

A-Z Guide

Holidays Act



Contents

Use This Guide to Understand	2
What is the Holidays Act?	2
Annual Holidays	3
Public Holidays	3
Sick Leave	3
Bereavement Leave	4
Family Violence Leave	4
Holiday and Leave Records	5
How is the Act Enforced?	6
Penalties	7
For Your Business	8



Use This Guide to Understand

- The Holidays Act 2003 provides for and protects employees' minimum entitlements to annual holidays, public holidays, sick leave and bereavement leave.
- The Act provides all employees with an entitlement to 4 weeks' annual holiday on pay after the end of each completed 12 months of continuous employment.
- The Act provides for 12 public holidays; where a public holiday falls on a day that would, but for the public holiday, otherwise be a working day for an employee the employee is entitled to take the day as a public holiday and to be paid for that day.
- The Act now provides employees with an entitlement to 10 days' sick leave for each 12-month period beginning after they have completed either 6 months current continuous employment, or 6 months' work if the employee worked at least an average of 10 hours a week and no less than 1 hour every week, or no less than 40 hours in every month.
- With an entitlement to bereavement leave after either 6 months current continuous employment, or 6 months' work during which the employee worked for the employer at least an average of 10 hours a week and no less than 1 hour every week or no less than 40 hours in every month.
- The Act requires employers to keep holiday and leave records for each employee.
- The Act cannot be contracted out of but the minimum entitlements may be improved upon.
- Labour inspectors have special powers under the Act and the right to make determinations about specified matters where an employer and employee cannot agree.
- The provisions of the Act are enforceable.
- Penalties may be sought for specified breaches of the Act.

What is the Holidays Act?

This **A-Z guide** on the **Holidays Act 2003** provides a brief outline of the holidays and leave provided by the Act; separate **A-Z Guides** provide in-depth information and examples on each type of holiday and leave.

The Holidays Act 2003 replaced the Holidays Act 1981. In doing so, the new Act effectively codified or legislated most of the case law which developed under the old Act. While the new Act is twice as long as the old one, because it answers many of the questions that the courts had to determine under the old Act it is easier to apply. It forms part of the minimum employment code in New Zealand. It provides all employees, where they are entitled, with annual holidays and public holidays, and sick and bereavement leave on pay.

The Holidays Act 2003 does not prevent an employer from providing an employee with enhanced or additional entitlements by agreement. However, it does render any employment agreement that excludes, restricts, or reduces an employee's entitlements under the Act, ineffective to that extent. Each employment is a separate and distinct relationship under the Holidays Act 2003. An employee who has several part-time jobs has separate entitlements with each employer.

The Holidays Act 2003 attempts to balance the need of employers to manage their businesses and the rights of employees to holidays and leave. In doing so, it sets out the "rules" that employers and employees must follow in respect of holidays and leave.

The Holidays Amendment Act 2010 came into force on 1 April 2011. This made changes to the principal Act in the areas of relevant daily pay, cashing up of annual leave, transferring of public holidays, taking of alternative holidays, proof of sickness, and penalties. Those changes have been incorporated into this guide.



Annual Holidays

The Holidays Act 2003 provides all employees in New Zealand with a minimum entitlement to annual holidays.

An employee becomes entitled to annual holidays after the end of each completed 12 months of continuous employment. Upon reaching entitlement the employee is entitled to 4 weeks' paid annual holidays.

The payment for annual holidays depends on when the holidays are taken and whether or not the employee has taken any unpaid leave in the 12-month period (or less in some circumstances) preceding the annual holiday. The minimum entitlement increased to 4 weeks' paid annual holidays from 1 April 2007.

Employees are able to make a request to cash up one week of entitled annual leave per year. Refer to the **A-Z Guide on Annual Holidays** for more information.

Public Holidays

The Holidays Act 2003 provides for 12 public holidays. An employee is entitled to a paid day off on a public holiday where the public holiday falls on day which, but for the public holiday, would otherwise be a working day for the employee. As of 8 April 2022, the Te Kāhui o Matariki Public Holiday Act 2022 came into effect establishing Matariki, the Māori New Year, as a national public holiday, beginning on 24 June 2022. As Matariki is based on lunar cycles in June or July, the Act also established the dates Matariki will be observed until 2052.

