must be known for the week. Again, to determine this look at:

- At the employee's employment agreement
- Employees roster
- Their work patterns

Using the simple calculation from the previous section just one extra step is needed, divide the new week by the agreed days.

## **CONVERTING ANNUAL HOLIDAY ENTITLEMENT BALANCES TO A NEW AGREED WEEK**

### **Changing existing hours to a new week in weeks**

#### **Example:**

Employee works a 40 week and has for 12 months and has used 1 week of annual holidays

- 160 hours
- - 40 hours
- 120 hours entitlement balance in hours

Employer and employee agree to move to a 32-hour week so to convert the 120 hours of entitlement to now reflect the entitlement under the 32-hour week the following calculation is undertaken:

- 3.** Current entitlement balance / Current agreed week hours = Remaining entitlement balance to be converted.
- 4.** Entitlement balance x New agreed week (hours) = New converted entitlement under new agreed week.
- 5.** New entitlement balance / New agreed week = New entitlement balance in weeks

#### **Example:**

- 1.**  $120/40 = 3$  weeks
- 2.**  $3 \times 32 = 96$  hours
- 3.**  $96/32 = 3$  weeks

**Example 1:**

Employee works a 40-hour week and has for 12 months and has used 67.5 hours of annual holidays

- 160 hours
- - 67.5 hours
- 92.5 hours

Employer and employee agree to move to a 42-hour week so to convert the 92.5 hours of entitlement to now reflect the entitlement under the 42-hour week the following calculation is undertaken:

- $92.5 / 40 = 2.31$  weeks
- $2.31 \times 42 = 97.02$  hours
- $97.02 / 42 = 2.31$  weeks

**Example 2:**

Employee works a 37.5-hour week and has for the last 5 years (20 weeks annual holidays in total) and has used 15.75 weeks of annual holidays

- **750 hours (20 weeks x 37.5 hours)**
- **- 590.63 hours (15.75 weeks x 37.5 hours)**
- **159.38 hours**

Employer and employee agree to move to a **24**-hour week so to convert the **159.38** hours of entitlement to now reflect the entitlement under the **24**-hour week the following calculation is undertaken:

- **$159.38 / 37.5 = 4.25$  weeks**
- **$4.25 \times 24 = 102$  hours**
- **$102 / 24 = 4.25$  weeks**

**Example 3:**

Employee works a **40-hour** week and has for 12 months and has used **taken 5 weeks of annual holidays (1 week in advance)**

- 160 hours
- - **200** hours
- **-40** hours

Employer and employee agree to move to a **44-hour** week so to covert the **-40** hours of entitlement to now reflect the entitlement under the **44-hour** week the following calculation is undertaken:

- **-40 / 40 = - 1** week
- **-1 x 44 = -44** hours
- **-44 / 44 = - 1** week