



**New Zealand
Payroll Practitioners
Association**

Developing and Supporting
Payroll Professionals

**TAKING RESPONSIBILITY (PAYROLL)
TO GET THE HOLIDAYS ACT RIGHT**

www.nzppa.co.nz

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TAKING RESPONSIBILITY (PAYROLL) TO GET THE HOLIDAYS ACT RIGHT

The Holidays Act was implemented on the 1st April 2004. It is by far the most complex piece of legislation that impacts on the work we do in payroll. There are real issues with the act but what NZPPA (is seeing typically on a daily basis) is employers and payroll adding to the issues on non-compliance by not following the basic requirements that the act requires.

We are looking at 2025 for a new Holidays Act (if the present government stays in) but in the new act there will be nothing about fixing what we are facing now, so this must be managed and sorted moving forward.

Payroll professionals must get on top of any actions from their business or payroll (and their payroll system) that are adding to the issues of the act and work proactively to get as much right as possible with the act.

In this special webinar we will be covering the main areas that are commonly raised with the NZPPA PayTech AdviceLine, and through NZPPA's consulting and audit work with numerous companies over many years.

Comprehensive notes will be provided.

Topics that will be covered:

- Defining payments made to employees and how they impact of Holiday Act calculations.
- Defining what the week and day is for an employee (the issue with variable employees and employee work patterns).
- Changing a week (by agreement), and what needs to be included in employment agreements.
- What Holidays Act calculations must be undertaken and at what time.
- Reviewing Holiday Act settings in payroll and why this is important and what the rest of the business may need to do.
- Payroll System issues what can be done?
- How to get the business on board with making changes to aid payroll compliance (making them understand and taking ownership).

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Holidays Act 2003

The Holidays Act 2003 came into effect on 1 April 2004. It covers the main paid employee leave types provided to employees. The Holidays Act is a complex piece of legislation with multiple calculations for a range of different leave situations.

Leave Name/Type of Leave	Paid or not paid	Qualifying period to get leave entitlement	No. of days entitled	What calculations are used
Annual Leave	Paid	12 months continuous employment	4 weeks	Greater of AWE and OWP for entitlement and 8% for accrual.
Sick Leave	Paid	6 months continuous employment	10 days	RDP or if that cannot be used ADP.
Bereavement Leave	Paid	6 months continuous employment	3 days for close family members, 1 day for everyone else, if the employer accepts	RDP or if that cannot be used ADP.
Public Holiday	Paid	Works on a public holiday	Up to 12 days per year	1.5 of RDP or if that cannot be used ADP.
Alternative Holiday	Paid	Otherwise working day	When earned value is based on the day taken in the future as the alternative holiday	RDP or if that cannot be used ADP.
Family Violence Leave (1/4/19)	Paid	6 months continuous employment	10 each 12 months (does not accumulate)	RDP or if that cannot be used ADP.
Unpaid Sick and Bereavement	Not paid	No qualifying period	As above but not paid.	Not paid.
Unpaid Leave	Not paid	No qualifying period	By agreement.	Not paid.

Gross Earnings

The gross earnings calculation is the most important calculation in the Holidays Act because all other calculations use gross earnings as the basis for their calculations.

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 than 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.

If you are using a payroll system you need to check the set up for gross earnings to understand what type of payments are included or excluded for that gross earnings period. It is also essential that any decisions made with gross earnings are documented for audit, problem solving, training and history purposes.

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Sections 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): *[including availability and shift cancellation compensation]

(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): *[at risk payments] — [piece work payments]

(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: *[the first week of compensation]

(iii) any payment for absence from work while the employee is on protected voluntary service or training within the meaning of the Volunteers Employment Protection Act 1973; and

*[any other payments that must be made by the employer (eg under the terms of the employment agreement, workplace policies, incentive scheme rules etc)]

(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.

***Additional notes from: Employment NZ Leave and Holidays, July 2021**

Discretionary Payments

Under the gross earnings calculation, it mentions “productivity or incentive-based payments (including commission)”. There is a lot of misunderstanding of these types of payments because if they are added into Holidays Act calculations the payment to an employee can be substantially increased.

Expanded definition of a discretionary payment

One of the confusing areas with the Holidays Act has been with the understanding of the term discretionary payments. There was an amendment to the act that added the definition stated below that has further clarified this term.

Here is the definition of a discretionary payment (Holidays Act 2003, 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.

[MBIE] What 'discretionary payments' means

If an employer is bound under the employment agreement to make a payment, then it is not a discretionary payment. Discretionary payments are ex-gratia payments that an employer doesn’t have to pay the employee under the employment agreement.

- ‘Employment agreement’ should be considered widely ie to include variations of employment agreements, letters of offer, rules of commission schemes, bonus scheme rules, policies etc especially if the employment agreement can be said to incorporate the entitlement to participate.
- If the terms of a payment scheme are intended to be binding on the employer and employees, it is unlikely to be a discretionary payment.
- If an employment agreement states that a payment is a discretionary payment for the purposes of the Holidays Act 2003, this in itself doesn’t make it a discretionary payment. Whether the employer is bound under the employment agreement to make the payment is what determines whether or not it is discretionary.

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- If an employer is bound by the employment agreement to make a payment to the employee even if the amount is discretionary (and could be zero), it is not a discretionary payment.
- If the payment is dependent on the employee and/or the organisation meeting eg any type of targets, quotas, performance criteria or indicators this does not make it a discretionary payment.
- If payments are made on a regular and consistent basis eg annually if criteria are met, it is unlikely to be a discretionary payment.
- If employees have a reasonable expectation of payment based on past practice, to the extent that the payment forms part of the employment agreement, it is unlikely to be a discretionary payment.

As it is rare for payments to be excluded it is recommended that employers seek advice before determining that a payment is discretionary, or else err on the side of caution and include the payment.

Examples of payments which are unlikely to be discretionary payments for the purposes of the Holidays Act 2003.