Unless an employee is required to work on a public holiday under the terms of the employee's employment agreement, the employee is entitled to take the public holiday that falls on a day that would otherwise be a working day for the employee. Christmas Day, Boxing Day, New Year's Day, 2 January, Waitangi Day and ANZAC Day are transferable public holidays where they fall on a Saturday or Sunday, and the day is not an otherwise working day for the employee. These holidays, and any other public holiday may be agreed to be transferred to another 24 hour period.

This means a public holiday may be agreed to be transferred:

- By a few hours to match shift arrangements
- To a completely different day (and not necessarily midnight to midnight)

In the absence of a written agreement, a public holiday is observed midnight to midnight on the traditional day.

The payment for a public holiday is dependent on whether an employee works or does not work on the public holiday. An employee who works on a public holiday that falls on a day that would otherwise be a working day for the employee is entitled to be paid Relevant Daily Pay (RDP) that relates to the time worked that day, plus half that amount again (time and a half) and an alternative holiday.

Refer to the **A-Z Guide on Public Holidays** for more information.

Sick Leave

The Holidays Act 2003 provides all employees with 10 days' sick leave every 12 months after the employee has completed 6 months of either:

- Continuous employment; or
- Work with the employer during which the employee works at least an average of 10 hours a week and no less than 1 hour every week or no less than 40 hours in every month.



An employee may take sick leave when they are sick or injured, or the employee's spouse or person who is dependent on them for care is sick or injured. Any untaken entitlement to sick leave may be carried over to the following entitlement year up to a maximum of 20 days' current entitlement in any year. In some circumstances an employer may withhold payment for sick leave if proof of sickness or injury is not provided.

The payment for sick leave is not less than the employee's relevant daily pay, or average daily pay, for each day of sick leave taken that would otherwise be a working day for the employee.

As of 24 July 2021, the Holidays (Increasing Sick Leave) Amendment Bill came into effect increasing the amount of sick leave from 5 to 10 days for all employees, including part-time employees. This means after the initial entitlement arises on reaching 6 months' continuous employment, a further 10 days' sick leave entitlement is available for each subsequent 12-month period of continuous employment if the above criteria continue to be met. For employees who had sick leave available when the amendment came into effect will be entitled to 10 days' sick leave on their 12-month anniversary date of when they last became entitled. Employees who already receive 10 or more sick days per year will not be affected by the change.

Refer to the **A-Z Guide** on **Sick Leave** for more information.

Bereavement Leave

The Holidays Act 2003 provides all employees with bereavement leave after the employee has completed 6 months of either:

- Continuous employment; or
- Work during which the employee worked for the employer at least an average of 10 hours a week and no less than 1 hour every week or no less than 40 hours in every month.

If the deceased person was the employee's spouse/partner, parent, child, brother or sister, grandparent, grandchild or spouse's/partner's parent, the employee is entitled to 3 days' bereavement leave.

Additionally, from the 30 March 2021, if an employee's pregnancy ends by way of a miscarriage or still-birth, the employee will be entitled to 3 days' bereavement leave. If another person's pregnancy ends by way of a miscarriage or stillbirth, an employee may be entitled to 3 days' bereavement leave, if the employee:

- is the person's spouse or partner; or
- is the person's former spouse or partner and would have been a biological parent of a child born as a result of the pregnancy; or
- had planned to be the primary carer of a child born as a result of the pregnancy (as described in section 7(1)(c) of the Parental Leave and Employment Protection Act 1987); or
- is the spouse or partner of a person who had planned to be the primary carer of a child born as a result of the pregnancy.
- If the employer otherwise accepts that the employee has suffered a bereavement, the employee is entitled to 1 day's bereavement leave.
- The minimum payment for bereavement leave is the employee's relevant daily pay, or average daily pay, for each day of bereavement leave taken that would otherwise be a working day for the employee.

Refer to the **A-Z Guide** on **Bereavement Leave** for more information.

