



# HOLIDAYS ACT 2003 Payroll Specification

(This specification is intended for use by payroll software developers)

Updated August 2008

## DISCLAIMER

Please note the following:

- This specification is an information resource only and is not a substitute for legislation or for legal advice.
- This specification is a guide only and will not necessarily cover all situations. Each user will need to ensure that the information in this specification is tailored appropriately to each particular situation.
- While every effort has been made to ensure accuracy, the Department of Labour takes no responsibility for the results of any actions taken on the basis of information in this specification, nor for any errors or omissions.
- Similarly, there may be other ways of complying with the legislation that are not set out in this specification.

# TABLE OF CONTENTS

|  |           |
|--|-----------|
| <b>1. Introduction</b>                                       | <b>3</b>  |
| <b>2. Application</b>  | <b>5</b>  |
| 2.1 Minimum Requirement                                      | 5         |
| 2.2 Holiday and Leave Record Only                            | 5         |
| 2.3 Full Version   | 5         |
| <b>3. Principles 1 – Definitions and Annual Leave</b>        | <b>6</b>  |
| <b>4. Definitions</b>  | <b>8</b>  |
| 4.1 Payment Types  | 8         |
| 4.2 Average Weekly Earnings                                  | 9         |
| 4.3 Ordinary Weekly Pay                                      | 11        |
| 4.4 Relevant Daily Pay                                       | 13        |
| <b>5. Annual Leave</b>                                       | <b>15</b> |
| 5.1 Date Commenced Employment and Anniversary Date           | 15        |
| 5.2 Calculating Annual Leave Entitlement                     | 16        |
| 5.3 Calculating Annual Leave Payment                         | 20        |
| 5.4 When Annual Leave Payment is to be made                  | 23        |
| 5.5 Public Holiday occurs during Annual Leave                | 24        |
| 5.6 Payment of Annual leave Pay with employee’s pay          | 24        |
| 5.7 Where Anniversary Date is in the middle of a Pay Period  | 25        |
| <b>6. Principles 2 – Public Holidays</b>                     | <b>26</b> |
| <b>7. Public Holidays</b>                                    | <b>27</b> |
| 7.1 Days that are public holidays                            | 27        |
| 7.2 Entitlement to a public holiday                          | 27        |
| 7.3 Payment for a public holiday not worked                  | 28        |
| 7.4 Payment for a public holiday worked                      | 29        |
| 7.5 Entitlement to an alternative holiday                    | 29        |
| 7.6 Payment for an alternative holiday                       | 29        |
| <b>8. Sick Leave and Bereavement Leave</b>                   | <b>31</b> |
| 8.1 Sick Leave Entitlement Date                              | 31        |
| 8.2 Entitlement to Sick Leave                                | 32        |
| 8.3 Entitlement to Bereavement Leave                         | 33        |
| 8.4 Payment for Sick or Bereavement Leave                    | 34        |
| <b>9. Holiday and Leave Record</b>                           | <b>35</b> |
| 9.1 Holiday and Leave Record Required                        | 35        |
| 9.2 Information to be stored in the Holiday and Leave Record | 35        |
| 9.3 Written Form   | 36        |
| 9.4 Kept for Six Years                                       | 36        |
| <b>Appendix 1: Annual leave Examples</b>                     | <b>37</b> |
| <b>Appendix 2: Relevant Daily Pay Examples</b>               | <b>44</b> |
| <b>Appendix 3: Payment Types</b>                             | <b>45</b> |
| <b>Appendix 4: Flow Chart – Average Earnings</b>             | <b>46</b> |
| <b>Appendix 5: Flow Chart – Ordinary Pay</b>                 | <b>46</b> |
| <b>Appendix 6: Flow Chart – Relevant Daily Pay</b>           | <b>48</b> |

# 1. INTRODUCTION

One of the aims of the Holidays Act 2003 is to clarify obligations and entitlements under the law. It has also provided an opportunity to address the Information Technology advances that have occurred since the introduction of the previous Act (Holidays Act 1981). Many employers have migrated from manual to electronic payroll systems and many of those systems incorporate features that are covered by the Holidays Act 2003.

Throughout the specification there are sections that outline the general principles of the Act for each of the types of leave covered by the Act. It simply describes the intention of the Act without reference to all the exceptions/detail of the Act but should provide a useful overview before examining the detail.

The subsequent sections provide an interpretation of the Holidays Act 2003, and while there may be other legally compliant interpretations, this interpretation is one that the Department of Labour considers to be compliant with the Act. In each section of the specification reference will be made to the relevant sections of the Act. These are followed by a description of the requirements. Any further comment is contained in footnotes.

The appendices provide worked examples which illustrate the provisions of the Act and the list of payment types used to calculate payment for various types of leave.

There is a range of ways that payroll software can be used to assist employers to meet their obligations under the Holidays Act 2003. It is useful for the purposes of this document to split payroll software into three functional groups:

## 1. Minimum Requirement

This type of software does not constitute a holiday and leave record. Holiday and leave entitlements are not recorded. Holiday and leave taken is recorded only in so far as it is relevant to the wages record.