- An employee's remuneration statement includes a bonus amount at 100%. The bonus is covered by bonus rules that state that payment of and amount of the bonus is dependent on company and employee performance.
- An employee's employment agreement has an amount for on target earnings (OTE) for commission. The actual amount of commission earned by the employee will depend on how many sales they make.
- Each year the company decides who will be participating in the bonus scheme. Letters are sent out to employees who will be participating telling them that they are eligible to participate this year. The letters state that the amount they receive depends on their performance and could be zero.
- A company gives all employees a Christmas bonus each year. This helps them recruit and keep good staff and employees are told about it by their employer when they start work with the company.

Examples of payments which are likely to be discretionary payments for the purposes of the Holidays Act 2003

- A business has had a really good year and the owner decides to give everyone a one-off bonus to reward their hard work. They do not do this regularly.
- A company gives all employees a Christmas bonus from time to time.
- A company decides that one employee has had an outstanding year and will be given an ex-gratia lump sum payment of 10% of their wages for the last 12 months.

Reference: <https://www.employment.govt.nz/leave-and-holidays/calculating-payments-for-leave-and-holidays/gross-earnings/>

What payments made to an employee are included in leave calculations?

Section RD 7 (a)(ii) of the Income Tax Act 2007 states that payments not regularly included in a salary and wage are to be taxed as an extra pay:

(ii) is not a payment regularly included in salary or wages payable to the person for a pay period.

Every payment made to an employee needs to be assessed as to whether it is a regular part of the employee's pay period or not and then taxed correctly under PAYE rules. The following table provides examples of a range of payments that may be made to an employee in a range of different circumstances by agreement between the employer and employee.

The payments described in the following table are usually found in old established workplaces with legacy employment agreements and as such these types of payments would not be considered a discretionary payments.

If they are not included in the employee's employment agreement then they could be considered as being excluded from gross earnings for leave calculations.

Type of agreed payment made to the employee	Taxed as an extra pay	Included in AWE or OWP	Included in RDP or ADP	Included in the 8% accrual on termination
Long service leave taken.	No	Yes	Yes	NA
Long service cashed out while employed as a lump sum.	Yes	Yes for AWE	Yes for ADP	NA
Long service cashed out on termination as a lump sum.	Yes	No	No	Yes
Annual bonus contractual (written into the employment agreement) while employed.	Yes	Yes for AWE	Yes for ADP	NA
Bonus contractual (written into the employment agreement) paid on termination.	Yes	No	No	Yes

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Type of agreed payment made to the employee	Taxed as an extra pay	Included in AWE or OWP	Included in RDP or ADP	Included in the 8% accrual on termination
Bonus contractual (written into the employment agreement) paid after termination.	Yes	No	No	Yes
Bonus discretionary not written into the employment agreement.	Yes	No	No	No (if paid on termination)
Bonus (regular) production bonus paid in each pay period.	No (taxed normally)	Yes	Yes	Yes
Notice period worked.	No (taxed normally)	Yes	Yes	Yes
Notice period paid in lieu of notice (lump sum) on termination.	Yes	No	No	Yes
Sick leave paid out on termination (agreed term) lump sum.	Yes	No	No	Yes
Redundancy compensation.	Yes but no earner levy deducted	No	No	No*
Retirement allowance paid on termination as a lump sum.	Yes but no earner levy deducted	No	No	Yes
Back pay from CEA negotiations (backdated over 18 months).	Yes	Yes for AWE	Yes for ADP	Yes
Alternative holiday cash up by agreement while employed.	Yes	Yes for AWE	Yes for ADP	NA
Alternate holiday cashed up on termination.	Yes	No	No	Yes
Alternate holiday taken while employed.	No	Yes	Yes	NA
TOIL accumulated and cashed out on termination as a lump sum.	Yes	No	No	Yes

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Type of agreed payment made to the employee	Taxed as an extra pay	Included in AWE or OWP	Included in RDP or ADP	Included in the 8% accrual on termination
Taxable allowance accumulated and paid out on termination as a lump sum.	Yes	No	No	Yes
Taxable allowance paid each pay period.	No	Yes	Yes	Yes
Annual holiday extra entitlement greater than 4 weeks cashed out while working (by agreement).	Yes	Yes for AWE	Yes for ADP	NA
Annual holiday extra entitlement cashed out on termination (by agreement)	Yes	No	No	Yes
Annual holiday minimum entitlement cashed up greater than a week (more than a week), while working.	Yes	No	No	NA

Please note: The above practice is illegal under the Holidays Act 2003.

Determining an otherwise working day

One of the issues with the Holidays Act 2003 is that the Act is written as if an employee usually works 40 hours a week over five days. In reality a lot of employees work various days and various times and defining a working week for the employee becomes difficult.

What this can mean for many workplaces that have different work patterns, is when a public holiday happens it raises the issue of whether the employee gets the day as a public holiday.

Section 12 of the Act provides the steps to follow when deciding if an employee is eligible or not to have a day counted as an "otherwise working day". If the employer and employee cannot decide after following these steps then a labour inspector from MBIE can, using the same steps under **section 13** (see the following page).

Section 12. Determination of what would otherwise be working day

- (1) This section applies for the purpose of determining an employee's entitlements to a public holiday, an alternative holiday, to sick leave, to bereavement leave, or to family violence leave.
- (2) If it is not clear whether a day would otherwise be a working day for the employee, the employer and employee must take into account the factors listed in subsection (3), with a view to reaching agreement on the matter.
- (3) The factors are—
 - (a) the employee's employment agreement:
 - (b) the employee's work patterns:
 - (c) any other relevant factors, including—
 - (i) whether the employee works for the employer only when work is available:
 - (ii) the employer's rosters or other similar systems:
 - (iii) the reasonable expectations of the employer and the employee that the employee would work on the day concerned.
 - (d) whether, but for the day being a public holiday, an alternative holiday, or a day on which the employee was on sick leave or bereavement leave or family violence leave, the employee would have worked on the day concerned.
- (3A) If the public holiday, alternative holiday, or day on which the employee was on sick leave or bereavement leave or family violence leave falls during a closedown period, the factors listed in subsection (3) must be taken into account as if the closedown period were not in

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effect.

