



New Zealand
**Payroll Practitioners
Association**

Developing and Supporting
Payroll Professionals

HOLIDAYS ACT 2003

(including the Holidays Amendment Act 2010)

Payroll Specification

(This specification is intended for use by payroll software developers)

FINAL Updated February 2011

DISCLAIMER

Please note the following:

- This specification is an information resource only and is not a substitute for legislation or for legal advice.
- This specification is a guide only and will not necessarily cover all situations. Each user will need to ensure that the information in this specification is tailored appropriately to each particular situation.
- This specification has been updated by the New Zealand Payroll Practitioners Association (NZPPA), with the assistance of the Department of Labour, to include the amendments made to the Holidays Act 2003 by the Holidays Amendment Act 2010.
- While every effort has been made to ensure accuracy, the New Zealand Payroll Practitioners Association (NZPPA) and the Department of Labour take no responsibility for the results of any actions taken on the basis of information in this specification, nor for any errors or omissions.
- Similarly, there may be other ways of complying with the legislation that are not set out in this specification.

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1. INTRODUCTION

Holiday Act 2003:

One of the aims of the Holidays Act 2003 is to clarify obligations and entitlements under the law. It has also provided an opportunity to address the Information Technology advances that have occurred since the introduction of the previous Act (Holidays Act 1981). Many employers have migrated from manual to electronic payroll systems and many of those systems incorporate features that are covered by the Holidays Act 2003.

Throughout the specification there are sections that outline the general principles of the Act for each of the types of leave covered by the Act. It simply describes the intention of the Act without reference to all the exceptions/detail of the Act but should provide a useful overview before examining the detail.

The subsequent sections provide an interpretation of the Holidays Act 2003, and while there may be other legally compliant interpretations, this interpretation is one that the Department of Labour considers to be compliant with the Act. In each section of the specification reference will be made to the relevant sections of the Act. These are followed by a description of the requirements. Any further comment is contained in footnotes.

The appendices (1-2) provide worked examples which illustrate the provisions of the Act.

There is a range of ways that payroll software can be used to assist employers to meet their obligations under the Holidays Act 2003. It is useful for the purposes of this document to split payroll software into three functional groups:

1. Minimum Requirement

This type of software does not constitute a holiday and leave record. Holiday and leave entitlements are not recorded. Holiday and leave taken is recorded only in so far as it is relevant to the wages record.

The majority of this specification will not apply to this type of software. However there are some calculations that require information from the wages record (e.g. average earnings in the 12 months prior to annual holidays being taken) and it is highly desirable that payroll software be able to provide that information.

If payroll software is of this type all material relating to the software must make it clear that the employer must keep a separate holiday and leave record.

2. Holiday and Leave Record Only

This type of software does constitute a holiday and leave record in that it provides data storage for all of the information that is required to be kept under Section 81. It does not perform calculations of things such as ordinary pay, annual holiday entitlement, average earnings or relevant daily pay.

In this type of software the employer would be expected to make these calculations and enter the data into the software directly.

3. Full Version

This type of software both constitutes a holiday and a leave record and performs calculations.

This type of software would provide data storage for all of the information required under Section 81 and in addition would automatically calculate things such as annual holiday entitlement, average earnings etc.

It is possible for software to be a combination of the versions above. However for the purposes of this specification the requirements for each of these three types of software will be identified separately. Note the requirements will be cumulative i.e. if something is mentioned as a minimum requirement it will also be required in the other two versions as well.

As outlined in detail in the principles section, an employer and employee may chose whether annual holiday will be represented in hours, days or weeks. The principles section spells out the kinds of representations and agreements that would be considered to be compliant with the Act. The rest of the specification refers to hours/days/weeks – which of those applies will depend on the agreement between employer and employee, but, the interpretation within payroll software would be expected to be consistent e.g. if annual holiday is accrued in hours then it would also be taken in hours, deducted in hours and payments calculated in hours.

This specification covers the minimum requirements under the Act. Employers are able to provide employees with additional entitlements but they must not exclude, restrict or reduce the employee's entitlements. While you may wish to incorporate these options into payroll software you should not allow payroll software to undermine the entitlements within the Act.

Holidays Amendment Act 2010:

The Holidays Amendment Act 2010 (the Amendment Act) received Royal Assent on 26 November 2010. The Amendment Act amends the Holidays Act 2003 (the principal Act).

The main changes are:

- Changes to the calculation of payments for public holidays, alternative holidays, sick leave and bereavement leave
- Allowing employees to ask to paid out a maximum of one week of annual holidays
- Changes to transferring the observance of public holidays
- Changes to when employees can take alternative holidays
- Changes to the requirements around requesting proof of sickness or injury
- Clarification of entitlements during a closedown period
- Other changes including penalties for non-compliance and definitions of discretionary payments and allowances.

Most changes to the Act will come into effect on 1 April 2011 except for one clarifying provision that is now in force. This provision relates to the treatment of holidays and leave during a 'closedown' of a business.

2. APPLICATION

Section 2: Commencement

2.1 MINIMUM REQUIREMENT

The Holidays Act 2003 (the principal Act) came into force on 1st April 2004 and further amendments to the Act came into force on 22 October 2004.

The Holidays Amendment Act 2010 will come into force on 1st April 2011 except for one clarifying provision that is now in force. This provision relates to the treatment of holidays and leave during a 'closedown' of a business.

The Act applies to all employees – fulltime, part-time or casual.

2.2 HOLIDAY AND LEAVE RECORD ONLY

As in 2.1 above.

2.3 FULL VERSION

As in 2.1 above.

The minimum annual holiday entitlement is 4 weeks per annum and all references should be to 4 weeks, 4/52 and 8% respectively.

3. PRINCIPLES 1 – DEFINITIONS AND ANNUAL HOLIDAY

Note: This does not cover the exceptions and details e.g. close downs, changes to anniversary date, what constitutes gross earnings, the taking of annual holiday in advance, the effect of taking leave without pay, payment when employment ends, ACC, Parental Leave, fixed term contracts etc. These are all covered in the detailed section of the specification.

After the end of each complete 12 months of continuous employment an employee is entitled to not less than 4 weeks paid annual holiday. The way that this entitlement is to be met should be agreed between the employer and employee. Any agreement must genuinely reflect the right to receive 4 weeks annual holiday per year, based on the employee's working pattern.

Where entitlement to annual holiday is clear then there is no requirement for an agreement to be made. However, whenever an employee's work patterns change then an agreement about the transition and conversion of entitlement will need to be reached.

The employer and employee should ideally agree to:

- what genuinely constitutes a working week for the purpose of the employee's entitlement to annual holiday (including a week's annual holiday that may be agreed to be paid out) – this can be provided for in weeks, days or hours (if this is the most convenient way for the parties); or
- where annual holiday is to be accrued¹ throughout the entitlement year, what the accrual will be based on (e.g. ordinary hours including regular overtime hours or ordinary hours excluding regular overtime hours or fixed number of days per week)

When work patterns change, any agreement should ideally change to reflect the new genuine working week for the employee. This agreement can include how any previously accrued entitlements will be treated e.g. the agreement could be to still provide 4 full weeks annual holiday, based on the new working pattern.

If there is a dispute, the Labour Inspector will interpret the agreement between the parties. Where the parties have not agreed on how an employee's annual holiday entitlement is to be met, a Labour Inspector is able to determine the matter for the parties. In making such a determination the Labour Inspector will use an accrual method based on 4/52 of time worked, if there is not a clear working week or working pattern.

This means that how annual holiday is implemented in your software will depend on the nature of the agreements that the users of your software will have entered into.

Some examples of valid agreements are provided in [Appendix 1](#). They do not cover all of the possible combinations but should illustrate the key points in the range of ways that annual holiday provisions can genuinely be agreed upon. The examples provided are:

Example 1: Entitlement is recorded in hours and based on 4/52 of the ordinary hours worked in the year when the entitlement arose – no change to method of calculation when work patterns changed.

¹ By accrual we are referring to the method of calculation not whether the leave is available to the employee.

Example 2: Parties agree that the annual holiday entitlement will be 4 weeks based on the work patterns at the time the leave is taken – no change to method of calculation when work patterns changed.

Example 3: Entitlement is recorded in days and based on 4/52 of an agreed working week expressed in days – change to method of entitlement including conversion of accrued entitlement when work patterns changed.

When the employee takes annual holiday, the employer will need to identify the amount of leave being taken in a manner that is consistent with the agreement on how the entitlement will be met.

The entitlement balance will then need to be reduced by a corresponding amount.

Annual holiday pay will need to be calculated based on:

- **the amount of leave being taken (in weeks or part weeks); times**
- **the greater of:**
 - (a) **ordinary weekly pay; or**
 - (b) **average weekly earnings in the 12 months prior to the holiday.**

Where holidays are accrued, the payment should be made to the employee in the unit of accrual, (for example if the employee accrued in hours they should be paid in hours) but always based on the employee's ordinary weekly pay or average weekly earnings (for example an employee could have a notional average hourly rate and ordinary hourly rate).

Where the entitlement to annual holiday has been accrued in hours or days then the calculations will need to be adjusted to reflect that. The key principle is that any method of calculation is based on average weekly earnings and ordinary weekly pay. It is also strongly recommended that the divisor for the purposes of calculating average or ordinary weekly pay be consistent with the method of accrual. (For example, if your accrual is based on ordinary hours then ordinary hours should be used in the divisor).

More detail on the calculation of [ordinary weekly pay](#) and [average weekly earnings](#) is in the [Definitions](#) and in [Appendix 1](#).

4. DEFINITIONS

Part 1: Preliminary Provisions

4.1 AVERAGE WEEKLY EARNINGS

Sections 21, 22, 24

Average Weekly Earnings are used to calculate annual holiday pay.

NB: Once average weekly earnings have been determined they are then compared to the employee's ordinary weekly pay.

Calculation

They are based on the employee's average earnings in the 12 months immediately before the end of the last pay period before the start of the annual holiday.

Average **weekly** earnings are:

$$\frac{\text{Gross earnings in previous 12 months pay periods}^2}{52}$$

NB: This calculation should only be done once regardless of the length of the annual holiday i.e. if an employee has been on annual holiday for 5 weeks and is paid fortnightly, this calculation is done once at the end of the last pay period before the annual holiday and the result applied to the entire 5 weeks. It would only be permissible to repeat the calculation if the result was the same or higher than the calculation at the start of the leave.

Calculation in hours or days

Where the entitlement to annual holiday has been accrued in hours or days then the calculations will need to be adjusted to reflect that. The key principle is that any method of calculation is based on average weekly earnings. This divisor must be consistent with the method of accrual.³

For example:

If the annual holiday accrual is 4/52 of ordinary hours worked then the following calculations should apply:

Average **hourly** earnings are calculated as follows:

$$\frac{\text{Gross earnings in previous 12 months pay periods}}{\text{Total ordinary hours in the previous 12 months pay periods}}$$

Or if the annual holiday accrual is 4/52 of 3 days a week then the following calculations would apply:

Average **daily** earnings are calculated as follows:

$$\frac{\text{Gross earnings in previous 12 months pay periods}}{156 \text{ (i.e. 3 days per week * 52 weeks per year)}}$$

Detailed examples are contained in [Appendix 1](#).