Family Violence Leave

From 1 April 2019, the Holidays Act 2003 will introduce an entitlement to 10 days' family violence leave for those employees who have completed 6 months of either:

- Continuous employment; or
- Work during which the employee worked for the employer at least an average of 10 hours a week and no less than 1 hour every week or no less than 40 hours in every month.



A further entitlement arises for each 12 month period after this initial entitlement. Any untaken entitlement cannot be carried forward to the next 12 month period, and any untaken family violence leave does not get paid out on the ending of the employee's employment. An employee and employer may agree for family violence leave to be taken in advance. Pay for family violence leave is at the rate of the employee's relevant daily pay, or average daily pay, for the day taken. If an employee is taking annual leave and becomes entitled to family violence leave, the employer must allow the employee to take any period related to the effects on the employee of family violence, as family violence leave rather than annual leave. An employer may require proof that an employee is a person affected by family violence leave.

Refer to the **A-Z Guide on Family Violence Leave** for more information.

Holiday and Leave Records

- the name of the employee
- the date on which the employee's employment commenced
- the number of hours worked each day in a pay period and the pay for those hours
- the employee's current entitlement to annual holidays
- the date on which the employee last became entitled to annual holidays
- the employee's current entitlement to sick leave
- the dates on which any annual holiday, sick leave, bereavement leave or domestic violence leave has been taken
- the amount of payment for any annual holiday, sick leave, bereavement leave or domestic violence leave that has been taken
- the portion of any annual holidays that have been paid out in each entitlement year
- the date and amount of payment, in each entitlement year, for any cashed out annual holidays
- the dates of, and payments for, any public holiday on which the employee worked
- the number of hours that the employee worked on any public holiday]
- the day or part of any public holiday agreed to be transferred and the calendar day or period of 24 hours to which it has been transferred
- 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 made in exchange for an alternative holiday
- the date of the termination of the employee's employment
- the amount paid to the employee as holiday pay upon the termination of the employee's employment
- any other particulars that may be prescribed.

If an employee's number of hours worked each day in a pay period and the pay for those hours are agreed, and the employee works those hours (their "usual hours"), the employer complies with the Act if the usual hours and pay are stated in the wages and time record, or the employment agreement, or a roster or similar document. If an employee with "usual hours" works additional hours, these must be recorded to enable to employer to comply with the Act.

A holiday and leave record must be kept in written form or in a form or manner that allows the information recorded to be easily accessed and converted into written form. The information entered in an employee's holiday and leave record must be kept for not less than 6 years after the date on which the information is entered. However, we recommend that you keep the information for the duration of the employee's employment, and for not less than 6 years after the employee's employment ends.

If a request for access to, or a copy of, or a certified extract from, information in relation to an employee is made by:

- The employee; or
- An authorised representative of the employee; or
- A representative of a union of which the employee is a member; or
- A labour inspector; then



An employer who receives such a request must comply with the request as soon as practicable by allowing that person to view the record or by providing a copy or certified extract of the information concerned.

Refer to the **A-Z Guide** on **Records** for more information.

How is the Act Enforced?

Rights and obligations

The Holidays Act 2003 stipulates that when dealing with each other an employer and employee must act in good faith.

The Act also requires that an employer must inform a new employee, at the time the employee enters into an employment agreement with the employer, about:

- The employee's entitlements under the Act; and
- That the employee can obtain further information about his or her entitlements from either the union of which the employee is a member (if applicable) or the Ministry of Business, Innovation and Employment (formerly the Department of Labour).

Enforcement

The provisions of the Holidays Act 2003 may be enforced by:

- An employee; or
- An authorised representative of an employee; or
- A representative of a union of which the employee is a member; or
- An employer; or
- A labour inspector.

However, any entitlements that an employee enjoys that are additional to the minimum entitlements contained in this Act may only be enforced by an employee, an authorised representative of an employee, or a representative of a union of which the employee is a member.

While any of the above persons may enforce the Act, only a labour inspector may bring an action for a penalty against an employer for failure to comply with the Act. An action to recover unpaid holiday pay or unpaid leave pay may be brought by any person who may enforce the provisions of the Act.

