

WE KNOW

HUMAN RESOURCES

ANNUAL LEAVE

QUICK GUIDE

This Quick Guide provides summarised information on how to manage annual holidays for your staff. Related information: Holidays and Leave Payments Quick Guide and Closedown Periods Quick Guide.

HOLIDAY ENTITLEMENT

All full and part-time employees are entitled to paid annual holidays of four weeks after each completed 12 months of continuous employment. Employers may choose to provide more holidays as part of a total employment package.

If an employer and employee agree, some or all of an employee's annual holiday entitlement may be taken in advance.

There is no definition of a 'week' in the Holidays Act, so an employer and employee should agree on how the four-week entitlement is to be met, based on the employee's actual working week. By agreement, an annual holiday entitlement may be recorded in the form of weeks, days or even hours, provided it meets the requirement to allow not less than 4 weeks annual holiday.

Annual holiday entitlement continues until the employee has taken the whole amount as paid holidays.

CASHING-UP ANNUAL HOLIDAYS

Annual holidays provided over and above the minimum 4 weeks are subject to whatever terms are agreed between the employer and employee – including whether or not all or part of such extra entitlement may be exchanged for money.

From the anniversary of the employee's employment on or after 1 April 2011 an employee may request to be to be paid out up to 1 week of the minimum 4-weeks annual holiday entitlement. A request may be made on one or more occasions but not for more than one week in total in any one year.

An employer may have a policy against paying out annual holidays in respect of some parts or the whole of the business.

If a request is made, the employer must –

- Consider the request within a reasonable timeframe
- advise the employee in writing as to whether the employer agrees to the request
- pay out the relevant portion of annual holiday as soon as practicable after agreeing to it; or
- decline the request (no reason need be given).

Where the employer agrees to make a payment it must be calculated in the same manner as if was in respect of holidays taken.

No term or condition of employment (whether in an employment agreement or otherwise) may require the employee to request a portion of their holidays to be paid out (although an agreement may contain a process for making a request) or require an employer to pay out a portion of the employee's holiday entitlement.

TIMING OF ANNUAL HOLIDAYS

Annual holidays are to be taken at a mutually agreed time. Employers must allow employees to take annual holidays within 12 months of the entitlement arising and must not unreasonably refuse a request for a period of annual holidays. Employees can choose to take at least two weeks of their annual holidays in a continuous period but do not have to do so. Employees' annual holiday requests should preferably be made in writing and a standard form provided for this purpose.

If the employer and employee cannot agree when any or all of an annual holiday entitlement will be taken, the employer can require the employee to take a holiday, giving at least 14 days' notice. The employer can also require an employee to take holidays or stop working during a closedown – see our Quick Guide to Closedown Periods.

PAYMENT OF ANNUAL HOLIDAYS

Annual holidays must be paid at the greater of:

1. The employee's average weekly earnings over the 52 weeks immediately prior to when the holiday is taken OR
2. The employee's ordinary weekly pay at the time the holidays are taken.

For details on calculating payment of annual holidays in different circumstances, refer to our Holidays and Leave Payments Quick Guide.

An employee must be paid for annual holidays before taking them unless the employer and employee agree to payment in the pay relating to the period when the holidays are taken. If employment is terminated then payment for outstanding holiday entitlement must be made in the pay relating to the employee's final period of employment.

PAYING ANNUAL HOLIDAY PAY WITH REGULAR PAY

Annual holiday pay can be paid together with an employee's pay in two circumstances:

1. Where the employee works on a fixed term agreement (for which there is a genuine reason stated in the written employment agreement) for less than 12 months, OR
2. When employment is so intermittent or irregular that it is impracticable for the employer to provide the employee with four weeks' annual holidays. (This applies to genuine casual employees, not to those who have a clear pattern of work and are therefore essentially employed on a part-time basis.)

The following criteria must also be met:

- The arrangement must be agreed to in the employee's written employment agreement.
- The annual holiday pay component must be shown as an amount separate from the wage or salary component in all records.
- Payment must be at a rate that is not less than 8% of the employee's gross earnings.

RELATIONSHIP BETWEEN ANNUAL HOLIDAYS AND OTHER ENTITLEMENTS

If the employee has outstanding sick leave entitlement and a sickness or injury occurs while the employee is on annual holidays, an employer *may* allow the employee to use outstanding sick leave entitlement. If the sickness or injury commences before an agreed period of holidays begins, the employer *must* allow the employee to use his/her outstanding sick leave entitlement. An employer *must* allow an employee who suffers a bereavement to take bereavement leave regardless of whether the bereavement occurred during or immediately prior to the period of annual holidays.

If sick leave or bereavement leave is exhausted, the employer *may*, at the employee's request, agree to the employee using annual holiday entitlement instead.

A public holiday falling during an employee's annual holiday period must be treated as a public holiday, not as part of annual holidays. In other words, the public holiday adds an extra day to the annual holiday and will be a paid day if it falls on a day on which the employee would otherwise have worked.

For further information regarding Annual Leave or other aspects of Employment Relations, please contact the Canterbury Employers' Chamber of Commerce, email info@cecc.org.nz or phone 03 366 5096.