² Up to the end of the last pay period prior to the commencement of the annual holiday.

³ For example if the leave is accrued on ordinary hours only the divisor should be ordinary hours. If leave is accrued on 4 days a week then the divisor will be based on 4 days a week.

Calculation when employee has worked for less than 12 months

If the employee has worked less than 12 months then the average weekly earnings are based on the total number of weeks worked immediately before the end of the last pay period before the annual holiday:

$$\frac{\text{Gross earnings in all the previous pay periods}}{\text{Total number of weeks in all the previous pay periods}}$$

Calculations in hours or days would be based on the same principle.

Calculation when employee has had unpaid leave longer than 1 week

When an employee has had unpaid leave (excluding parental leave, volunteers leave, accident compensation, sick leave or bereavement leave) of longer than a week then there are two options:

- (a) The anniversary date will be adjusted to reflect the length of unpaid leave (refer [Date Commenced Employment and Anniversary Date](#)). In this case there is **no** change to the method of calculation as outlined above i.e. the divisor will remain at 52. This is the default option.

However it is permissible for the calculation to reflect the number of weeks actually worked as this will result in a higher value which will result in a provision better than the Act. This will be the effect where a calculation is done using the actual number of days or hours worked as the divisor – therefore this method is permitted.

- (b) The employer and employee **agree** that the anniversary date will not be adjusted to reflect the length of unpaid leave. In this case the divisor must be adjusted to reflect the period of unpaid leave over 1 week e.g. if the employee had 3 weeks unpaid leave then the divisor would be 50 (52 – 2). The adjustment of the divisor is related to the period of the calculation i.e. would be done whenever that period of unpaid leave of over one week was within the previous 12 months' pay periods.

Where a calculation is done using the actual number of days or hours worked as the divisor then as long as the unpaid days or hours of the second or subsequent weeks are **not** included in the calculation⁴ then this will result in either the same or a higher value which will result in a provision better than the Act. Therefore this method is permitted.

Calculation when employee has a period of parental leave

When an employee takes leave under the Parental Leave and Employment Protection Act 1987 (refer [Calculating Annual holiday Entitlement](#) for more detail) the calculation of average weekly earnings is unchanged.

4.1.1 Minimum Requirement

The gross earnings for the 12 months prior to end of the pay period prior to the start of the annual holiday will need to be able to be determined.

Where annual holiday is expressed in either hours or days then the total number of relevant hours or days in the 12 months prior to the end of the pay period prior to the start of the annual holiday being taken will need to be able to be determined.

4.1.2 Holiday and Leave Record Only

None.

⁴ Which would usually be the case.

4.1.3 Full Version

All of the calculations and methods above will need to be available. They should also be transparent so that a Labour Inspector or employee can check that the calculation is correct.

4.2 ORDINARY WEEKLY PAY

Sections 8, 21, 22, 24

Ordinary weekly pay is also used to calculate annual holiday pay.

Determination

Ordinary weekly pay will be the greater of:

- (a) the amount of pay that the employee receives under his or her employment agreement for an ordinary working week (at the beginning of the annual holiday).

OR

- (b) where (a) cannot be determined, then based on the following calculation:

$$\frac{\text{Gross earnings for previous 4 weeks (or pay period before calculation is made if longer than 4 weeks)} - \text{Gross earnings (conditional)}}{4}$$

OR

- (c) if a special rate of ordinary weekly pay for the purpose of calculating annual holiday pay is specified in an employment agreement and is equal to or greater than the amount under (a) or (b) then that amount (otherwise just use (a) or (b) above).

NB: This determination should only be done once regardless of the length of the annual holiday i.e. if an employee has been on annual holiday for 5 weeks and is paid fortnightly this determination is done once at the beginning of the annual holiday and the result applied to the entire 5 weeks. It would only be permissible to repeat the determination if the result was the same or higher than the determination at the start of the leave.

Calculation in days or hours

Where the entitlement to annual holiday has been accrued in hours or days then the calculations will need to be adjusted to reflect that. The key principle is that any method of calculation is based on ordinary weekly pay. Where method (b) is being used to determine ordinary pay then the divisor must be consistent with the method of accrual.

For example:

If the annual holiday accrual is 4/52 of ordinary hours worked and the payroll period is weekly or fortnightly then the following calculations should apply:

Ordinary **hourly pay** will be the greater of:

- (d) the amount of pay that the employee receives under his or her employment agreement for an ordinary hour – including all of the relevant types of payments (at the beginning of the annual holiday); or
- (e) where (a) can not be determined, then based on the following calculation:

$$\frac{\text{Gross earnings in previous 4 weeks pay periods} - \text{gross earnings (conditional)}}{\text{Total ordinary hours in the previous 4 weeks pay periods}}$$

- (f) if a special rate of ordinary hourly pay for the purpose of calculating annual holiday pay is specified in an employment agreement then that amount can be used if it would be equal to or greater than the amount under (a) or (b) (otherwise just use (a) or (b) above).

Or if the annual holiday accrual is 4/52 of 3 days a week and the payroll period is weekly or fortnightly then the following calculations would apply:

Ordinary **daily pay** will be the greater of:

- (a) the amount of pay that the employee receives under his or her employment agreement for an ordinary day (at the beginning of the annual holiday); or
- (b) where (a) can not be determined, then based on the following calculation:

$$\frac{\text{Gross earnings in previous 4 weeks pay periods} - \text{gross earnings (conditional)}}{12 \text{ (i.e. 3 days per week * 4)}}$$

- (c) if a special rate of ordinary daily pay for the purpose of calculating annual holiday pay is specified in an employment agreement, then that amount can be used if it would be equal to or greater than (a) or (b) (otherwise just use (a) or (b) above).

Further examples are contained in [Appendix 1](#).

Calculation when employee has had unpaid leave

The ordinary weekly pay calculation remains unchanged if an employee has unpaid leave in the preceding 4 weeks pay periods. Where the formula in section 8(2) is used to calculate ordinary weekly pay and the calculation is made in weeks then any period of unpaid leave will result in a lower rate of ordinary weekly pay.

A calculation that is done using the actual number of days or hours worked as the divisor will possibly result in a higher value which will result in a provision better than the Act – therefore this method is permitted.

4.2.1 Minimum Requirement

The gross earnings (ordinary) for the 4 weeks (or the length of the pay period if longer than 4 weeks) prior to end of the pay period prior to the start of the annual holiday will need to be able to be determined.

Where annual holiday is expressed in either hours or days then the total number of relevant hours or days in the 4 weeks (or the length of the pay period if longer than 4 weeks) prior to the end of the pay period prior to the start of the annual holiday being taken will need to be able to be determined.

4.2.2 Holiday and Leave Record Only

None.

4.2.3 Full Version

Where method (a) above in 4.3 will be used to determine ordinary weekly/daily/hourly pay then this should be stored as a value.

Likewise where (c) above in 4.3 will be used to determine ordinary weekly/daily/hourly pay then this should be stored as a value identified as a special rate for this purpose.

Where (b) above in 4.3 will be used to determine ordinary weekly/daily/hourly pay then the calculations will need to be available. They should also be transparent so that a Labour Inspector or employee can check that the calculation is correct.

4.3 Relevant Daily Pay & Average Daily Pay

Sections 9, 9A, 49, 50, 52, 53, 60, 71

Relevant daily pay and average daily pay are used to calculate payments for public holidays, alternative holidays, sick leave and bereavement leave.

Relevant daily pay is the amount of pay that the employee would have received had the employee worked on the day concerned.

Average daily pay is the employee's:

Gross earnings in previous 52 weeks pay periods

Number of whole or part days the employee either worked or was on paid leave or holiday in the previous 52 weeks pay periods

Determination (section 9(1))

(a) the amount of pay that the employee would have received had the employee worked on the day concerned including any overtime or irregular payments that would have been paid to the employee had they worked that day (however, if overtime is worked due to the employee's absence then this is not included in relevant daily pay).

OR

(b) Where it is not possible or practicable for (a) to be determined or where an employee's daily pay varies within the pay period when the holiday or leave falls then you may use average daily pay.

Please Note: ADP (section 9A(1)) is the alternative calculation. The employer should always try to determine the employee's relevant daily pay (section 9(1)) first. If it is not practicable or possible to determine RDP, or if the employee's daily pay varies within the pay period when the holiday or leave falls, then ADP **may** be used. ADP should not be the default calculation in the first instance. The "may" is important as if it is still possible to use RDP the employer has a choice which payment to use. This is likely to apply where there is predictable daily pay that happens to vary in the weekly pay period e.g. where an employee always works 6 hours one day and 8 hours another.

Transition

Up to 31 March 2011, if relevant daily pay cannot be ascertained then the four week averaging calculation must be used. If a pay period starts before 1 April 2011 and finishes after, then any sick leave, bereavement leave, public or alternative holidays that happen prior to 1 April 2011 must be calculated using the four week averaging calculation (if RDP cannot be determined). Any sick leave, bereavement leave, public or alternative holidays taken from 1 April 2011 may be calculated using ADP (if it is not possible or practicable to determine RDP, or if the employee's daily pay varies within the pay period).

Example:

An employee takes a sick day on 23 March 2011 and on 5 April 2011 they take an alternative holiday. The employees' pay period is monthly from 15th to the 15th of the following month. What this will mean is that the employee's sick day will be calculated using the four week averaging calculation (if RDP cannot be determined) and the alternative holiday may

be calculated using ADP(if it is not possible or practicable to determine RDP or if the employee's daily pay varies within the pay period when the holiday or leave falls).

4.3.1 Minimum Requirement

Relevant daily pay must be used first if possible under section 9(1) if not section 9A(1):

The gross earnings for the previous 52 weeks before the end of the pay period immediately before the calculation is made will need to be able to be determined

The total number of whole or part days during which the employee earned those gross earnings, including any day on which the employer was on a paid holiday or paid leave; but excluding any other day on which the employee did not actually work, will need to be able to be determined.

4.3.2 Holiday and Leave Record Only

Value of payment made for sick leave, bereavement leave, public holiday and alternative holiday needs to be recorded under section 81.

4.3.3 Full Version

Where (a) in 4.3 above is to be used to determine relevant daily pay then that value will need to be stored. Where it varies from one day of the week to another then the relevant daily pay will need to be stored for each day of the week.

Where (b) in 4.3 above will be used to determine average daily pay then the calculation will need to be available and the value will need to be stored. It should also be transparent so that a Labour Inspector or employee can check that the calculation is correct.