The Act may be enforced by applying to the Employment Relations Authority. Every labour inspector has, in addition to the powers conferred by the Act, powers of entry under the

Employment Relations Act 2000. These powers enable a labour inspector to enter, at any reasonable hour, any premises where any person is employed or where the labour inspector has reasonable cause to believe that any person is employed, and to:

- Interview any person, or any employer, or any employee; and
- Require the production of, and to inspect and take copies from any holiday and leave record; and
- Require any employer to supply to the labour inspector a copy of the holiday and leave record or employment agreement or both of any employee of that employer; and
- Question any employer about compliance with the Holidays Act 2003.



Determinations by labour inspectors

The Holidays Act 2003 provides that, where an employer and employee are unable to agree, a labour inspector may make a determination about:

- For the purposes of the ordinary weekly pay or relevant daily pay of the employee, the cash value of any board or lodgings provided by the employer to the employee; and
- The ordinary weekly pay; and
- The relevant daily pay; and
- Whether a day would otherwise be a working day for the employee; and
- How the employee's entitlement to annual holidays may be met; and
- The amount of pay the employee must receive for working on a public holiday which occurs on a day that would otherwise be a working day for the employee; and
- That the employee's employer acted in good faith and did not act for the purpose of evading its obligations under the Holidays Act 2003 when the employer dismisses an employee and then reemploys the employee within 1 month after the dismissal.

Before making a determination under the Act a labour inspector must discuss the matter with both parties and give each party an opportunity to comment on what the labour inspector proposes to consider in making the determination.

A determination made by a labour inspector may be overturned by the Employment Relations Authority. To avoid a determination by a labour inspector you and your employee should agree on these matters as part of the employee's employment agreement.

Penalties

A labour inspector may bring an action against an employer (any every person who is involved in the failure) for the employer's failure to comply with any of the following provisions:

- Section 16 and sections 21 to 28, which relate to an employee's entitlement to and pay for annual holidays; and Section 40(3), which relates to an employee's entitlement to be paid for a public holiday that would have occurred during the employee's annual holidays; and
- Sections 28A and 28B, which relate to a request by an employee for a portion of his or her annual holidays to be paid out and payment for that portion; and
- Section 46, sections 49 to 56, section 60 and section 61(3) which relate to an employee's entitlement to, and payment for, public holidays and alternative holidays; and
- Section 63, section 65 and section 69 to 72, which relate to the employee's entitlement to, and payment for, sick leave and bereavement leave; and
- Section 81 and 82, which relate to an employer's obligation to keep a holiday and leave record, and to requests for access to a holiday and leave record.

An action for a penalty cannot be commenced against an employer if more than 12 months have transpired since the cause of action became known, or should reasonably have become known, to the labour inspector.

The penalties for non-compliance are up to \$10,000 for an employer who is an individual, and \$20,000 for an employer which is a company or other body corporate. A person is involved in a failure to comply if they are an officer of an entity and were involved in a breach by virtue of having:

- aided, abetted, counselled, or procured the breach; or
- induced, whether by threats or promises or otherwise, the breach; or
- been in any way, directly or indirectly, knowingly concerned in, or party to, the breach; or
- conspired with others to affect the breach.



An officer can be:

- a person occupying the position of a director of a company if the entity is a company
- a partner if the entity is a partnership
- a general partner if the entity is a limited partnership
- a person occupying a position comparable with that of a director of a company if the entity is not a company, partnership, or limited partnership
- any other person occupying a position in the entity if the person is in a position to exercise significant influence over the management or administration of the entity.

For Your Business

Some provisions of the Holidays Act 2003 are not as straightforward in application as you might, at first, think.

Other **A-Z Guides** are available to provide in-depth information and examples to help you understand the law about annual holidays, public holidays, sick leave and bereavement leave.

Remember

- **Always call AdviceLine to check you have the latest guide**
- **Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.**
- **Use our AdviceLine employment advisors as a sounding board to test your views.**
- **Get one of our consultants to draft an agreement template that's tailor-made for your business.**

This guide is not comprehensive and should not be used as a substitute for professional advice.

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