- (4) For the purposes of public holidays, if an employee would otherwise work any amount of time on a public holiday, that day must be treated as a day that would otherwise be a working day for the employee

Under Section 12(3)(b) it mentions “the employee’s work patterns”, it is typical for payroll if they can clearly see if the employee has worked the day to look at the last 4 weeks.

For example:

An employee works Labour Day, but they have a work pattern that is all over the place. So, payroll looks at the last four Mondays to ascertain if Monday is an otherwise working day for the employee.

If the employee works a defined cycle, then that timeframe may be used to determine if the day is an otherwise working day for the employee i.e. the employee works a six-week cycle.

If an agreement cannot be reached, then a labour inspector from MBIE can be called in to make a decision under the following section.

Section 13. Labour Inspector may determine what would otherwise be working day

- (1) This section applies if an employer and employee cannot agree under section 12 on whether a day would otherwise be a working day for the employee.
- (2) A Labour Inspector may determine whether the day would otherwise be a working day for the employee.
- (3) In making a determination, the Labour Inspector must take into account the factors listed in section 12(3).

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Entitlement to Annual Holidays

Entitlement to annual holidays provides the criteria by which employees are entitled to paid annual holidays. It also details what is considered as part of continuous employment (service) with the employer. Sub-section (1) in plain language states do 12 months to get four weeks of annual holidays.

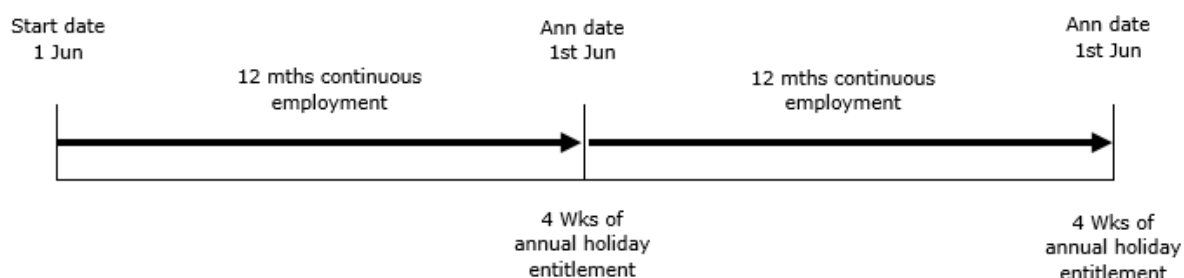
Please note: Additional Annual Holidays

If the employer provides additional annual holidays above the four weeks of minimum entitlement, this is by agreement and the rules of the Holidays Act do not apply.

Section 16. Entitlement to annual holidays

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

Example of how an employee meets the requirement to get 4 weeks of annual holiday entitlement:



Section 2 is the main section and it deals with what types of leave count as continuous employment for the employee. These are:

- any paid leave type taken under the Act is part of continuous employment for the employee
- any period of parental leave is included (four types of leave) under the Act
- military service, (army, navy, air force)
- all leave resulting from a work accident or non-work accident.

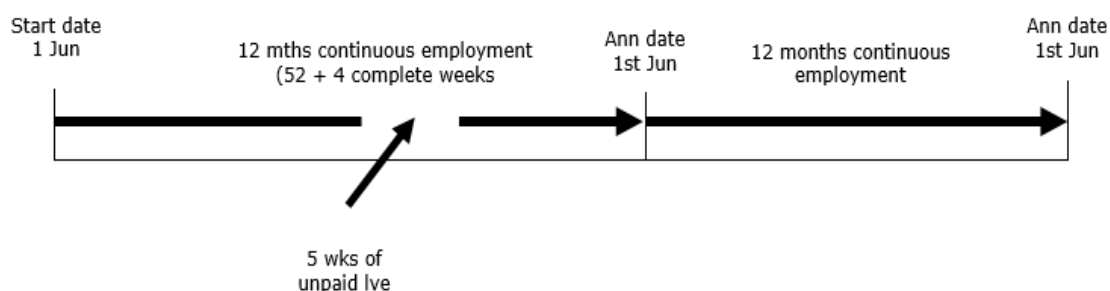
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Unpaid Sick and Bereavement Leave

Under section 16(2)(v), if unpaid sick or unpaid bereavement leave is given it will mean that the employee accrues annual holidays while on this type of leave.

- (2) For the purposes of subsection (1), the 12 months of continuous employment—
- (a) includes any period during which the employee was—
- (i) on paid holidays or leave under this Act "(for example, family violence leave); or
 - (ii) on parental leave under the Parental Leave and Employment Protection Act 1987; or
 - (iii) on protected voluntary service or training within the meaning of the Volunteers Employment Protection Act 1973; or
 - (iv) receiving weekly compensation under the Accident Compensation Act 2001 or former Act as well as, or instead of, payment from the employer; or
 - (v) on unpaid sick leave or unpaid bereavement leave or unpaid family violence leave; or
 - (vi) on unpaid leave for any other reason for a period of no more than 1 week; but
- (b) unless otherwise agreed, does not include any other unpaid leave, being leave other than that referred to in paragraph (a)(v) and (vi).

Sub-section 3 allows the employer and employee to reduce the 52-week divisor for average weekly earnings if the employee has been given unpaid leave greater than a week.



Please note: in the example above the employee takes 5 weeks of unpaid leave but the act does not count the 1st week taken.

Sub-section (3) If, for the purposes of subsection (2)(b), an employer and employee agree that any period of unpaid leave of more than 1 week is to be included in the employee's 12 months of continuous employment, the divisor of 52 to be used for the purposes of calculating the employee's average weekly earnings must be reduced by the number of whole or part weeks greater than 1 week that the employee was on the unpaid leave.

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In sub-section 4, until the employee uses their minimum entitlement for annual holidays, they cannot be lost or cashed up except for the fourth week in the current entitlement year. This means annual leave, if not taken, can mount up very quickly creating additional costs and risk to the business.

- (4) An employee's entitlement to annual holidays remains in force until the employee has—
- (a) taken all of the entitlement as paid holidays; or
 - (b) been paid out under [section 28B](#) for the entitlement in the entitlement year.