5. ANNUAL HOLIDAY

Part 2 Subpart 1

5.1 DATE COMMENCED EMPLOYMENT AND ANNIVERSARY DATE

Sections 16, 35

The anniversary date should be updated as follows:

- (a) At start of employment

Anniversary Date = Date Commenced + 1 Year

- (b) When the anniversary date is reached then the

Anniversary Date = Current Anniversary Date + 1 Year

- (c) When an employee has unpaid leave other than:

- (i) parental leave under the Parental Leave and Employment Protection Act 1987
- (ii) volunteers leave within the meaning of the Volunteers Employment Protection Act 1973
- (iii) while receiving weekly compensation under the Injury Prevention, Rehabilitation and Compensation Act 2001 or former Act
- (iv) unpaid sick or bereavement leave

for a period of more than a week then either the anniversary date is changed as follows:

Anniversary Date = Current Anniversary Date + Length of unpaid leave in days including weekends – 7⁵

Or where the employer and employee agreed then there is no update i.e.

Anniversary Date = Current Anniversary Date⁶

- (d) When an employee is not yet entitled to annual holiday and an employer has a close down period and an employee is required to take leave then

Anniversary Date = The first date the premises were closed or the work was discontinued or a proximate nominated date + 1 Year.

5.1.1 Minimum Requirement

None.

5.1.2 Holiday and Leave Record Only

The date the employee commenced employment must be stored for each employee.

The annual holiday anniversary date must be stored for each employee. This date will mark the next date the employee becomes entitled to annual holiday.

⁵ For example if the employee has 1 week and 3 days unpaid leave then the anniversary date will be increased by 3 days.

⁶ This will change the method of calculation of average weekly earnings (see 4.2).

5.1.3 Full Version

Where appropriate above then the date should be updated automatically but given the discretion in 3 and 4 then the anniversary date may be changed. Such changes should be recorded alongside the reason for the change.

The date should be stored, as in 5.1.2.

5.2 CALCULATING ANNUAL HOLIDAY ENTITLEMENT

Sections 16, 17, 20, 32, 33, 34, 35

After the end of each complete 12 months of continuous employment an employee is entitled to not less than 4 weeks paid annual holiday. The way that this entitlement is to be met should be agreed between the employer and employee. Any agreement must genuinely reflect the right to receive 4 weeks annual holiday per year and should ideally be recorded somewhere.

When the employee takes annual holiday, the employer will need to identify the amount of leave being taken in a manner that is consistent with the agreement on how the entitlement will be met. The entitlement balance will then need to be reduced by a corresponding amount. In all of the following sections below this is what is meant by “determine the length of annual holiday as a number or portion of weeks/days/hours” and guidance is given as to how to do this in Principles 1 – Definitions and Annual holiday with examples in [Appendix 1](#).

5.2.1 Minimum Requirement

None.

5.2.2 Holiday and Leave Record Only

The current annual holiday entitlement must be stored for each employee.

The dates on which annual holiday was taken and total payment for any annual holiday must be stored for each employee.

A more complete record would also include:

- A. The date and amount (in weeks/days/hours) of each increase of entitlement to annual holiday.
- B. The date and amount (in weeks/days/hours) of annual holiday taken.

The sum of all the amounts (in weeks/days/hours) in A less the sum of all the amounts (in weeks/days/hours) in B should always equal the current entitlement.

5.2.3 Full Version

All of the above should be included.

Annual holiday Accrual and record of Annual holiday Entitlement Changes

Many payroll systems accrue annual holiday at the end of each payroll period on the basis of the time worked in that period. The accrued annual holiday can be stored in weeks/days/hours as per the agreement between the employer and employee. In addition many systems keep a record of all changes to the annual holiday entitlement.

The following relates to those systems.

The accrued annual holiday must be kept separate from the current entitlement.⁷

The accrued annual holiday should be transferred to the current entitlement on the employee's annual holiday anniversary date (refer [Date Commenced Employment and Anniversary Date](#)). Where that date falls within a payroll period it is acceptable to transfer the accrued leave on the last date of that payroll period. However the anniversary date should not be changed to that date as employees become entitled to take their annual holiday from that date.

Calculations to increase Annual holiday Entitlement

(a) When an employee starts work their Accrued Leave and Annual holiday Entitlement will be set to their starting value (usually zero)

(b) At the end of each pay period the Accrued Leave will be increased as follows:⁸

$$\text{Accrued Leave} = \text{Accrued Leave} + \text{Length of pay period (in days/hours/weeks)} * 4/52$$

Where 4/52 is assuming the employee receives 4 weeks leave per year. Where an employee receives more than 4 weeks leave then the percentage for any annual holiday over 4 weeks will be determined by agreement.

(c) At the end of the pay period which contains the employee's anniversary date a record of increase of entitlement will be created. This record will identify the:

- (i) last date of accrual i.e. when the entitlement was to⁹ (this will usually be the end of the payroll period but may be the anniversary date)
- (ii) amount of the increase.

Both the Annual holiday Entitlement and Accrued Leave will be updated as follows:

$$\text{Annual holiday Entitlement} = \text{Annual holiday Entitlement} + \text{Accrued Leave}$$

$$\text{Accrued Leave} = 0$$

Calculations to decrease Annual holiday Entitlement

(a) Determine the length of annual holiday as a number or portion of weeks/days/hours (refer [Principles 1](#) for guidance on how this is to be determined).

(b) At the end of each pay period in which the leave occurred a record of decrease of entitlement will be created. This record will identify the:

- (i) Dates of the annual holiday either start and finish or each individual day
- (ii) Length (in weeks/days/hours) of annual holiday from the start to finish date;
- (iii) Total payment for the annual holiday (refer [Calculating Annual holiday Payment](#) for details)

$$\text{Annual holiday Entitlement} = \text{Annual holiday Entitlement} - \text{Length of leave (in days/hours/weeks)}$$

⁷ There are two reasons for this. Firstly it is important where an employee does not think they have entitlement to leave that they have not yet acquired. Secondly when an employee ceases employment they will receive 8% of gross earnings for accrued leave and payment for annual holiday to which they are already entitled. This is the minimum and the employer can pay at one rate if it would be equal or greater than 8%.

⁸ Where the length of the pay period reflects the number of weeks/days/hours that contribute to the accrual.

⁹ The employee is entitled to apply for leave from their anniversary date not from the accrual date.

Calculations where Annual holiday is anticipated

Where an employer allows an employee to anticipate annual holiday then the calculations will be as follows.

- (a) Determine the length of annual holiday as a number or portion of weeks/days/hours (refer to the [Principles 1](#) for guidance on how this is to be determined).
- (b) If the current Annual holiday Entitlement is less than or equal to 0 then at the end of each pay period in which the leave occurred a record of decrease of entitlement will be created. This record will identify the:
 - (i) Dates of the annual holiday either start and finish or each individual day
 - (ii) Length (in weeks/days/hours) of annual holiday from the start to finish date;
 - (iii) Total payment for the annual holiday (refer [Calculating Annual holiday Payment](#) for details)
 - (iv) That the leave was anticipated Annual holiday¹⁰

$$\text{Annual holiday Entitlement} = \text{Annual holiday Entitlement} - \text{Length of leave (in days/hours/weeks)}$$

(this will result in a negative Annual holiday Entitlement).

- (c) If the current Annual holiday Entitlement is greater than 0, but less than the period the employee wishes to take, then at the end of each pay period in which the leave occurred two records¹¹ of decrease of entitlement will be created. The first record will identify the portion of the leave not taken in advance:
 - (i) Dates of the annual holiday either start and finish (or date when entitlement ended) or each individual day
 - (ii) Length (in weeks/days/hours) of annual holiday the employee was entitled to.
 - (iii) Total payment for this portion of the annual holiday (refer [Calculating Annual holiday Payment](#) for details)

$$\text{Annual holiday Entitlement} = \text{Annual holiday Entitlement} - \text{Length of leave entitled (in days/hours/weeks)}$$

(this will result in a Annual holiday Entitlement of zero).

The second record will identify the:

- (i) Dates of the annual holiday either start (or date when anticipated leave started) and finish or each individual day
- (ii) Finish date of the annual holiday
- (iii) Length (in weeks/days/hours) that was anticipated annual holiday¹²
- (iv) Total payment for this part of the annual holiday (refer [Calculating Annual holiday Payment](#) for details)

$$\text{Annual holiday Entitlement} = \text{Annual holiday Entitlement} - \text{Length of leave anticipated (in days/hours/weeks)}$$

(this will result in a Annual holiday Entitlement of less than zero).

¹⁰ This is so that any payments for anticipated leave are able to be identified if employment ends.

¹¹ This is so that any payments for anticipated leave are able to be identified if employment ends.

¹² This is so that any payments for anticipated leave are able to be identified if employment ends.

Calculations to Annual holiday Entitlement during closedown where an employee has an annual holiday entitlement greater than zero

- (a) Calculate the length (in weeks/days/hours) of the closedown period. Determine whether the length of the closedown period (in weeks/days/hours) is greater or less than the employee's current Annual holiday Entitlement.
- (b) Where the employee's current annual holiday entitlement is greater than the length of the closedown period, then at the end of each pay period during which the close down occurred a record of decrease of annual holiday entitlement will be created. This record will identify the:
 - (i) Dates of the annual holiday either start and finish or each individual day
 - (ii) Length (in weeks/days/hours) of annual holiday during the closedown
 - (iii) That the leave was taken as a result of a closedown
 - (iv) Total payment for the annual holiday (refer [Calculating Annual holiday Payment](#) for details)

$$\text{Annual holiday Entitlement} = \text{Annual holiday Entitlement} - \text{Length of leave (in days/hours/weeks)}$$

- (c) Where the employee's current annual holiday entitlement is not greater than the length of the closedown period, the existing entitlement must be taken by the employee.
 - (i) Dates of the annual holiday either start and finish (or date when entitlement ended) or each individual day
 - (ii) Length (in weeks/days/hours) of annual holiday the employee was entitled to
 - (iii) That the leave was taken as a result of a closedown
 - (iv) Total payment for this portion of the annual holiday (refer [Calculating Annual holiday Payment](#) for details)

$$\text{Annual holiday Entitlement} = \text{Annual holiday Entitlement} - \text{Length of leave the employee is entitled to (in days/hours/weeks)}$$

(This will result in an Annual holiday Entitlement of zero).

The remainder of the close down will either be not required to be paid by the employer (this period should not be treated as "unpaid leave" under section 16), and therefore have no impact on annual holiday entitlement, or be taken as anticipated leave. Where anticipated leave is taken a record of decrease of annual holiday entitlement will be created for each pay period of the close down. This record will identify the portion of the close down covered by anticipated annual holiday:

- (i) Dates of the annual holiday either start (or date when anticipated leave started) and finish or each individual day
- (ii) Length (in weeks/days/hours) that was anticipated annual holiday
- (iii) That the leave was taken as a result of a closedown
- (iv) Total payment for this part of the annual holiday (refer [Calculating Annual holiday Payment](#) for details)

$$\text{Annual holiday Entitlement} = \text{Annual holiday Entitlement} - \text{Length of leave anticipated (in days/hours/weeks)}$$

(This will result in an Annual holiday Entitlement of less than zero).

