CANTERBURY EMPLOYERS' CHAMBER OF COMMERCE

WE KNOW HUMAN RESOURCES

HOLIDAY & LEAVE PAYMENT CALCULATIONS

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.

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.

PAYMENT FOR ANNUAL HOLIDAYS

Employee Who Is Entitled To Annual Holidays

(has completed 12 months' continuous employment since commencing employment or the previous anniversary)

Holiday pay must be paid at the greater of the employee's:

- Ordinary weekly pay when the holiday begins, or
- Average weekly earnings for the 12 months immediately before the end of the last pay period before the annual holiday.

Employee Taking Annual Holidays in Advance of Entitlement

Holiday pay must be paid at the greater of the employee's:

- Ordinary weekly pay when the holiday begins, or
- Average weekly earnings for:
  - the 12 months immediately before the end of the last pay period prior to the holiday, if the employee has worked for not less than 12 months, or
  - the period of employment before the end of the last pay period prior to the holiday, if the employee has worked for less than 12 months.

Holiday Pay for Annual Holiday entitlements established during Parental leave or within 12 months of returning from Parental Leave

The usual method of calculating holiday pay (i.e. the requirement to pay the greater of the employee's average weekly earnings or ordinary weekly pay) does not apply in these circumstances. Depending upon when these holidays are actually taken, the holiday pay will be proportionally reduced as a result of the employee's absence on Parental Leave. This is because it is only necessary to calculate holiday pay in respect of the whole or any part of such holidays on the basis of the employee's average weekly earnings over the preceding 12 months. Note that any entitlement to annual holidays established prior to commencing Parental Leave but not actually taken until after returning to work is required to be paid in the conventional manner i.e. not less than the employee's ordinary weekly pay at the time the holiday (or any part of it) is taken.

Holiday Pay on Termination of Employment for Employee who has Completed 12 Months' Service

Payment for the portion of the untaken annual holidays (to which the employee has reached entitlement to take) must be paid at the greater of:

- Ordinary weekly pay when employment ends, or
- Average weekly earnings during the 12 months immediately before the end of the last pay period prior to employment ending.

In addition, the employer must pay 8% of gross earnings since the employee's last anniversary date (when they last became entitled to annual holidays) less any holiday pay:

- Paid in advance of entitlement, or
- Paid as a 8% loading in relation to a fixed term agreement (or agreements) of less than 12 months or because of the intermittent or irregular nature of the employment.

Note that 'gross earnings' used to calculate this 8% payment must include payment for any remaining untaken annual holidays (see the first paragraph under this heading).

Holiday Pay on Termination of Employment for Employee who leaves before Completing 12 Months' Service
If an employee has worked for less than 12 months and therefore is not entitled to annual holidays, the employer must pay the employee 8% of the employee's gross earnings for the period of employment less any holiday pay

- Paid for annual holidays taken in advance of entitlement, or
- Paid as an 8% loading in relation to a fixed term agreement (or agreements) of less than 12 months or paid because of the intermittent or irregular nature of the employment.

Paying Annual Holiday Pay with the Employee's Regular Pay

Refer to our quick guide to Annual Holidays.

PAYMENT FOR SICK LEAVE, BEREAVEMENT LEAVE, PUBLIC HOLIDAYS AND ALTERNATIVE HOLIDAYS

Employees must be paid an amount equivalent to their *relevant daily pay* for each public holiday that the employee is not required to work or taken as an alternate holiday or day of sick leave or bereavement leave – provided that the day would otherwise be a working day for them. (*See our Public Holidays Quick Guide for information on payments for employees who work on public holidays.)*

PAYMENT FOR AN EMPLOYEE WHO WORKS ON A PUBLIC HOLIDAY

An employee who works on any part of a public holiday must be paid for hours actually worked at a minimum rate of time and a half. If an employee is paid *penal rates* then he/she must be paid for time worked on a public holiday at the greater of:

- Relevant daily pay, minus the penal rate otherwise payable, plus half that amount again, or
- Relevant daily pay, including the penal rate, for time worked.

(The term *'penal rates'* means an identifiable additional amount payable for working on a public holiday or on a particular day of the week. It does not include a payment for a sixth or seventh day of work).

Any employee who works on a public holiday must be paid as above whether or not he or she would otherwise have worked on that day (for example, students and others employed just to work on the public holiday).

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