Setting the accrual rate for leave

One of the typical questions asked of NZPPA is what leave accrual rate should be set in the payroll system to accrue leave. Well, there is nothing in the Act that defines this. The Act states do 12 months to get four weeks of annual holidays or if the employee leaves prior to the 12 months, an 8% calculation is used.

Payroll systems accrue to provide the employer what the liability is for leave. This is a set rate based on a pay, pay period or monthly setting and is not based on legislation.

Weeks vs. Days and Hours

The Holidays Act 2003 is written in weeks and days. There is nothing in the Act that states leave entitlements can be paid or calculated in hours.

If leave entitlements are stated in hours, it can only be done if the hours can be related back to a week or a day. This is an issue in a lot of payroll systems, and it is important to ensure this clearly shows that hours relate back to a week and day if a Labour Inspector from MBIE were to challenge this.

CHANGING A WEEK AND THE EFFECT ON ANNUAL HOLIDAY ENTITLEMENT

To start with, the Holidays Act 2003 is stated in weeks and days and not in hours. This is the case even though you will find the majority of payroll systems are in hours. You cannot use hours unless there is an agreement between the employer and employee (Section 17 of the Act).

There is no definition of a week in the Act so a week is by agreement. If the week is changed by agreement between the employer and employee then the minimum entitlement earned under the act will change to reflect what has been agreed.

Now, please understand you can always do better than the legislation as the Act is based on minimum entitlement, but the problem with changing entitlement to reflect the week is that it is undermined when based on hours. This is because when hours are used a change may be seen as an employee losing or gaining a substantial number of hours as a result of the change. This is an actual misconception based on using hours instead of the correct use of weeks provided under the Act.

To understand the real meaning of the Act you must think in terms of weeks and not hours. 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: Kate works a 40-hour week (Mon to Fri) and after 12 months of continuous employment she gets 4 weeks of annual leave entitlement. In the payroll system, this would be stated as 160 hours. Kate requests to reduce her working week from 40 hours to 20 hours for family reasons and the employer accepts. This now means Kate will have an agreed 20-hour week of work. Kate did not take any annual holiday prior to the change so as of Monday Kate will now have 4 weeks of 20 hours. By using hours, it seems as though Kate has lost 80 hours!

Now please put your passions aside. Yes Kate has worked a 40-hour week for 12 months and why should she be disadvantaged by this change? But Kate has not been disadvantaged at all. On Friday she had 4 weeks and on Monday she still has 4 weeks. If she takes her

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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 Kate 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.

Take the hint: get the employee to take their leave which is what the Act is all about. This is good for the employee and the business as it manages and reduces leave liability. And for all the fluffy HR practitioners that may be reading this post, it ensures the employee maintains their work-life balance!

If the week is not changed to reflect what the week actually is, Kate would effectively have 8 weeks of 20 hours of annual holiday entitlement. How will an employer accommodate this? After all, they often have enough problems getting the employee to take 4 weeks.

So, in a nutshell the main point from the above to take away is:

- a week is by agreement and when the week changes by agreement any entitlement also changes to reflect what has now been agreed constitutes a week.

When a week defined in hours has been agreed, hours can be retained if the week changes.

There is one situation that can see hours being retained when the week is changed by agreement. When the employee's employment agreement states that if the employee works 12 months of continuous employment they will receive 4 weeks of 40 hours, this has then created a defined number of hours that would be retained even on a change of hours.

Example: It is stated in Joe's employment agreement that after 12 months of continuous employment he will receive 4 weeks of 40 hours. Joe works for 12 months and receives 4 weeks of 40 hours (160 hours in total). He then asks for a reduction to 20 hours a week so that he can return to university. This is agreed to by the employer. As it was previously agreed, the 160 hours already earned is retained and upon the change there will not be a reduction in these hours. This then creates a leave liability issue for the employer straight away in trying to manage these hours because it does not fit with the week the employee now works.

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So, to manage this an employer needs to ensure the employment agreement aligns to the payroll system, that a week is clearly defined and that the employee understands the effect changing a week has on their existing annual holiday entitlement.

The Act is written in weeks and if used correctly it is workable and actually logical, but not many payroll systems use weeks and this is the issue as it is the basis of the Act and has been so since it was implemented on 1 April 2004.

NZPPA supporting payroll since 2007!

Annual holidays can be calculated in Hours, Days or Weeks

Under the Act (section 17 below), the way annual holidays are calculated is by agreement between the parties and can be calculated in hours, days or weeks.

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\(3\)](#).

Mismatch between employment agreement and payroll system

One of the issues NZPPA has been seeing is how leave that has been agreed to be stated between the employer and employee in one way, differs to what the payroll system is recording.

For example:

As an agreed term in the employee's employment agreement, it states: "After 12 months continuous employment the employee will receive 4 weeks of annual holiday entitlement" but the payroll system states all leave in hours and does not define a week of leave at all.

It is important to ensure that any agreement between the employer and employee is reflected in the employment agreement so leave entitlement can clearly be defined. There is a potential an employee or union could challenge the employer if the payroll system did not reflect what was agreed between the employer and employee.

How can a week or day be defined when an employee works variable hours?

This is where the problem with hours and the Holidays Act begins. The act does give the way to determine the value of a week and a day through using an average, if the week or the day cannot be determined. But the act does not give the same tools to determine the entitlement for leave just stating it as a week or a day. When an employee works a different week every week or different hours every day what is a week and what is a day?

Example: this shows the last 4 weeks an employee actually works in days and weeks:

Week no.	Mon	Tue	Wed	Thu	Fri	Total weekly hours worked
1	5.7	8	6	6.3	2.5	28.5
2	8	6.7	5	6.8	7	33.5
3	8	8	8	8	8	40
4	7	5	7.5	9	8	36.5

So, if the employee works this for a whole year under the Holiday Act they receive:

- six months continuous employment, they receive sick and bereavement leave, and after
- twelve months continuous employment, the employee will receive 4 weeks of annual holiday entitlement.

When an employee works different hours every week, week after week this causes an issue in what the employee will receive in regard to leave entitlement once they reach 12 months.

Proportional accrual - 4/52

One method that is used in payroll to define leave entitlement based on variable hours is by using proportional accrual.