Calculations to Annual holiday Entitlement during closedown where an employee has an annual holiday entitlement of less than or equal to zero

- (a) An employer and employee may agree that the period of close down may be treated as anticipated leave. However as the anniversary date will now be one year after the start of close down, the accrued leave must be transferred to the annual holiday entitlement and the close down leave deducted from that.

Annual holiday Entitlement = Annual holiday Entitlement + Accrued Leave

Accrued Leave = 0

At the end of each pay period in which the close down occurred a record of decrease of annual holiday entitlement will be created. This record will identify the:

- (i) Dates of the annual holiday either start and finish or each individual day
- (ii) Length (in weeks/days/hours) of annual holiday from the start to finish date
- (iii) That the leave was anticipated Annual holiday taken as a result of a closedown
- (iv) Total payment for the annual holiday (refer [Calculating Annual holiday Payment](#) for details)

**Annual holiday Entitlement = Annual holiday Entitlement – Length of leave
(in days/hours/weeks)**

- (b) If the employer and employee do not agree that the period of close down may be treated as anticipated leave then a payment based on 8% of gross earnings will be made (refer [Calculating Annual holiday Payment](#) for details); the anniversary date will be changed to the start of the close down or to a nominated closedown date ([refer 5.1](#)) and the accrued leave will be reset to zero as at the new anniversary period. A record of decrease in accrual will need to be made that specifies the new anniversary date and that accrued leave was reset to zero as a result of a close down.

Accrued Leave = 0

5.3 CALCULATING ANNUAL HOLIDAY PAYMENT

Sections 21, 22, 23, 24, 25, 26, 28, 33, 34, Schedule 3

Annual holiday Taken – Payment Calculated

When annual holiday is taken (after entitlement has arisen, in advance, or as a result of a closedown) the payment is calculated by determining the length of annual holiday as a number or portion of weeks/days/hours (refer to [Principles 1](#) and [Appendix 1](#) for more detail on how to do this) and paying that at a rate that is based on the greater of average weekly earnings ([refer 4.2](#)) and ordinary weekly pay ([refer 4.3](#)).

Parental Leave

The following applies if an employee becomes entitled to annual holiday on pay during:

- A period of parental leave under the Parental Leave and Employment Protection Act 1987 (PLEPA);
- A period of preference in obtaining employment under the PLEPA; or
- The period of 12 months commencing with the date on which the employee returns to work after a period of parental leave under the PLEPA or a period of preference.

When annual holiday relating to that entitlement is taken the payment is calculated by determining the length of annual holiday as a number or portion of weeks/days/hours (refer to [Principles 1](#) and [Appendix 1](#) for more detail on how to do this) and paying that at a rate that is based on average weekly earnings ([refer 4.1](#)) – **not** the greater of average weekly earnings or ordinary weekly pay.

Annual holiday paid at 8%

When employment ends within 12 months, before a further entitlement has arisen or where there is a closedown and an employee has no entitlement to holidays then annual holiday pay is based on 8% of gross earnings for the relevant period less any relevant payments already made. See below ([refer 5.3.3](#) for Calculation of annual holiday pay when employment ends) for more detail on this calculation and ([refer 5.6](#) for payments for casual or fixed term employees).

5.3.1 Minimum Requirement

The following three totals need to be able to be calculated for a single or multiple pay periods in the previous 12 months:

- Gross Earnings (Ordinary) plus Gross Earnings (Conditional)
- Gross Earnings (Conditional)
- Gross Earnings (Ordinary).

5.3.2 Holiday and Leave Record Only

All payments for annual holiday must be recorded and identified as such. The payments can be recorded as a total for a pay period as long as:

- it is recorded as a payment for an annual holiday
- it is clear how the total payment was calculated.¹³

5.3.3 Full Version

All of the above should be included plus the following calculations will need to be available. It should also be transparent so that a Labour Inspector or employee can check that the calculation is correct.

Calculation of Annual holiday Pay – Standard Calculation During Employment

- (a) Determine the length of annual holiday as a number or portion of weeks/days/hours – this must be same determination as that for the reduction in the Annual holiday Entitlement
- (b) Determine the Ordinary Weekly/Daily/Hourly Pay as per Section 4.3.
- (c) Determine the Average Weekly/Daily/Hourly Earnings as per Section 4.2.
- (d) Determine the greater of the Ordinary Weekly/Daily/Hourly Pay and the Average Weekly/Daily/Hourly Earnings and use this as the annual holiday payment rate.
- (e) Multiply the length of the annual holiday entitlement by the annual holiday payment rate.

Calculation of Annual holiday Pay when employment ends

- (a) If Annual holiday Entitlement is greater than zero then:

¹³ The record needs to show whether the employee's entitlement has had a period of parental leave attached to it.

- (i) Calculate payment for the whole annual holiday entitlement using the same method as the Standard Calculation as if the next day on which the employee would otherwise work after the last day of employment was the first day of Annual holiday. This gives Annual holiday Payment A.
- (ii) Determine the anniversary date for the last increase of Annual holiday Entitlement (i.e. the employee's last anniversary date).
- (iii) Determine the total gross earnings since the date above until and including the last day of employment.¹⁴ NB: these earnings will include the Annual holiday Payment A above.

It has been drawn to our attention that some payroll software does not include the Annual holiday Payment A in the calculation of total gross earnings. This can result in the employee being paid less than what they are entitled to under the Act. Payroll software must be clear that gross earnings includes payment for annual holidays taken since the employee last became entitled to leave.

- (iv) Annual holiday Payment B = Total Gross Earnings as in paragraph (a)(iii) above * 0.08.
 - (v) Total Annual holiday Payment = Annual holiday Payment A + Annual holiday Payment B.
- (b) If Annual holiday Entitlement equals zero then:
- (i) Determine the Anniversary Date for the last increase of Annual holiday Entitlement (the employee's last anniversary date). If there has not been any Annual holiday Entitlement then this date will be the date the employee started employment (because the employee has worked for less than 12 months).
 - (ii) Determine the total gross earnings since the date above until the last day of employment.¹⁵
 - (iii) Annual holiday Payment = Total Gross Earnings calculated under paragraph (ii) above * 0.08.
- (c) If Annual holiday Entitlement is less than zero then:
- (i) Determine the Anniversary Date for the last increase of Annual holiday Entitlement (the employee's last anniversary date). If there has not been any Annual holiday Entitlement (because the employee has worked for less than 12 months) then this date will be the date the employee started employment.
 - (ii) Determine the total gross earnings since the date above until the last day of employment.¹⁶
 - (iii) Annual holiday Payment A = Total Gross Earnings (calculated under paragraph (ii) above) * 0.08.
 - (iv) Calculate the payment made to the employee for the anticipated annual holiday that resulted in an annual holiday entitlement of zero (anticipated annual holiday) – use the annual holiday records to determine this. This amount is Annual holiday Payment B.
 - (v) Calculate any payments made under section 22 (Leave taken in advance) since the annual holiday entitlement became zero. This amount is Annual holiday Payment C.
 - (vi) Total Annual holiday Payment = Annual holiday Payment A – (Annual holiday Payment B + Annual holiday Payment C).

¹⁴ Where the anniversary date falls in the middle of a pay period refer 5.7 below.

¹⁵ Where the anniversary date falls in the middle of a pay period refer 5.7 below.

¹⁶ Where the anniversary date falls in the middle of a pay period refer 5.7 below.

Calculations for Annual holiday Pay during closedown where an employee has an annual holiday entitlement greater than zero

- (a) If the length (in weeks/days/hours) of the closedown period is less than or equal to the current annual holiday entitlement then calculate annual holiday payment using the same method as the Standard Calculation as if the dates/length of the close down were those of Annual holiday.
- (b) If the length (in weeks/days/hours) of the closedown period is greater than the current annual holiday entitlement then the existing entitlement must be taken – use the same method as the Standard Calculation but the dates/length will be restricted to the dates/length from when the closedown starts until the entitlement has ended.
- (c) For the remainder of the closedown period, the employer and employee may agree to let the employee take this portion of the closedown period as anticipated leave. If this occurs then use the same method as the Standard Calculation but the dates/length will be restricted from when the entitlement above ended to when the closedown ends.
- (d) If the length (in weeks/days/hours) of the closedown period is greater than the current annual holiday entitlement and the employer and employee do not agree to let the employee take the remainder as anticipated leave then there is no payment for the remainder of the period.

Calculations for Annual holiday Holiday Pay during closedown where an employee has an annual holiday entitlement of less than or equal to zero

- (a) If the employer and employee agree that the period of closedown may be treated as anticipated leave then calculate annual holiday payment using the same method as the Standard Calculation as if the dates/length of the close down were the those of Annual holiday.
- (b) If the employer and employee do not agree that the period of closedown may be treated as anticipated leave then:
 - (i) Determine the Anniversary Date for the last increase of Annual holiday Entitlement (this will be the employee's last anniversary date). If the employee has worked for less than 12 months then it will be the date the employee started employment..
 - (ii) Determine the total gross earnings since the date above until and including the last day of work before the closedown.¹⁷
 - (iii) Annual holiday Payment A = Total Gross Earnings * 0.08.
 - (iv) Calculate any payments made to the employee for anticipated annual holiday since the employee's last anniversary date – use the annual holiday records to determine this. This amount is annual holiday payment B.
 - (v) Calculate any payments made under section 28 (annual holiday payment paid with employee's pay) since the employee's last anniversary date. This amount is annual holiday payment C
 - (vi) Total annual holiday payment = annual holiday payment A – (annual holiday payment B.+ annual holiday payment C).

NB: When the employee is paid under this criteria their anniversary date will be reset to the start of the closedown or the nominated date ([refer 5.2.3](#)).

¹⁷ Where the anniversary date falls in the middle of a pay period refer 5.7 below.

5.4 WHEN ANNUAL HOLIDAY PAYMENT IS TO BE MADE

Section 27

An employer must pay an employee for annual holiday before the annual holiday is taken unless the employer and employee agree that the employee is to be paid in the pay that relates to the period during which the annual holiday is taken.

5.4.1 Minimum Requirement

All payroll software must enable this provision to be met and record whether there has been an alternative agreement reached between the employer and employee.

5.5 PUBLIC HOLIDAY OCCURS DURING ANNUAL HOLIDAY

Section 40

A public holiday that occurs during an employee's annual holiday (including any annual holiday added to the end of employment) must be treated as a public holiday and not as part of the employee's annual holiday. Note that if an employee leaves their employment and has an entitlement to annual holiday, any public holidays that would fall within the period of that annual holiday if it had been taken at the end of employment must be treated as public holidays and not as annual holiday.

5.5.1 Minimum Requirement

None.

5.5.2 Holiday and Leave Record Only

The leave record must distinguish which days were taken as annual holiday and which were public holidays and the payments for those days.

5.5.3 Full Version

Payroll software should prevent annual holiday from being assigned to a public holiday.

5.6 PAYMENT OF ANNUAL HOLIDAY PAY WITH EMPLOYEE'S PAY

Section 28

It is still permissible under restricted circumstances for an employer to pay annual holiday pay with the employee's pay. Refer to section 28 of the Holidays Act 2003 for full details of conditions which must apply before this is permissible, these include:

- (a) if 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 holiday 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.

