

# Payroll's Nightmare the Holidays Act 2003

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## Holidays Act 2003

There are now six main leave entitlements under the act, they are:

- **Annual Holidays** (4 weeks of annual leave)
- **Public Holidays** (11 public holidays)
- **Sick Leave** (5 days after 6 months)
- **Bereavement Leave** (3 days for close family members, 1 day for everyone else)
- **Alternative Holidays** (for working on a public holiday that is an otherwise working day)
- **Domestic Violence Leave** (10 days after 6 months)

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## What is the cost of getting the Holidays Act Wrong?



When the issues with the act were first raised by MBIE they stated that employees in general could have been underpaid from \$80 to \$1800 per year for their leave.

The real cost of the Holidays Act is hundreds of millions of dollars and that is the tip of the iceberg of what has been published.

### Factors to consider in determining the cost of getting it wrong are:

Number of staff being underpaid (difference between what was paid to what should have been paid) and that must include present and terminated employees in that 6 year period

x

Liability period is 6 years (employment law)

x

Interest being awarded and/or court fees

x

Cost of recalculating leave (cost of work/time), lawyers, MBIE involvement

x

Damage to brand from MBIE's public name and shame

Also keep in mind underpayments cannot be traded off against overpayments the Wages Protection Act 1987 must be followed.

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## Getting the right things in place to get the act right!



There are five main ways to get the Holidays Act right:

1. An employment agreement must be written in line with the Holidays Act and should link with what payroll actually does.
2. Clearly define a "WEEK" and a "DAY" for an employee.
3. Recheck settings in payroll when an employees work pattern changes and update if needed.
4. Ensure the right payments to an employee are assigned to the right calculation and gross earnings period under the act.
5. Clearly understand what the payroll system is doing and ensure it meets the requirements of the Holidays Act, do not accept anything less!

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## Gross Earnings



This is the main area where mistakes are made because there are different periods of gross earnings that are being used in the different calculations under the act.

The periods are:

- 12 months taken for the last pay period back 52 weeks.
- 4 weeks taken from the last pay period back 4 weeks.
- From start date to end date (less than 12 months)
- From last entitlement date to end date (less than 12 months)
- If there is special standard pay cycle different to above then gross earnings can be also taken for that period.

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## Understanding Payments



Ensuring the right payments go to the right period of gross earnings is essential in getting this part of the act correct.

**For example:**

### ***Annual Bonus paid once a year***

- It is not part of a week or a day but would be part of the 52 week gross used for:
  - Average Weekly Earnings (AWE) annual holidays, and
  - Average Daily Pay (ADP) for the other type of leave

### ***Weekly taxable motor vehicle allowance***

- This is not part of a day but would be part of the OWP and AWE

### ***Shift allowance paid every shift***

- This is part of the day, week and 52 week gross

You must spend time in understanding payments and what period of gross earnings they should be included in.

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## Understanding Discretionary Payments



There is a lot of misunderstanding on what is a discretionary payment is.

If the payment meets any of the following in general, it is not a discretionary payment:

- If an employer is bound under the employment agreement to make a payment, then it is not a discretionary payment.
  - Taxable allowances
  - Bonuses, incentives, commission payments
  - Employee has an expectation (employer told them) or the employee has to achieve a target
- Discretionary payments are payments that an employer doesn't have to pay the employee under the employment agreement.
  - Out of the blue payment made to an employee, did not know it was coming

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## Annual Holidays Calculations



Annual holiday calculations:

Annual holiday entitlement greater of:

- **Average Weekly Earnings (AWE)**
  - 52 weeks gross / 52 weeks
- **Ordinary Weekly Pay (OWP):**
  - Agreed rate for the week (default must be tried first)
  - 4 week average
  - Fixed rate

Annual holiday accrual – 8% before 12 months or after 12 months

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## OWP – 4 week

(2) If it is not possible to determine an employee's ordinary weekly pay under subsection (1), the pay must be calculated in accordance with the following formula:

$$\frac{a - b}{c}$$

where—

**a** is the employee's gross earnings for—

(i) the 4 calendar weeks before the end of the pay period immediately before the calculation is made; or

(ii) if, the employee's normal pay period is longer than 4 weeks, that pay period immediately before the calculation is made

**b** is the total amount of payments described in subsection (1)(c)(i) to (iii)

**c** is 4.

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## 8% of Gross Earnings

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

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

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## Calculations for the other types of leave

### Other types of leave:

- Sick, Bereavement, Public, Alternative and Domestic Violence Leave, uses:
  - **Relevant Daily Pay (RDP) – value of the day (default must be tried first)**
  - **Average Daily Pay (ADP) – 52 week gross /No. of days**

**Please note: RDP is not just ordinary rate of pay**

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## Relevant daily pay

### It includes:

- Productivity or incentive-based payments (including commission) if those payments would have otherwise been received on the day concerned; and
- Payments for overtime if those payments would have otherwise been received on the day concerned; and
- The cash value of any board or lodgings provided by the employer to the employee

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## S9A Average daily pay



- (1) An employer may use an employee's average daily pay for the purposes of calculating payment for a public holiday, an alternative holiday, sick leave, or bereavement leave if—
- (a) it is not possible or practicable to determine an employee's relevant daily pay under section 9(1); or
  - (b) the employee's daily pay varies within the pay period when the holiday or leave falls.

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## What to watch out for in payroll systems:



- Be careful using an overseas developed payroll systems (usually not designed to meet NZ legislative requirements).
- A lot of payroll systems are only paying ordinary rate and are not factoring in other payments.
- Look for a payroll system that you can see the calculations being undertaken so they can be checked and confirmed.
- Look for a payroll system that data is transparent and can be exported/reported easily.

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