Proportional accrual for annual holiday entitlement is based on 4/52 of every hour worked and paid leave under the act (as leave is counted as part of continuous employment). This creates a bucket of hours which then causes a problem how many hours from the bucket is a week for the employee?

Going back to Section 17 it states, "annual holidays is to be met based on what genuinely constitutes a working week for the employee". If proportional accrual is used there still must be some agreement on what a week is from the bucket of hours created or the employer could be challenged that they have not been provided 4 weeks of entitlement as per the act.

Changing hours of work and the impact on annual holiday entitlement

A typical situation in a workplace is when an employee requests, or an employer consults, to change the employee's hours from what has been agreed. This could include:

- changes in the employee's circumstances (looking after children, extended family)
- wanting to undertake study changes in work (reduced hours, restructuring etc.).

Whatever the reason, any change would need to be by agreement between the parties involved (employer and employee).

A week is defined by agreement

A week is defined by agreement and when that agreement is changed between the parties, it means the working week for the employee changes from that point forward. This also impacts on any annual holiday entitlement already earned.

Issues to highlight and be aware of:

- It is important that the employee understands that annual holiday entitlement does not remain the same when the working week has changed.
- If the employee wants to receive the full value of what leave was worth prior to a reduction in hours, they should take leave prior to the change or right at the time of the change. The longer they wait, the more the rate will reduce to reflect the employee's new week.
- This goes the other way as well. If an employee increases hours for a week say from 20 to 30 hours, any annual holiday entitlement will increase to reflect the new working week.

Impact on annual leave entitlement when changing the working week

The Holidays Act 2003 calculations are based at the time the leave is taken.

Example:

Linda has been working for ABC Limited for the last three years and works a 40-hour week.

With the birth of her second child, she asks her employer if she can reduce her hours from her contracted 40 to 20 per week. Her employer has agreed to this (the employer does not have to agree).

Linda already has two weeks of annual holiday entitlement on the books prior to the change.

Two months into her new work pattern of 20 hours per week, Linda requests to take a week of annual leave.

The calculation would be:

The greater of AWE and OWP (taken from the last pay period).

- The AWE (12 months) will cover gross earnings for two months at the reduced 20 hours and the rest at 40 hours. The hours are not relevant as it is the total gross earnings for the period that the calculation will use.
- The OWP will firstly look to see if the value of the week can be determined (which should be able to be done) or do an average over the last four weeks at the 20-hours a week rate.

The result is that AWE is the higher of the two.

Cannot use averaging for time in holidays act remediation

One of the key concepts of the Holidays Act is a week for annual holidays and a day for the other types of leave provided under the Act. A week is by agreement and if the week changes, the entitlement changes to reflect the new agreed week.

When the week cannot be defined because every week is different for an employee, the Holidays Act fails because there is no method to determine a variable week for an employee. The employer and payroll are left with an unworkable situation where a week must be determined but cannot be because of the variable nature of the hours the employee is working.

Now, defining a week that cannot be defined because the employee's work pattern is variable is currently being done through a range of methods as follows:

- Some payroll systems use proportional accrual where 4/52 of every hour is collected to create 4 weeks of annual holiday entitlement. However, this does not work because it creates a bucket of time but still does not define a week and how many days in a week when leave is taken.
- Some employers use the last week worked as the basis of the current week. However, depending on what was worked in the last week it can mean the week does not actually represent the typical week the employee works and could mean an employee is paid more or less than they should be for that week.
- Some employers use a roster or the work pattern of the employee to determine the week. However, once again it's unclear how far back you go to determine a week. I know of NZPPA members being told by a MBIE labour inspector that this assessment can be anything from 3 months up to 6 months, which is unworkable for a payroll which could be processing leave for hundreds or thousands of employees in a pay period and it becomes a manual activity as the payroll system cannot do the assessment.
- Another method seen is where the employer averages the last 13 weeks (one quarter of the year) to create a week and days for a week. However, this is an average and an average could always be less than the current week, so they end up doing another check to ensure it is not less than what the week would be. This is yet another manual activity on top of normal payroll processing.

Taking Responsibility of the Holidays Act

Now, the Holidays Act section 17 states:

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.

The key to section 17 is that it must be "**agreed**", and all the above methods mentioned usually don't involve even talking to the employee – it is just done so the week can be determined under an unworkable Act. Even if used, there is a second part to the section above which is "**what genuinely constitutes a work week for the employee**". So, even if the week is determined by any of the methods above, the result needs to be tested against what genuinely constitutes a work week for the employee, which again is not being done in conjunction with the employee. The bottom line is that a week and the days in a week must be defined even for an employee working variable hours with agreement from the employee.

Lastly, recalculating leave is a complex, time-consuming and costly activity, so it is important to do it right so you can determine whether an employee has been paid correctly for leave.

Annual Holidays Calculations

There are three calculations used to calculate annual holiday's payment. The three calculations apply to five different situations. The calculations are:

- Average Weekly Earnings (AWE)
- Ordinary Weekly Pay (OWP)
- 8% of Gross Earnings (8%)

The first two calculations, AWE and OWP, are for calculating the entitlement and are always calculated on the basis of the greater of the two. The 8% is for any accrual to be paid.

Reference:

<https://www.employment.govt.nz/assets/Uploads/tools-and-resources/flowcharts/Holiday-Act-Guidance-tools-4-Ordinary-Weekly-Pay-vs-Average-Weekly-Earnings.pdf>

Payment for annual holidays

Payment for annual holidays is generally at the rate of the greater of:

- the ordinary weekly pay at the start of the holiday or
- the employee's average weekly earnings for the 12-month period just before the end of the pay period before the annual holiday is taken

Reference: Employment NZ Leave and Holidays, July 2021, Page 4

Taking Responsibility of the Holidays Act

Average Weekly Earnings (AWE)

Average weekly earnings is the employee's gross earnings over the 12 months just before the end of the last payroll period before the annual holiday is taken, divided by 52.