5.6.1 Minimum Requirement

The annual holiday component of wages must be an identifiable component of the employee's pay and must be paid at a rate not less than 8% of the employee's gross earnings.

It has been drawn to our attention that this has been a common practice in the past. Material relating to payroll software must make it clear that where an employer makes a payment of this type when the employment does not comply with section 28 then the employee will still be entitled to paid annual holiday regardless of any payments made during the year.

Where an employee is receiving annual holiday pay as a component of their regular pay (refer 5.6 above) then records should include the grounds used to justify this payment method.

5.7 WHERE ANNIVERSARY DATE IS IN THE MIDDLE OF A PAY PERIOD

(When employment ends or closedown)

Where the employee's anniversary date falls in the middle of a pay period and you are unable to determine the portion of accrued annual holiday and/or gross earnings to the anniversary date rather than the end of the payroll period, then use the following method to determine whether to pay the accrued annual holiday using the same method as the Standard Calculation or at 8% of gross earnings.

- (a) Calculate the amount the employee would have been paid if that payroll period (includes previous Anniversary Date) accrued leave amount was paid as annual holiday.
- (b) Calculate the gross earnings * 0.08 for that payroll period.
- (c) Determine which is greater:
 - (i) If the annual holiday payment was greater than gross earnings *0.08 then ensure that the annual holiday entitlement includes that accrued leave and calculate gross earnings * 0.08 from the beginning of the next payroll period.
 - (ii) If gross earnings *0.08 is greater than the annual holiday payment then ensure that the annual holiday entitlement does not include that payroll period and include it in the calculation of gross earnings * 0.08.

5.8 Paying Out Portion of Annual Holiday Entitlement Principles

As part of the Holidays Amendment Act 2010 there is provision to allow an employee to have up to 1 week of their annual holiday entitlement paid out.

Employers may have a workplace policy that they will not consider any requests to paid out annual holidays. This can apply to the whole or only some parts of the business. The policy can only be on whether the employer will consider any requests. It cannot be about the amount of annual holidays an employee can paid out or the number of requests an employee may make. If an employer does not have a workplace policy on cashing up that applies to the employee, they must consider any request to paid out annual holidays in good faith

Only annual holidays the employee becomes entitled to from 1 April 2011 may be paid out. For example, if an employee is entitled to four weeks' annual holidays on 1 June 2011, the employee will be able to request their employer to pay-out up to one week of the four weeks' annual holiday entitlement they received from 1 June 2011. Leave accumulated from previous years cannot be paid out. Note that:

- an employee has the right to request their employer to pay out a portion of the employee's entitlement to annual holidays.
- a request must be in writing and may be made on 1 or more separate occasions until maximum of 1 week of employee's annual entitlement is paid out in each entitlement year.
- in a payroll system this could mean the developer could have this function as an optional feature that can be turned on if the employer allows a payout or turned off if the employer has adopted a policy that allows the employer to not consider a request to pay out annual holidays.

The paid out annual holiday must come from the entitlement year defined as:

- A period of 12 months continuous employment beginning on the anniversary of the employee's employment; and
- Includes a period of 12 months continuous employment described in section 16(2).

If the employee takes annual holidays in advance prior to their anniversary date then any paid out annual holidays must come out of any remaining entitlement (a maximum of 1 week). An employee cannot pay out annual holidays in advance of their four week entitlement.

Cashed up annual entitlement can be calculated in hours or days where annual holiday entitlement is accrued in hours or days. If paid out in hours or days, no more than 1 week of annual holiday entitlement must be cashed up in any entitlement year from 1 April 2011.

To define a week that can be paid out, if not clearly defined in the employment agreement, or otherwise for a week that is non standard, or if the employee works variable hours, the definition of a working week will need to be agreed between the parties.

How the 1 week cashed up annual holiday payment is taxed is as follows:

- Cashed up annual holiday is a lump sum payment and will fall under the RD 7 (1) meaning of "extra pay"(see [RD7 ITA 2007](#)).

The cashed up value of annual holidays is excluded from gross earnings as per section 8(2)(iv).

Employees receiving pay as you go annual holidays under section 28 of the Act cannot make a request to have up to a week's annual holidays paid out.

There is no legislative requirement to show a paid out week of annual holiday entitlement as a separate payment on a pay slip, but it will be useful to include this in answering employee and Labour Inspector queries.

5.9 Payment for Annual Holidays Paid Out

If the employer agrees to pay out a portion of the employees annual holidays the employer must pay the employee for that paid out entitlement portion in the following way:

In accordance with section 21(2)

Calculation of cashed up Annual holiday entitlement

1. Determine the length of annual holiday entitlement to be cashed up as a whole or portion of the maximum of 1 week; Determine the Ordinary Weekly/Daily/Hourly Pay as per Section 4.2.
2. Determine the Average Weekly/Daily/Hourly Earnings as per Section 4.1.
3. Determine the greater of the Ordinary Weekly/Daily/Hourly Pay and the Average Weekly/Daily/Hourly Earnings and use this as the annual holiday payment rate.
4. To determine paid out annual holiday entitlement of less than a week divide the length of the annual holiday payment by the number of days in a week to get the daily rate, multiply by the days if greater than a day or for less than a day to be cashed up divide the day by the portion to be cashed up.
6. Annual holiday entitlement cashed up is excluded from the gross earning calculation for any other period that gross earning is assessed.

5.9.1 Minimum Requirement

Refer to 5.9 above.

5.9.2 Holiday and Leave Record Only

The Holiday and Leave record must show:

- the portion of any annual holidays that have been paid out in each entitlement year (if applicable), and
- the date and amount of payment, in each entitlement year, for any annual holidays paid out under section 28B (if applicable).

5.9.3 Full Version

All of the above should be included if an employer agreed to an employees' request to pay out annual holidays. It should be transparent so that a labour inspector or employee can check that the calculation is correct and that no more than 1 week of current entitlement has been paid out.

6. PRINCIPLES 2 – PUBLIC HOLIDAYS

Each employee shall have an entitlement to 11 public holidays if those holidays fall on days that would otherwise be working days for the employee.

[Refer to 7.1](#) for the list of days that are public holidays.

If an employee does not usually work on the day of the public holiday and does not actually work on that day then they have no entitlement to be paid for the public holiday.

Payment for work on a public holiday is the greater of:

- Relevant daily pay or average daily pay (if applicable) (less any penal rates), plus half that amount again (time and a half) or
- Relevant daily pay (including penal rates).

Penal rates are amounts paid for working on a particular day (e.g. Saturday or Sunday) or on a public holiday.

If the employee does not usually work on the day of the public holiday, but does work, they will be entitled to payment at time and a half for the time worked, but not an alternative holiday.

If the employee usually works on the day of the public holiday and the employee is not required to work on that day then they are entitled to receive payment of not less than the relevant daily pay or average daily pay (if applicable) (refer 7.4).

If the employee usually works on the day of the public holiday and the employee is required to work on that day they are entitled to receive payment at time and half for the time they work on that day. They are also entitled to an alternative holiday. When they take the alternative holiday they will be entitled to receive payment of not less than the relevant daily pay or average daily pay (refer 4.3).

If the employee is specifically employed only to work on public holidays they must be paid at time and a half for the time worked on the public holiday.

Relevant daily pay and average daily pay is defined [above in 4.3](#) with examples in [Appendix 2](#).

7. PUBLIC HOLIDAYS

Part 2 Subpart 3

7.1 DAYS THAT ARE PUBLIC HOLIDAYS

Section 44(1)

The following are public holidays:

- Christmas Day (25 December)
- Boxing Day (26 December)
- New Year's Day (1 January)
- Day after New Year's Day (2 January)
- Good Friday
- Easter Monday
- ANZAC Day
- Labour Day (4th Monday in October)
- Queen's Birthday (1st Monday in June)
- Waitangi Day
- Local Anniversary Day (anniversary of a province or the day locally observed as that day).

When any of the first 4 days listed above fall on a Saturday/Sunday and the employee does not usually work on that day then the public holiday is transferred to the following Monday/Tuesday (i.e. if the day falls on a Saturday, it will be transferred to the Monday, and if it falls on a Sunday it will be transferred to a Tuesday. This should be recorded.)

7.1.1 Minimum Requirement

None.

7.1.2 Holiday and Leave Record Only

None.

7.1.3 Full Version

The payroll software should identify all the public holidays for each year.

7.2 ENTITLEMENT TO A PUBLIC HOLIDAY

Sections 40, 46, 47, 48

If an employee would not otherwise work on the day of the public holiday and does not actually work on that day then they have no entitlement to be paid for the public holiday.

If the employee would not otherwise work on the day on which a public holiday falls, but does work, they will be entitled to payment at time and a half for the time worked, but not an alternative holiday.

If the employee would otherwise work on the day of the public holiday and the employee does not work on that day then they are entitled to receive payment of not less than the relevant daily pay or average daily pay for that day (refer 4.3).

If the employee would otherwise work on the day of the public holiday and the employee is required to work on that day they are entitled to receive payment at time and half for the time they work on that day. They are also entitled to an alternative holiday. When they take the alternative holiday they will be entitled to receive payment of not less than the relevant daily pay or average daily pay for that day (refer 4.3).

If an employee is specifically employed only to work on public holidays they are entitled to receive payment at time and a half for the time they work on the public holiday.

7.2.1 Minimum Requirement

None.

7.2.2 Holiday and Leave Record Only

The dates of and payment for any public holiday the employee would otherwise work and did not work must be stored for each employee.

The dates of and payment for any public holiday the employee would otherwise work and did work must be stored for each employee.

The hours the employee worked on the public holiday must be stored for each employee.

The dates of and payment for any public holiday the employee would otherwise not work and did work must be stored for each employee.

The dates of and payment for any alternative holidays.

7.2.3 Full Version

Where employees work regular hours and that information is stored then the software should identify which employees would usually work on the public holiday or the alternative holiday.

7.3 PAYMENT FOR A PUBLIC HOLIDAY NOT WORKED

Section 49

The payment for a public holiday when the employee does not work will be the relevant daily pay or average daily pay ([refer 4.3](#)).

7.3.1 Minimum Requirement

As outlined in 4.3.1 the software must be able to provide the information required to determine relevant daily pay.

7.3.2 Holiday and Leave Record Only

As above in 7.2.2 the dates and payments for all payments relating to public holidays must be stored for each employee.

7.3.3 Full Version

As outlined in 4.3.3 the software must be able to be used to determine relevant daily pay **or average daily pay.**

7.4 PAYMENT FOR A PUBLIC HOLIDAY WORKED

Section 50

The calculation of payment for a Public Holiday where the employee works is as follows:

- (a) Determine the time the employee worked on the public holiday
- (b) Determine **Either:**
 - (i) the portion of the employee's relevant daily pay that relates to the time actually worked less any penal rates multiplied by 1.5 **OR**
 - (ii) if the employee's daily pay varies in the relevant pay period the portion of the employee's average daily pay that relates to the time actually worked (less any penal rates) multiplied by 1.5
- (c) Determine the portion of the employee's relevant daily pay that relates to the time actually worked including all penal rates
- (d) Pay the employee the greater of either (b)(i) or (ii) or (c).

