CANTERBURY EMPLOYERS' CHAMBER OF COMMERCE

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HUMAN RESOURCES

CALCULATING HOLIDAY PAY UPON TERMINATION OF EMPLOYMENT

QUICK GUIDE

This Quick Guide contains information on payment calculations for holidays and leave under the Holidays Act 2003. For further information on holiday and leave entitlements please refer to our quick guides on annual holidays, public holidays, sick leave and bereavement leave, or our complete Guide to the Holidays Act 2003.

PAYMENT FOR ANNUAL HOLIDAYS

Properly assessing payment due upon termination of employment in respect of an individual employee's holiday pay entitlements entails consideration of three aspects.

- the employee's length of service (i.e. greater or less than 12 months);
- outstanding holidays (if any), and
- the proximity of any public holidays in the period following termination.

Unless the Employment Agreement provides more favourable terms, entitlement to annual holidays does not crystallise until an employee has completed a period of 12 months continuous employment either from the date employment commenced or from the previous anniversary date.

An **employee who has not completed 12 month's continuous employment** at the date of termination will not be entitled to holidays but is entitled to payment of accrued holiday pay, calculated at 8% of their gross earnings – less any payment previously made in respect of holidays taken in advance. (Note: this does not apply in the case of employees who, by agreement, have been paid holiday pay in their regular pay cycle in the circumstances permitted under the Holidays Act).

An **employee, who has completed 12 months continuous employment from commencing employment or their previous anniversary but not yet completed a further 12 months service**, will be entitled to payment in respect of:

- any holidays to which the employee has previously become entitled but which have not been taken; <u>**and**</u>
- accrued holiday pay in respect of the period from the employee's previous anniversary to the date of termination.

The method of calculating holiday pay differs in each case.

Holiday pay *in respect of annual holidays to which the employee has previously become entitled but remaining untaken* at the date of termination must be assessed *at the greater of* the employee's average weekly earnings for the 12 months immediately before the end of the last pay period before ceasing employment <u>or</u> at the rate of their ordinary weekly pay at the date of termination.

Accrued holiday pay *in respect of the period from the previous anniversary to the end of employment* is calculated in the same way as an employee who has not completed 12 months continuous employment (see above). In calculating this payment it should be noted that gross earnings <u>includes the holiday pay in respect of holidays due but untaken at termination.</u>

ELIGIBILITY FOR PUBLIC HOLIDAYS AFTER TERMINATION

This will only apply to those employees terminating employment who have previously become entitled to annual holidays all or part of which remain untaken at the date of termination. It does *not* apply in circumstances where an employee is only entitled to accrued holiday pay.

In normal circumstances the right to be paid for a public holiday is dependent upon being employed at the time the public holiday is observed and further, that day being a day which would otherwise be a working day for the employee.

However, an employee will be entitled to be paid for a public holiday if the holiday would have:

- otherwise been a working day for the employee; and
- occurred during the employee's annual holidays had the employee taken the remaining annual holidays immediately after employment ended.

Payment for the public holiday will be calculated on the basis of the employee's *relevant daily pay* or *average daily pay* as applicable.

This does lead to the possibility of an employee being paid twice for the same public holiday – once by the 'old' employer and once by a new employer (assuming employment commences prior to the public holiday).

(This anomaly was not possible under Holidays legislation prior to 1981 which incorporated provision for proportionate payment when an employee started/ceased employment during the fortnight preceding a public holiday).

DEFINITIONS

'Average Weekly Earnings'
Average weekly earnings means 1/52 of an employee's *gross earnings* (see definition below).

'Gross Earnings'
Gross earnings for the period for which earnings are being assessed means all payments the employer must pay under the employment agreement, such as:

- Salary or wages
- Allowances
- Commission
- Payment for an annual or public holiday, sick or bereavement leave taken during the period
- Productivity or incentive-based payments
- Overtime payments
- The cash value of any board or lodgings provided, as agreed, by the employer or determined by a Labour Inspector
- First week compensation payable by the employer under the Injury Prevention, Rehabilitation and Compensation Act or any previous ACC legislation.

Payments the employer is not required to make under the employment agreement are excluded. For example:

- Discretionary payments
- Weekly compensation payable under ACC legislation
- Payment for absence from work while on protected voluntary service or training under the Volunteers Employment Protection Act
- Reimbursement payments for actual costs incurred by the employee related to his or her employment
- Payment of a reasonably assessed amount to reimburse the employee for employment-related costs.

Any payment made in respect of annual holidays which the employer has agreed to pay out.

'Discretionary payment'
Is a payment that the employer is not bound by the employee's employment agreement to pay to the employee but this does not include an amount the employer is required to pay but where the amount to be paid is to be determined by the employer or where payment is to be made only if certain conditions are met i.e. payments made in these circumstances will be part of gross earnings.

'Ordinary Weekly Pay'
This is the amount paid to an employee under the relevant employment agreement for an ordinary working week. It includes:

- The payment of commission
- Productivity or incentive-based payments if a regular part of the employee's pay
- Overtime payments, if a regular part of the employee's pay
- The cash value of any board or lodgings provided by the employer.

It excludes:

- Productivity or incentive-based payments not regularly part of the employee's pay
- Overtime payments not paid on a regular basis
- One off or exceptional payments
- Discretionary payments* the employer is not bound to pay under the employment agreement.

If ordinary weekly pay cannot be determined the following formula must be used, based on the previous 4 weeks' gross earnings:

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

Here

'a' is gross earnings for:
  (i) the 4 calendar weeks before the end of the pay period immediately before making the calculation, or
  (ii) if the employee's normal pay period is longer than 4 weeks, the longer pay period immediately before making the calculation)

'b' is the total amount of excluded payments,

'c' is 4.

An employment agreement may specify a special rate of ordinary weekly pay for the purpose of calculating annual holiday pay but only if that rate is the same as or greater than the amount payable under the regulations above.

'Relevant Daily Pay'
Relevant daily pay is the amount of pay the employee would have received if he or she had worked on the particular day. It includes:

- The payment of commission
- Productivity or incentive-based payments the employee would otherwise have received
- Overtime payments the employee would otherwise have received
- The cash value of any board or lodgings provided by the employer

Relevant daily pay for a public holiday does not include the extra half rate payment required where an employee works on a public holiday.

An employment agreement may specify a special rate of relevant daily pay for the purpose of calculating annual holiday pay but only if that rate is the same as or greater than the amount payable under the regulations above.

If it is not possible or practicable to determine an employee's relevant daily pay or if the employee's daily pay varies within the pay period when the holiday or leave falls an employer may use 'average daily pay'

'Average Daily Pay'

Is calculated using the following formula based on the previous 52 weeks' earnings:

$$\frac{a}{b}$$

Here:

'a' is the employee's gross earnings for the 52 calendar weeks before the end of the pay period immediately before making the calculation,

'b' is the number of whole or part days during which the employee earned those earnings including any day when the employee was on a paid holiday or paid leave but excluding any day on which the employee did not actually work.