Section 5. Interpretation

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

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

Example:

$$\frac{\text{Gross earnings}}{\text{Divisor (52 Weeks)}}$$

Worked example:

$$\frac{\$52,000}{52} = \$1000$$

- AWE is calculated by going back 12 months from the last pay period (before the current period), to determine the taxable gross earnings to be included for that period and then dividing by 52.

Please note: Other taxable payments that have been paid on top of the employee's wage or salary, can impact on the leave rate.

Taking Responsibility of the Holidays Act

Ordinary Weekly Pay (OWP)

OWP is the second entitlement calculation and there are three options under this section.

Section 1 states that if the value of the week can be determined based on what is in the employee's employment agreement, that is what is used including productivity or incentive and commission bonuses, overtime and the cash value of any board or lodgings if it can be seen as a regular part of the employee's pay.

Section 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.

(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).

Definition of ordinary weekly pay and average weekly earnings

Ordinary weekly pay is everything an employee is normally paid weekly under the employment agreement, including:

- regular allowances, such as a shift allowance
- regular productivity or incentive-based payments (including commission or piece rates)
- the cash value of board or lodgings
- regular overtime.

Ordinary weekly pay doesn't include irregular, one-off payments or discretionary payments or employer payments to an employee's superannuation scheme.

For many people, ordinary weekly pay is clear because they are paid the same amount each week.

If it isn't possible to work out ordinary weekly pay, use the following formula:

- go to the end of the last regular pay period before the holiday
- from that date, go back:
 - four calendar weeks, or;
 - if the pay period is longer than four weeks, go back the length of the pay period
- work out the gross earnings for that period
- deduct from the gross earnings any payments that are irregular or the employer doesn't have to pay, and
- divide the answer by 4.

If an employment agreement has a specific rate for ordinary weekly pay, this rate must be compared with the actual ordinary weekly pay, and the greater of the two amounts must be used as the ordinary weekly pay rate.

Reference: Employment NZ Leave and Holidays, July 2021, Page 5

Taking Responsibility of the Holidays Act

8% of Gross Earnings

The 8% calculation is done for accrual in regard to the following situations:

- On termination (before completing 12 months)
- On termination (from last entitlement date to end date after 12 months)
- Pay as you go (fix term less than 12 months or a casual)
- Closedown (cashing up from start date to start of closedown)

Worked example (terminates less than 12 months service):

Employee resigns after 3 months working for an employer.

Gross earnings for period is: 12 weeks (4 weeks a month) @ \$1000 per week

$$\$12,000 * 8\% = \$960$$

Payment for Annual Holidays

Annual Leave in Advance

Section 20. Employer may allow employee to take annual holidays in advance

An employer may allow an employee to take an agreed portion of the employee's annual holidays entitlement in advance.

The three calculations that have already been discussed apply to five different situations.

- Sections **21**, **22**, and **24** require two of the three calculations to be done (Average weekly earnings & Ordinary weekly pay) with the greater value from the two calculations being used as the annual holiday payment. These calculations are only used for annual leave entitlement.
- Sections **23** and **25** use the **8%** gross earning calculation. This calculation is only used for annual leave accrual.
- Section **26** states any cashed up entitlement must go into the 8% calculation on termination.

Understanding the difference between Annual Leave Entitlement and Annual Leave Accrual

Annual leave entitlement	When an employee has done 12 months continuous employment the four weeks becomes leave entitlement.
Annual leave accrual	Before 12 months it is leave accrual (not yet entitlement). This happens every year until the employee has done a further 12 months service then it becomes entitlement.

Calculation of Annual Holiday Pay

Section 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.

Notes:

Taking Responsibility of the Holidays Act

Worked example 1:

Employee gets annual holiday of four weeks (approved) to be taken from the 2 Oct to the 30 Oct.

Weekly salary is \$1000 per week

Ordinary weekly pay:

\$4000 (gross earning over four weeks)

4 (last four calendar weeks from beginning of the annual holiday)

= \$1000

Average weekly earnings:

\$52000

52

= \$1000

Taking Responsibility of the Holidays Act

Worked example 2:

Employee gets annual holiday of four weeks (approved) to be taken from the 2 Oct to the 30 Oct.

Gross earnings:

Allowances (Living away allowance 4 weeks @ \$500 per week):	\$ 2000
First week ACC (80% figure for one week):	\$ 800
Weekly salary is \$1000 per week	\$ 3000

Ordinary weekly pay:

\$5800 (gross earning over four weeks)

4 (last four calendar weeks from beginning of the annual holiday)

= \$1450

Average weekly earnings:

\$53800

52

= \$1034.61

Annual Holiday payment to be paid would be:

\$1450 (greater of AWE & OWP)

Calculation of Annual Holiday Pay If Holiday Taken in Advance

The difference between Section 21 and section 22 is that in section 22 the divisor used in the average weekly earnings can be reduced to reflect the amount of time the employee has actually been in the workplace.

Section 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.

Taking Responsibility of the Holidays Act

Worked example 1:

Employee has been employed for six months. Employee gets annual holiday in advance of one week (approved) to be taken from the 2 Oct to the 6 Oct.

Weekly salary is \$1000 per week

Ordinary weekly pay:

\$4000 (gross earning over four weeks)

4 (last four calendar weeks from beginning of the annual holiday)

= \$1000

Average weekly earnings:

\$26000

26

= \$1000

Taking Responsibility of the Holidays Act

Worked example 2:

Employee gets annual holiday of four weeks (approved) to be taken from the 2 Oct to the 30 Oct.

Gross earnings:

Allowances (Living away allowance 4 weeks @ \$500 per week): \$ 2000

First week ACC (80% figure for one week): \$ 800

Weekly salary is \$1000 per week

Ordinary weekly pay:

\$4000 (gross earning over four weeks)

4 (last four calendar weeks from beginning of the annual holiday)

=\$1000

Average weekly earnings:

\$27800

26

=\$1069.23

Annual leave in advance payment for the week: \$1069.23

Calculation of Annual Holiday Pay If Employment Ends Within 12 Months

Section 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.