Penal rates are additional rates to compensate an employee for working on a particular day of the week (usually Saturday or Sundays) or on a public holiday.

Please note that the employer only has the choice of paying either time and a half of the relevant portion of RDP or time and a half of the relevant portion of ADP if the employee's daily pay varies in the relevant pay period. This is because the trigger of "not practicable or possible" in section 9A(1)(a) will never be met when the employee actually works on the day.

7.5 ENTITLEMENT TO AN ALTERNATIVE HOLIDAY

Sections 56, 59

As noted above an employee who works (or is on call where the nature of the restriction is such that the employee has not had a holiday) on a public holiday that would otherwise be a working day for the employee (regardless of how long they worked) is entitled to an alternative holiday. Employees who *only* work on or who are *only* on call for public holidays are not entitled to alternative holidays.

If the alternative holiday has not been taken within 12 months of the entitlement arising then the employee may exchange the alternative holiday for a cash payment.

7.5.1 Minimum Requirement

None.

7.5.2 Holiday and Leave Record Only

The number of alternative holidays an employee is entitled to should be stored for each employee.

The dates of and payment for any alternative holiday the employee takes must be stored for each employee.

7.5.3 Full Version

As in 7.5.2 above.

7.6 PAYMENT FOR AN ALTERNATIVE HOLIDAY

Sections 60, 61

The payment for an alternative holiday will be the relevant daily pay or average daily pay ([refer 4.3](#)).

Where an alternative public holiday is exchanged for payment the amount will be that agreed between the employer and the employee.

7.6.1 Minimum Requirement

None.

7.6.2 Holiday and Leave Record Only

The dates of and payment for any alternative holiday the employee exchanges for a payment be stored for each employee.

7.6.3 Full Version

As in 7.6.2 above.

7.7 Transferring public holidays

Sections: 44A, 44B, 44C

From 1 April 2011 employers and employees will be able to agree to transfer the observance of public holidays to another working day in order to meet the needs of the business or the individual needs of the employee. Such an agreement cannot reduce the number of public holidays to which the employee is entitled.

An employer and employee may agree in writing that an entire public holiday is to be observed by the employee on another calendar day or 24-hour period which would otherwise be a working day. Any request must be considered in good faith and any agreement must meet the minimum requirements set out in the legislation. These are:

- any public holiday being transferred must be identified and otherwise be a working day for the employee
- the day it is being transferred to must be identified or identifiable; otherwise be a working day for the employee; and not another public holiday, and
- the purpose of the transfer cannot be to avoid paying the employee time and a half for working on a public holiday or providing them with an alternative holiday (although this may be the effect of the transfer).

Employers and employees are still able to agree to transfer part of a public holiday, for cases where an employee is to start work on one day and finish on the following day. For example, say an employee is to work from 10pm on 24 April to 6am on Anzac Day and from 10pm on Anzac Day to 6am on 26 April. The employer and employee can agree to treat 10pm to midnight on Anzac Day as not part of a public holiday, in exchange for treating a period of 24 hours that finishes on Anzac Day as a public holiday. The parties can agree whether the

24-hour period starts before or finishes after a work period. For instance, they could agree that it runs from midday on 24 April to midday on Anzac Day.

Once an employer and employee have agreed that a public holiday will be transferred to another day, that day is treated as if it were a public holiday. The employee is entitled to a paid day off on that day and the following applies:

- The employee is paid their relevant daily pay or average daily pay for the day.
- If the employee works on the day the public holiday is transferred to, then they are entitled to be paid time and a half for the hours worked and to receive a whole day's alternative holiday (see the section below). An employer and employee must both agree that the employee will work on the day the public holiday is transferred to.
- Where the employee would have been working on a day that a public holiday is transferred to but cannot work due to sickness, the payment for the day is as if they had a paid, unworked public holiday.
- If a day that a public holiday is transferred to falls within a period that an employee is taking as annual holidays, then that day must be treated as a public holiday and not as part of the employee's annual holidays.

Employers may have a workplace policy that they will not transfer public holidays. This can relate to the whole of a business or some parts of the business. As part of their good faith obligations an employer should consult with their employees on the development of a policy. If employees agree, this policy could be included in an employment agreement. An employer should tell any potential new employee about the policy when they make the offer of employment.

If the employer does not have a workplace policy preventing transferring public holidays that applies to the employee, they must consider any request to agree to transfer public holidays in good faith.

The first public holiday to which the new law may apply is Good Friday, 22 April 2011.

7.6.4 Minimum Requirement

None.

7.6.5 Holiday and leave record only

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.

7.6.6 Full Version

As in 7.6.5 above.

8. SICK LEAVE AND BEREAVEMENT LEAVE

Part 2 Subpart 4

8.1 SICK LEAVE ENTITLEMENT DATE

Section 63

An employee has an entitlement to 5 days' sick leave after 6 months continuous service with the employer.

An employee who does not meet the above test becomes entitled to 5 days' sick leave if the employee has, over a period of 6 months, worked for that employer for:

- (a) at least an average of 10 hours a week during that period; and
- (b) no less than 1 hour in every week during that period or no less than 40 hours in every month during that period.

The employee and employer can agree to the employee taking sick leave in advance of this date and taking it off the entitlement when it arises after 6 months. Any such agreement should ideally be recorded in writing.

If the employee or the employee's spouse or partner or dependant falls sick before scheduled annual holiday the employee is entitled to take the period of their sickness as sick leave. If the employee falls sick during a period of annual holiday, their employer can agree to the employee taking the period of the sickness as sick leave instead of annual holiday.

If an employee was scheduled or agreed to work on a public holiday but does not work because they or a spouse or partner or dependant is sick:

- They must be paid relevant daily pay or average daily pay for the day (refer 4.3) (not time and a half)
- The day must be treated as a public holiday (no sick leave may be deducted).

8.1.1 Minimum Requirement

None.

8.1.2 Holiday and Leave Record Only

The date the employee's employment commenced must be stored for all employees.

8.1.3 Full Version

The sick leave anniversary date must be stored for each employee. This date will mark the next date the employee's sick leave will be increased.

For employees who have had six months continuous employment or employees whose employment is not continuous during six months but have worked:

- an average of at least 10 hours per week, and
- at least one hour per week or 40 hours per month

the sick leave anniversary date should be updated as follows:

(a) At start of employment

Anniversary Date = Date Commenced + 6 months

(b) When the anniversary date is reached then the

Anniversary Date = Current Anniversary Date + 1 Year

8.2 ENTITLEMENT TO SICK LEAVE

Sections 63 and 66

An employee has an entitlement to 5 days sick leave after 6 months continuous service with the employer. The entitlement is increased by 5 days for each subsequent 12 months continuous service up to a maximum of 20 days current entitlement. An employer can allow an employee to increase this maximum.

Or

An employee has an entitlement to 5 days sick leave after they have worked a certain amount of hours for an employer for a period of 6 months, as described in 8.1 above. The entitlement is increased by 5 days for each 12 month period in which the employee continues to work in accordance with 8.1 above.

If the employee, at the end of a 12 month period, does not meet the test, they will get a new sick leave entitlement once they have met the test over a 6 month period. However, they will not lose any outstanding sick leave entitlement that they have not yet taken (and may carry over any unused sick leave to a maximum of 20 days).

8.2.1 Minimum Requirement

None.

8.2.2 Holiday and Leave Record Only

The current sick leave entitlement must be stored for each employee.

The dates on which sick leave was taken and total payment for any sick leave must be stored for each employee.

A more complete record would also include the date and number of days of each increase to the sick leave entitlement.

8.2.3 Full Version

All of the above.

Calculations to increase Sick Leave

(a) When an employee starts work their Sick Leave Entitlement will be set to their starting value (usually zero).

(b) At the end of the pay period which contains the employee's sick leave anniversary date a record of increase of entitlement will be created. This record will identify the:

(i) date of the increase – should be the anniversary date

(ii) amount of the increase

If Current Sick Leave Entitlement is less than or equal to 15 then

Sick Leave Entitlement = Current Sick Leave Entitlement + 5

Else

Sick Leave Entitlement = 20 (unless the employer has agreed to increase the maximum current entitlement).

Calculations to decrease Sick Leave Entitlement

At the end of the pay period in which the leave occurred a record of decrease of entitlement will be created. This record will identify the:

- Start date of sick leave
- Finish date of the sick leave
- Total days of sick leave from the start to finish date
- Total payment for the sick leave ([refer 8.4](#) for calculation details)

Sick Leave Entitlement = Current Sick Leave Entitlement – Total Days of Sick Leave

8.3 ENTITLEMENT TO BEREAVEMENT LEAVE

Sections 69 and 70

An employee's entitlement to bereavement leave arises after they have completed 6 months service (as per the entitlement to sick leave – see 8.1) and they suffer a bereavement as described in Section 69(2).

An employee has an entitlement to 3 days bereavement leave for a close relative (the employee's spouse or partner, parent, child, brother, sister, grandparent, grandchild and/or spouse's or partner's parent) and 1 days bereavement leave for other people where the employer accepts the employee has suffered a bereavement.

Note: The 3 days do not have to be taken consecutively. For example a person might take 2 days leave at the time of the funeral and 1 day for the unveiling.

There is no upper limit to the employee's entitlement so the entitlement can not be stored in the same way as sick leave or annual holiday.

An employee is only entitled to bereavement leave if they usually work on the day that they required bereavement leave.

If an employee is scheduled or agrees to work on a public holidays but then suffers a bereavement:

- They must be paid their relevant daily pay or average daily pay for the day (refer 4.3) (not time and a half)
- The day must be treated as a public holiday (no bereavement leave may be deducted).

8.3.1 Minimum Requirement

None.

8.3.2 Holiday and Leave Record Only

The dates on which bereavement leave was taken and total payment for any bereavement leave must be stored for each employee.

8.3.3 Full Version

As above in 8.3.2.

8.4 PAYMENT FOR SICK OR BEREAVEMENT LEAVE

Section 71

The payment for sick leave or bereavement leave will be based on the relevant daily pay **or average daily pay.** ([refer 4.3](#)).

8.4.1 Minimum Requirement

As outlined in 4.3.1 the software must be able to provide the information required to determine relevant daily pay **or average daily pay..**

8.4.2 Holiday and Leave Record Only

As above in 8.2.2 and 8.3.2 the dates and payments for all payments relating to sick and bereavement leave must be stored for each employee.

8.4.3 Full Version

As outlined in 4.3.3 the software must be able to be used to determine relevant daily **or average daily pay.**

9. HOLIDAY AND LEAVE RECORD

Section 81

9.1 HOLIDAY AND LEAVE RECORD REQUIRED¹⁸

Every employer is required to keep a holiday and leave record that complies with Section 81 of the Act. *Section 81(1)*

The holiday and leave record may be incorporated into payroll software as long as it complies with the requirements below. *Section 81(3)(b)*

You should inform purchasers whether or not your software meets the requirements to be a holiday and leave record.

9.2 INFORMATION TO BE STORED IN THE HOLIDAY AND LEAVE RECORD

Section 81(2)

For payroll software to constitute a holiday and leave record it must include the following information:

- name of the employee
- date on which the employee's employment commenced
- days on which the employee actually works, if the information is relevant to the calculation of entitlements or payment for entitlements under this Act
- employee's current entitlement to annual holiday
- date on which the employee last became entitled to annual holiday
- employee's current entitlement to sick leave
- dates on which any annual holiday, sick leave or bereavement leave has been taken
- amount of payment for any annual holiday, sick leave or bereavement leave that has been taken
- the dates of, and payment for, any public holiday on which the employee worked
- the number of hours that the employee worked on any public holiday
- the date on which the employee became entitled to any alternative holiday
- 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
- the cash value of any board or lodgings
- the details of any payment in exchange for an alternative holiday
- date of termination of the employee's employment (if applicable)
- the amount paid to the employee as holiday pay upon the termination of the employee's employment (if applicable)
- the portion of any annual holidays that have been paid out in each entitlement year (if applicable)

¹⁸ The Act allows for the holiday and leave record to be kept as part of payroll software by not insisting that it be a written record and by allowing for it to form part of the wages and time record. It is important that employers are clear whether their payroll software will constitute a holiday and leave record as they need to know whether they need to keep any additional written records to comply with the Act.

- the date and amount of payment, in each entitlement year, for any annual holidays paid out under section 28B (if applicable); and
- 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).

9.3 WRITTEN FORM

Section 81(3)

For payroll software to constitute a holiday and leave record it must allow the information in the record to be easily accessed and converted into written form.¹⁹

9.4 KEPT FOR SIX YEARS

Section 81(4)

Employers are required to keep the information for not less than 6 years after the date the information was entered which means that software should contain protections from accidental deletion of data from periods within the last 6 years.

¹⁹ This requirement means that where payroll software is being used as the holiday and leave record there should be a mechanism to print all of the holiday and leave information for an employee. This does not need to be in a single report but must be easily produced by the software.

APPENDIX 1: ANNUAL HOLIDAY EXAMPLES

Annual holiday Example 1

(Agreement based on accrued hours)

Entitlement is:

- recorded in hours
- agreed in the employment agreement to be based on 4/52 of the **ordinary hours (i.e. excluding overtime hours) worked in the year when entitlement arose**
- reduced in **hours** when the leave is taken

No change to method of calculation when work patterns changed..

Payment is:

- an hourly rate based on greater of ordinary weekly pay and average weekly earnings.

This kind of agreement would be based on the principle that everyone should get 8% of the ordinary hours they worked in the year the entitlement arose with payment being made at an hourly rate.

Each employee would accrue 4/52 of an hour's annual holiday for each ordinary hour worked in the period when the entitlement arose. When they take leave their entitlement will be reduced by the number of hours of leave that was taken.

In the below examples, the figures in the column entitled "Annual holiday entitlement in hours" relate to each employee's actual leave entitlement rather than their accrued leave. All examples relate to situations where the employee has not taken any annual holiday in advance.

Employee A works:

MONTH	DAYS PER WEEK	ORDINARY HOURS PER WEEK	ORDINARY WEEKLY PAY	ANNUAL HOLIDAY ENTITLEMENT IN HOURS
1 – 12	4	32	\$480	-
13	4	32	\$480	128
14-24	5	40	\$640	128

Employee A above takes 8 hours (one 8 hour day) leave in the 21st week after they start working 40 hours per week (i.e. in their 18th month). Their leave entitlement would be reduced to 120 hours.

Employee A had a pay rise from \$15.00 to \$16.00 an hour when they went full-time.

Their payment will be 8 hours multiplied by the greater of:

- Ordinary hourly rate in their employment agreement of \$16 or
- Average hourly pay (over previous 12 months) =

Gross earnings in previous 12 months pay periods

Total ordinary hours in previous 12 months pay periods

$$\frac{(20 * 640) + (32 * 480)}{(20 * 40) + (32 * 32)} = \frac{\$28,160}{1,824} = \$15.43$$

Which is 8 * \$16 = \$128.

Employee B works:

MONTH	DAYS PER WEEK	ORDINARY HOURS PER WEEK	WEEKLY PAY	ANNUAL HOLIDAY ENTITLEMENT IN HOURS
1-12	5	40	\$600	-
13	5	40	\$600	160
14-24	3	21	\$294	160

Employee B takes 7 hours (one 7 hour day) leave in the 21st week after they start working 21 hours per week (i.e. in their 18th month). Their leave entitlement would be reduced to 153 hours.

Employee B’s weekly pay has been reduced from \$15.00 to \$14.00 an hour since they went part time as they no longer qualify for an allowance.

Their payment will be 7 hours multiplied by the greater of:

(a) Ordinary hourly rate in their employment agreement of \$14 or

(b) Average hourly pay (over previous 12 months) =

$$\frac{\text{Gross earnings in previous 12 months pay periods}}{\text{Total ordinary hours in previous 12 months pay periods}} = \frac{(20 * 294) + (32 * 600)}{(20 * 21) + (32 * 40)} = \frac{\$ 25,080}{1,700} = \$14.75$$

Which is 7 * \$14.75 = \$103.25.

Employee C has worked:

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	TOTAL
Hours	8	8	8	5	5	34
Average Overtime	-	-	2	-	-	2
Pay	\$120	\$120	\$150	\$75	\$75	\$540

for their entire 25 months of employment. Their leave entitlement at the end of one year will be based on their ordinary hours (34 hours per week) which will be 136 hours.

Employee C takes Friday off which as the work pattern is considered in hours will be 5 hours and their leave entitlement would be reduced to 131 hours.

Their payment will be 5 hours multiplied by the greater of:

(a) Ordinary hourly rate in their employment agreement of \$15 or

(b) Average hourly pay (over previous 12 months) =

$$\frac{\text{Gross earnings in previous 12 months pay periods}}{\text{Total ordinary hours in previous 12 months pay periods}} = \frac{(540 * 52)}{(36 * 52)} = \frac{\$ 28,080}{1,872} = \$15.00$$

Which is 5 * \$15.00 = \$75.00.

Annual holiday Example 2

(Agreement based on weeks)

Entitlement is:

- based on **weeks**
- reduced based on the work pattern **at the time the leave is taken**
- reduced in proportions of weeks based on the work pattern in **hours** not days

No change to method of calculation when work patterns changed.

This kind of agreement would be based on the principle that everyone should get an entitlement to annual holiday of exactly 4 weeks a year (no less and no more).

Each employee would accrue exactly 4 weeks annual holiday for each year of continuous service. When they take leave their leave entitlement will be reduced by the:

$$\frac{\text{number of hours of leave}}{\text{total ordinary hours in 'current' week}}$$

In the below examples, the figures in the column entitled “Annual holiday entitlement in weeks” relate to each employee’s actual leave entitlement rather than their accrued leave. All examples relate to situations where the employee has not taken any annual holiday in advance.

Employee A works:

MONTH	ORDINARY WEEKLY PAY	ANNUAL HOLIDAY ENTITLEMENT IN WEEKS
1 – 12	\$450	-
13	\$450	4
14-24	\$600	4

Employee A above takes 8 hours (one 8 hour day) leave in the 21st week after they start working 40 hours per week (i.e. in their 18th month). The proportion of a week taken will be 8/40 (i.e. 20%) of a week and their leave entitlement would be reduced to 3.8 weeks.

Their payment will be 0.20 multiplied by the greater of:

- Ordinary weekly pay of \$600 and
- Average weekly pay calculated as $((20 * 600) + (32 * 450))/52 = \507.69

Which is $0.2 * \$600 = \120 .

Employee B works:

MONTH	ORDINARY WEEKLY PAY	ANNUAL HOLIDAY ENTITLEMENT IN WEEKS
1-12	\$660	-
13	\$660	4
14-24	\$315	4

Employee B takes 7 hours (one 7 hour day) leave in the 21st week after they start working 21 hours per week (i.e. in their 18th month). The proportion of a week taken will be 7/21 (i.e. 33%) of a week and their leave entitlement would be reduced to 3.67 weeks.

Their payment will be 0.33 multiplied by the greater of:

- (a) Ordinary weekly pay of \$315 and
- (b) Average weekly pay calculated as $((20 * 315) + (32 * 660))/52 = \527.30

Which is $0.33 * \$527.30 = \174.00 .

Employee C has worked:

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	TOTAL
Hours	8	8	8	5	5	34
Ord Pay	\$120	\$120	\$120	\$75	\$75	\$510

for their entire 25 months of employment.

Employee C takes Friday off which as the work pattern is considered in hours will be 5 hours out of a total of 34 hours. The proportion of a week taken will be 5/34 (i.e. 14.7%) of a week and their leave entitlement would be reduced to 3.85 weeks.

Their payment will be 0.147 multiplied by the greater of:

- (a) Ordinary weekly pay of \$510 and
- (b) Average weekly pay calculated as $(52 * \$510)/52 = \510

Which is $0.147 * \$510 = \75.00

NB: Either rounding or not rounding to decimal places is acceptable as long as the proportion deducted from annual holiday and the proportion of the payment is the same.

Annual holiday Example 3

(Agreement based on accrued days with negotiation when working patterns change)

Entitlement is:

- recorded in days
- based on 4/52 of an agreed working week expressed in days
- reduced based on the work pattern **at the time the leave is taken**
- reduced based on the work pattern in **days**

Change to method of entitlement including conversion of accrued entitlement when work patterns changed.

Payment is:

- based on greater of ordinary daily rate and average daily rate.

Note this agreement is dependent on there being a clear definition of a daily rate.

This kind of agreement would be based on the principle that everyone should get 8% of the days they worked in the year the entitlement arose with payment being made at a daily rate.

In the below examples, the figures in the column entitled “Annual holiday entitlement in days” relate to each employee’s actual leave entitlement rather than their accrued leave. All examples relate to situations where the employee has not taken any annual holiday in advance.

Employee A works:

MONTH	DAYS PER WEEK	HOURS PER WEEK	ORDINARY WEEKLY PAY	ANNUAL HOLIDAY ENTITLEMENT IN DAYS
1 – 12	4	32	\$480	-
13	4	32	\$480	16
14-24	5	40	\$640	16
25	5	40	\$640	20

The agreement is that accrual will be 4/52 of every day worked.

Employee A: Renegotiation Agreement

When the employee changed their hours of work the employer and employee agreed that the leave entitlement would continue to be calculated in days and when the employee took a week off their leave entitlement would be reduced by 5 days. Payment would stay the same i.e. that the employee would be paid the appropriate daily rate for each day they took.

Employee A above takes 1 days leave in the 21st week after they start working 40 hours per week (i.e. in their 18th month). Their leave entitlement would be reduced to 15 days.