Worked example:

- Employee has worked for three months (13 weeks) and decides to resign.
- Weekly salary is \$1000 per week.
- $\$13000$ (Gross earnings) * 8% = Final annual leave pay is \$1040

When Payment for Annual Holidays Must Be Made

Section 27. When payment for annual holidays must be made

- (1) An employer must pay an employee for an annual holiday before the holiday is taken unless—
 - (a) the employer and employee agree that the employee is to be paid in the pay that relates to the period during which the holiday is taken; or
 - (b) the employee's employment has come to an end.
- (2) If subsection (1)(b) applies, the employer must pay the annual holiday pay in the pay that relates to the employee's final period of employment.

When Annual Holiday Pay May Be Paid with Employee's Pay

Section 28. When annual holiday pay may be paid with employee's pay

- (1) Despite section 27, an employer may regularly pay annual holiday pay with the employee's pay if—
 - (a) the employee—
 - (i) is employed in accordance with section 66 of the Employment Relations Act 2000 on a fixed-term agreement to work for less than 12 months; or
 - (ii) works for the employer on a basis that is so intermittent or irregular that it is impracticable for the employer to provide the employee with 4 weeks' annual holidays under section 16; and
 - (b) the employee agrees in his or her employment agreement; and
 - (c) the annual holiday pay is paid as an identifiable component of the employee's pay; and
 - (d) the annual holiday pay is paid at a rate not less than 8% of the employee's gross earnings.
- (2) If an employee to whom subsection (1)(a)(i) applies is employed by the same employer beyond 12 months on a series of fixed-term agreements of less than 12 months each, the employer and employee may agree that the employee is to be paid in accordance with subsection (1) regardless of the number of agreements.
- (3) If the fixed-term agreement of an employee to whom subsection (1)(a)(i) applies is followed by permanent employment with the same employer, the employee—
 - (a) becomes entitled to paid annual holidays at the end of 12 months' continuous employment (including the period of that fixed-term agreement) under section 16; but
 - (b) the amount of the holiday pay that the employee is entitled to be paid for the holidays is reduced by the amount that the employee has already received under subsection (1).
- (4) If an employer has incorrectly paid annual holiday pay with an employee's pay in circumstances where subsection (1) does not apply and the employee's employment has continued for 12 months or more, then, despite those payments, the employee becomes entitled to annual holidays in accordance with section 16 and paid in accordance with this subpart.

Example:

For 2 days of work a casual employee receives gross wages of \$185.25.

Pay as you go would be:

- $\$185.25 * 8\% = \14.82

This would be paid to the employee in their pay as an identifiable component on the pay slip.

Other Leave (Public, Sick, Bereavement, Alternative) Relevant Daily Pay

Section 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, bereavement leave, or family violence 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).

Taking Responsibility of the Holidays Act

RDP is about the value of the day. If you can determine the value of the day for the employee, then that is what is used. For instance:

- Employee A works four hours every Monday and eight hours every Friday. If they go sick on Monday, you can pay four hours and if they go sick on the Friday then they can be paid eight hours for the day.
- Employee B works 8 hours every day Monday to Friday and gets paid \$1000 per week. If the employee went on bereavement leave on any day it would be \$200 for the day.

RDP is not just the base rate or ordinary hours for the day and includes other payments (s9) (1) (b) that would otherwise be paid on the day.



many payroll systems just pay the ordinary rate for the day; *this* may not be the same as RDP and you need to check.

Definition: 'Relevant daily pay'

Relevant daily pay is used to calculate payment for public holidays, alternative holidays, sick leave, bereavement leave and family violence leave. It is the amount the employee would have received if they had worked on that day, and it includes:

- productivity or incentive payments, including any allowances, commission or piece rates, if those payments would have been received had the employee worked
- overtime payments
- the cash value of board and lodgings provided.

It doesn't include payment of employer contributions to superannuation schemes for the benefit of the employee, or reimbursements payable to the employee, or in general, non-taxable allowances.

An employment agreement may include a special rate of relevant daily pay, this can be used to calculate payment for a public holiday, an alternative holiday, sick leave, bereavement leave, or family violence leave as long as the rate is equal to, or greater than, the rate calculated using the definition above.

Reference: Employment NZ Leave and Holidays, July 2021, Page 13-14.

Taking Responsibility of the Holidays Act

Average Daily Pay

Section 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, bereavement leave, or family violence 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)."

Taking Responsibility of the Holidays Act

Definition: 'Average daily pay'

Average daily pay may only be used if it isn't possible or practicable to determine relevant daily pay, or if the employee's daily pay varies within the pay period when the holiday or leave falls.

Average daily pay is a daily average of the employee's gross earnings over the past 52 weeks. It is the employee's gross earnings divided by the number of whole or part days the employee either worked or was on paid leave or holiday during that period.

Definition: 'Penal rate'

For the purposes of payment for working on a public holiday, a penal rate is an identifiable additional amount paid to compensate the employee for working on a particular day of the week or a public holiday. A penal rate is usually stated in an employment agreement. Examples of penal rates include:

- a Saturday payment
- a Sunday payment
- a public holiday payment.

Penal rates (for the purposes of payment for working on a public holiday) don't include:

- allowances, such as wet weather money
- overtime rates
- special rates for working a sixth or seventh day in a week.

Reference: Employment NZ Leave and Holidays, July 2021, Page 14.

Section 24: Calculation of Annual Holiday Pay If Employment Ends and Entitlement to Holidays Has Arisen

Section 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.

Worked example:

Employee has worked continuously for 12 months and is entitled to four weeks of annual leave but decides to resign.

Weekly salary is \$1000 per week

Ordinary weekly pay (as at the date of the end of the employee's employment):

\$4000 (gross earning over four weeks)

4 (last four calendar weeks from beginning of the annual holiday)

= \$1000

Average weekly earnings (employee's average weekly earnings during the 12 months immediately before the end of the last pay period):

\$52000/52 = \$1000

Section 25: Calculation of Annual Holiday Pay If Employment Ends Before Further Entitlement Has Arisen

Section 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.

Worked example:

Employee has worked for fifteen months, has taken their four weeks of annual leave but then decides to resign.

Weekly salary is \$1000 per week.

3 months (13 weeks) since last annual leave entitlement.

$$\$13000 \text{ (Gross earnings)} * 8\% = \$1040$$

Section 26: Payments may be cumulative

To avoid doubt,—

(a) gross earnings for the purposes of section [25\(2\)](#) includes any payments under section [24\(2\)](#); and

(b) an employee may be entitled to payments for annual holidays under both section [24](#) and section [25](#).

Worked Example:

An employee works for 15 months and then resigns. At the 12-month mark they had taken one week of annual leave entitlement.

Annual leave payment on termination would be:

- Employee has 3 weeks of entitlement at a total of \$2400.00
- Employee has 3 months of accrual at a total of \$9600.00 (12 weeks x \$800 per week) * for this example always 4 weeks in a month.

Calculation would be:

(Total for entitlement + Total for accrual) * 8%

- $\$2400.00 + \$9600.00 = \$12,000.00 * 8\% = \960.00
- $\$2400.00 + \$960.00 = \$3360.00$

On the final pay slip it should be represented as the following:

- Annual leave entitlement (15 Days) \$2400.00
- Annual leave accrual \$960.00

Cashing up annual holiday entitlement and accrual on termination

On termination if there is any outstanding annual leave entitlement and or accrual there is a requirement to pay this out in the final pay.

- **Annual leave entitlement cashed up on termination**

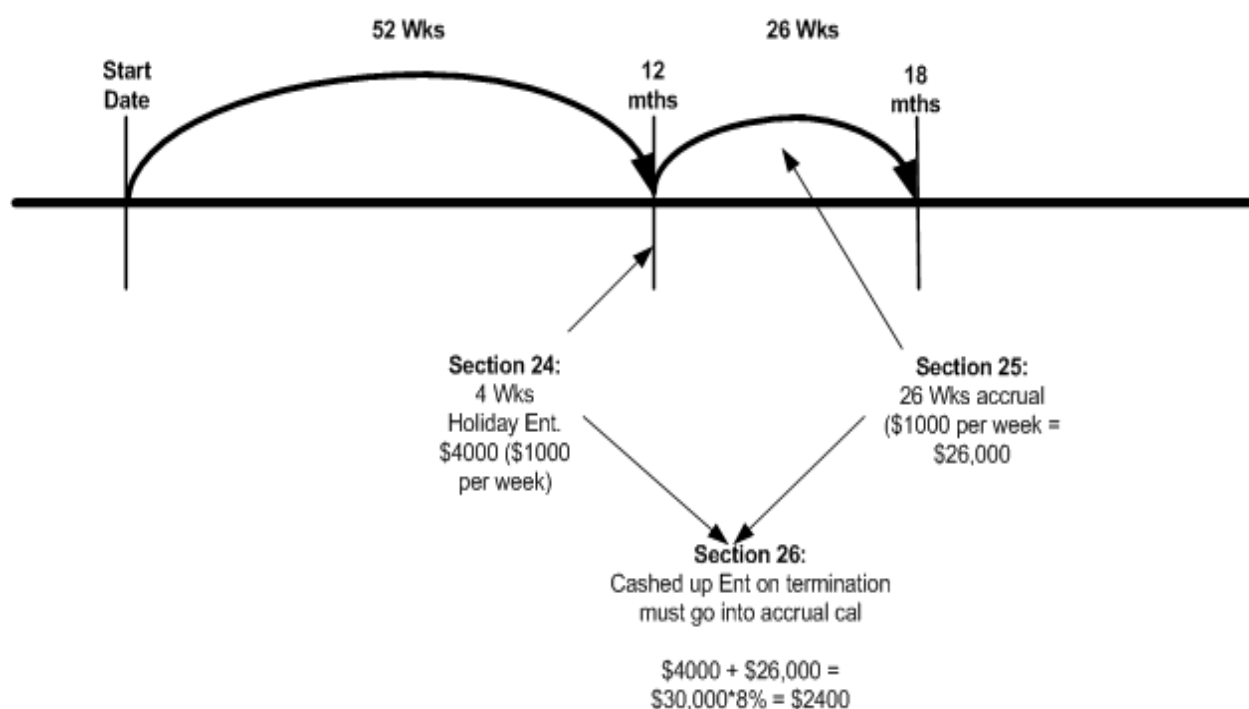
Any annual leave entitlement to be cashed up on termination has to use the AWE and OWP calculations (section 24), paid out at the greater of the 2.

- **Annual leave accrual cashed up on termination**

Any annual leave accrual to be cashed up on termination has to be calculated using 8% of gross earnings (section 25).

Important point:	If any annual leave entitlement is cashed up on termination it must also go into the accrual calculation (section 26), see example below.
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Example of Sections 24, 25 and 26 - Holiday pay on holiday pay



Reviewing Holiday Act settings in payroll and why this is important and what the rest of the business may need to do.

See Payroll Audit Payment Types spreadsheet.

Payroll System issues what can be done?

- Spend far more time on selecting the correct payroll system (best fit, best system).
- Development a full service level agreement (SLA) that works for the business and not just the payroll provider on who does what and when and the cost involved.
- Take control of configuration, test and do not sign off until payroll has evidence that the payroll software meets business and compliance needs.
- Identify manual payroll processes and why they are not being done in the payroll system.
- Ask questions of the payroll provider on their development methodology (for upcoming changes to legislation)
- Fully document issues (bugs, non-compliance), nail the payroll provider down on a timeframe to fix.
- Fully check system updates and the reasons for them.

How to get the business on board with making changes to aid payroll compliance (making them understand and taking ownership).

- Use current cases in the media to show the real consequences of not taking ownership of payroll in relation to the Holidays Act. This could see the business has front page news in not paying their employees correctly.
- Get it across to management the liability period for the Holidays Act is 6 years (starting from when the business recognised there was an issue), example 2 years ago the business found out there was an issue with how payroll had been doing calculations under the Holidays Act (but did nothing until now), so that means it is 6 years from two years ago so the liability period is actually now 8 years.
- The new Holidays Act that the present government has been working on since 2018 (if we ever get to see it) won't change the past it is only looking forward so this will not save the business from sorting out past issues with the Holiday Act.