Employee A’s pay increased from \$15.00 to \$16.00 an hour when since they went full-time.

Their payment will be 1 day multiplied by the greater of:

- Ordinary daily pay of \$128 or
- Average daily pay (over previous 12 months) =

Gross earnings in previous 12 months pay periods

Total days in previous 12 months pay periods

$$\frac{(20 * 640) + (32 * 480)}{(20 * 5) + (32 * 4)} = \frac{\$ 28,160.00}{228} = \$123.50$$

Which is 1 * \$128 = \$128.

Employee B works:

MONTH	DAYS PER WEEK	HOURS PER WEEK	ORDINARY WEEKLY PAY	ANNUAL HOLIDAY ENTITLEMENT
1-12	5	40	\$600	-
13	5	40	\$600	20 days
14-24	variable	21	\$294	160 hours

The initial agreement was that accrual will be 4/52 of 5 days a week.

Employee B: Renegotiation Agreement

When the employee changed their hours of work the employer and employee agreed that the leave entitlement would be changed so that it is now accrued on the basis of hours worked as it is no longer easily calculated in days. The existing entitlement was converted from days to hours based on the 8 hour day the employee was working when the entitlement arose. The employer and employee agreed that over the next year one day's leave would be considered to be 8 hours leave.

Employee B takes one day's leave in the 21st week after they start working variable days/hours (i.e. in their 18th month). Their leave entitlement would be reduced to 152 hours.

Employee B's pay had been reduced from \$15.00 to \$14.00 since Employee B started working 21 hours.

Their payment will be 8 multiplied by the greater of:

- (a) Ordinary hourly rate in their employment agreement of \$14 or
- (b) Average hourly pay (over previous 12 months) =

Gross earnings in previous 12 months pay periods

Total ordinary hours in previous 12 months pay periods

$$\frac{(20 * 294) + (32 * 600)}{(20 * 21) + (32 * 40)} = \frac{\$ 25,080.00}{1,700} = \$14.75$$

Which is 8 * \$14.75 = \$118.02.

Employee C has worked:

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	TOTAL
Hours	8	8	8	5	5	34
Ord Pay	\$120	\$120	\$120	\$75	\$75	\$510

for their entire 25 months of employment. The agreement is that accrual will be 4/52 of 5 days a week.

The leave entitlement at the end of one year will be 20 days.

Employee C takes Friday off which as the work pattern is considered in days will be 1 day out of a total of 5 days. Their leave entitlement would be reduced to 19 days.

Their payment will be 1 multiplied by:

$$\text{Ordinary daily pay} = \frac{\$510}{5} = \$102.00$$

NB: As the employee's daily rate has been constant for the entire period there is no need to make the comparison but otherwise it would have been the greater of average and ordinary as per the examples above.

Annual holiday Example 4

(Cashed up annual holiday based on weeks, days and hours)

Employee A works:

MONTH	ORDINARY WEEKLY PAY	ANNUAL HOLIDAY ENTITLEMENT IN WEEKS
1-12	\$780	-
13	\$780	4

Employee A works a 40 hour week (5 days) and applies to paid out a whole week of annual holiday entitlement on the 53rd week after they start working and the employer agrees.

Their payment will be the greater of:

- (a) Ordinary weekly pay of \$780, and
- (b) Average weekly pay calculated as $(40560/52) = \$780.00$

The cashed up annual holiday payment for one week will be \$780.00

Employee B works:

MONTH	ORDINARY WEEKLY PAY	ANNUAL HOLIDAY ENTITLEMENT IN WEEKS
1 - 12	\$450	-
13	\$450	4
14-24	\$600	4

Employee B applies to paid out one 1 day of annual holiday entitlement (8 hour day) in the 21st week after they start working 40 hours per week (i.e. in their 18th month). The proportion of a week taken will be 8/40 (i.e. 20%) of a week and their leave entitlement would be reduced to 3.8 weeks.

Their payment will be 0.20 multiplied by the greater of:

- (a) Ordinary weekly pay of \$600, and
- (b) Average weekly pay calculated as $((20 * 600) + (32 * 450))/52 = \507.69

Which is $0.2 * \$600 = \120 .

The cashed up annual holiday payment for one day will be \$120.00.

Employee C works:

MONTH	DAYS PER WEEK	ORDINARY HOURS PER WEEK	ORDINARY WEEKLY PAY	ANNUAL HOLIDAY ENTITLEMENT IN HOURS
1 – 12	4	32	\$480	-
13	4	32	\$480	128
14-24	5	40	\$640	128

Employee C applies to be paid out 8 hours of annual holiday entitlement in the 21st week after they start working 40 hours per week (i.e. in their 18th month). Their holiday entitlement would be reduced to 120 hours.

Employee C had a pay rise from \$15.00 to \$16.00 an hour when they went full-time.

Their payment will be 8 hours multiplied by the greater of:

(a) Ordinary hourly rate in their employment agreement of \$16, or

(b) Average hourly pay (over previous 12 months) =

Gross earnings in previous 12 months pay periods

Total ordinary hours in previous 12 months pay periods

$$\frac{(20 * 640) + (32 * 480)}{(20 * 40) + (32 * 32)} = \frac{\$28,160}{1,824} = \$15.43$$

Which is $8 * \$16 = \128 .

The cashed up annual holiday payment for 8 hours will be \$128.00.

APPENDIX 2: Relevant Daily Pay & Average Daily Pay Examples

Employee A works:

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	TOTAL
Hours	8	8	8	8	8	40
Payment	\$120	\$120	\$120	\$120	\$120	\$600

If **Employee A** works the same hours every day for the working week and takes either: sick leave, bereavement leave, public holiday (taken not worked), or an alternative holiday on any work day the employee will be paid \$120 for that day as this is their relevant daily pay.

Employee B works:

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	TOTAL
Hours	8	8	8	5	5	34
Payment	\$120	\$120	\$120	\$75	\$75	\$510

If Monday is a public holiday and **Employee B** does not work during that day then they could receive a \$120 payment for that day, as this is their relevant daily pay. Alternatively, because there is a variation during the pay period the employer could choose to pay the employee their average daily pay.

If the employer for **Employee B** decides to use average daily pay because there is a variation during the pay period then the following would apply:

Employee B has worked for over 18 months and always works 8 hours on (Mon to Wed) and works 5 hours on (Thurs to Fri). Employee B has worked for the last 12 months with no work days off.

Gross earnings for the last 12 months from the last pay period: (52 x \$510) = \$26520.00

$$\begin{array}{r} \text{ADP} = \$26520 \\ \hline \phantom{\text{ADP} = } = \$102.00 \\ \phantom{\text{ADP} = } 260 \end{array}$$

If Monday is a public holiday and they work for 4 hours, receive an alternative holiday and take it on a Friday then they will receive:

\$15 * 1.5 * 4 (i.e. four hours at time and a half for the Monday) = \$90 payment for working on the Monday and

\$75 when they take their alternative holiday on the Friday.

Employee C works:

PAY PERIOD		MON	TUE	WED	THURS	FRI	TOTAL
1 wk ago	Hours	8	4	3	0	8	23
	Payment	\$120	\$60	\$45		\$120	\$345
2 wks ago	Hours	2	2	5	0	5	14
	Payment	\$30	\$30	\$75		\$75	\$210
3 wks ago	Hours	8	8	8	0	5	29
	Payment	\$120	\$120	\$120		\$75	\$435
4 wks ago	Hours	5	2	2	0	5	14
	Payment	\$75	\$30	\$30		\$75	\$210

Employee C works irregular hours (that are not rostered in advance) but regular days so the value of a day not actually worked cannot be determined using relevant daily pay under section 9(1) so the alternative calculation average daily pay under section 9A(1) must be applied.²⁰

If Employee C takes Monday as a public holiday and they don't work during that day then they will receive:

$$\frac{\text{Gross earnings in previous 52 calendar before end of the pay period immediately before calculation is made}}{\text{Number of whole or part days the employee was paid in the previous 52 weeks pay periods}}$$

If Employee C has the following:

- For the 12 months Employee C has taxable gross earnings of \$12,670
- For the same period Employee C has been paid for a total of 240 days

ADP for Employee C will be:

Gross earnings:	\$12,670.00	
	-----	= \$52.79 ADP
Days worked or on paid leave:	240	

²⁰ In this example it becomes a “must” because in this example it is not possible to determine RDP, so there is only one option – ADP (unless a rate of RDP has been agreed to in the employment agreement).

APPENDIX 3: Change Log

The following table lists the changes that have been made to this document in regard to the 1 April 2011 changes:

Section Heading/Reference	Page No.	Description of change
Section 1 Introduction	Page 5	Added in details of the Holidays Amendment Act 2010.
Section 2.1 Minimum requirement	Page 6	Added in reference to commencement of the Holidays Amendment Act 2010.
Section 3 – Principles 1 – Definitions and Annual Holiday	Page 7	Added the ability to pay out annual holiday.
Section 4.1 Payment types	Page 9	Added reference to average daily pay.
Section 4.1.2 Holiday and leave Record Only	Page 10	Added the additional requirements for the holiday and leave record, last three bullet points.
Section 4.3 – 4.3.3 Relevant Daily Pay	Pages 15-16	Added the average daily pay calculation section (b) and additional notes.
Section 5.8 Paying Out Portion Of Annual holiday Entitlements Principles	Pages 27-29	Added the principles in regard to cashing out annul leave.
Section 5.9-5.9.3 Payment for annual holidays paid out	Pages 29	Added description of how annual holiday is to be cashed out.
Section 6 – Principles 2 – Public Holidays	Pages 30	Added principles in regard to transferring public holidays and using average daily pay.
Section 7 – Public Holidays	Pages 31-32	Added section on transferring public holidays.
Sections 7.3.3, Section 8, 8.3, 8.4, 8.4.1, 8.4.3	Pages 34, 37,39-40	Added reference to average daily pay.
Section 7.7-7.7.3 Payment for Transfer of part of public holiday	Page 35	Added description of how payment for a part transferred public holiday is paid.
Section 7.8-7.8.3	Page 35-36	Added description of how payment for how a whole transferred public holiday is paid.
Section 9.2 Information to be stored in the holiday and leave record	Page 42	Added additional items to be included in Holiday and leave record.
Appendix 1: Annual Holiday Examples	Pages 49-50	Added Example 4 – Cashed up annual holiday based on weeks, days and hours.
Appendix 2: Relevant Daily Pay & Average Daily Pay Examples	Pages 51-52	Added the reference to the Act and include average daily pay examples.
Annual leave	Throughout	Changed all reference to Annual Leave to Annual holidays as per the Act.
Payment Types	Throughout	All mention of payment types have been removed from the payroll specification, they are not mentioned in the act and DOL found them confusing.

Flowcharts	Appendices	Flowcharts for AWE, RDP and ADP have been removed because of being confusing.
Principal Act	Throughout	Reference to the Holidays Act as the principal Act and the 2010 Act as the Holidays Amendment Act 2010.
Appendix 7: Change Log	Pages 58-59	Included this table of changes for 1 April 2011.