The majority of this specification will not apply to this type of software. However there are some calculations that require information from the wages record (e.g. average earnings in the 12 months prior to annual leave being taken) and it is highly desirable that payroll software be able to provide that information.

If payroll software is of this type all material relating to the software must make it clear that the employer must keep a separate holiday and leave record.

## 2. Holiday and Leave Record Only

This type of software does constitute a holiday and leave record in that it provides data storage for all of the information that is required to be kept under Section 81. It does not perform calculations of things such as ordinary pay, annual leave entitlement, average earnings or relevant daily pay.

In this type of software the employer would be expected to make these calculations and enter the data into the software directly.

## 3. Full Version

This type of software both constitutes a holiday and a leave record and performs calculations.

This type of software would provide data storage for all of the information required under Section 81 and in addition would automatically calculate things such as annual leave entitlement, average earnings etc.

It is possible for software to be a combination of the versions above. However for the purposes of this specification the requirements for each of these three types of software will be identified separately. Note the requirements will be cumulative i.e. if something is mentioned as a minimum requirement it will also be required in the other two versions as well.

As outlined in detail in the principles section, an employer and employee may chose whether annual leave will be represented in hours, days or weeks. The principles section spells out the kinds of representations and agreements that would be considered to be compliant with the Act. The rest of the specification refers to hours/days/weeks – which of those applies will depend on the agreement between employer and employee, but, the interpretation within payroll software would be expected to be consistent e.g. if annual leave is accrued in hours then it would also be taken in hours, deducted in hours and payments calculated in hours.

This specification covers the minimum requirements under the Act. Employers are able to provide employees with additional entitlements but they must not exclude, restrict or reduce the employee's entitlements. While you may wish to incorporate these options into payroll software you should not allow payroll software to undermine the entitlements within the Act.

## **2. APPLICATION**

### *Section 2: Commencement*

#### **2.1 Minimum Requirement**

The Holidays Act 2003 (the Act) came into force on 1<sup>st</sup> April 2004 and further amendments to the Act came into force on 22 October 2004.

The Act applies to all employees – fulltime, part-time or casual.

#### **2.2 Holiday and Leave Record Only**

As in 2.1 above.

#### **2.3 Full Version**

As in 2.1 above.

The minimum annual leave entitlement is 4 weeks per annum and all references should be to 4 weeks, 4/52 and 8% respectively.

### 3. PRINCIPLES 1 – DEFINITIONS AND ANNUAL LEAVE

*Note: This does not cover the exceptions and details e.g. close downs, changes to anniversary date, what constitutes gross earnings, the taking of annual leave in advance, the effect of taking leave without pay, payment when employment ends, ACC, Parental Leave, fixed term contracts etc. These are all covered in the detailed section of the specification.*

**After the end of each complete 12 months of continuous employment an employee is entitled to not less than 4 weeks paid annual leave. The way that this entitlement is to be met should be agreed between the employer and employee. Any agreement must genuinely reflect the right to receive 4 weeks annual leave per year, based on the employee’s working pattern.**

Where entitlement to annual leave is clear then there is no requirement for an agreement to be made. However, whenever an employee’s work patterns change then an agreement about the transition and conversion of entitlement will need to be reached.

The employer and employee should ideally agree to:

- what genuinely constitutes a working week for the purpose of the employee’s entitlement to annual leave – this can be provided for in weeks, days or hours (if this is the most convenient way for the parties); or
- where annual leave is to be accrued<sup>1</sup> throughout the entitlement year, what the accrual will be based on (e.g. ordinary hours including regular overtime hours or ordinary hours excluding regular overtime hours or fixed number of days per week).

When work patterns change, any agreement should ideally change to reflect the new genuine working week for the employee. This agreement can include how any previously accrued entitlements will be treated e.g. the agreement could be to still provide 4 full weeks annual leave, based on the new working pattern.

If there is a dispute, the Labour Inspector will interpret the agreement between the parties. Where the parties have not agreed on how an employee’s annual leave entitlement is to be met, a Labour Inspector is able to determine the matter for the parties. In making such a determination the Labour Inspector will use an accrual method based on 4/52 of time worked, if there is not a clear working week or working pattern.

This means that how annual leave is implemented in your software will depend on the nature of the agreements that the users of your software will have entered into.

Some examples of valid agreements are provided in [Appendix 1](#). They do not cover all of the possible combinations but should illustrate the key points in the range of ways that annual leave provisions can genuinely be agreed upon. The examples provided are:

**Example 1:** Entitlement is recorded in hours and based on 4/52 of the ordinary hours worked in the year when the entitlement arose – no change to method of calculation when work patterns changed.

**Example 2:** Parties agree that the annual leave entitlement will be 4 weeks based on the work patterns at the time the leave is taken – no change to method of calculation when work patterns changed.

---

<sup>1</sup> By accrual we are referring to the method of calculation not whether the leave is available to the employee.

**Example 3:** Entitlement is recorded in days and based on 4/52 of an agreed working week expressed in days – change to method of entitlement including conversion of accrued entitlement when work patterns changed.

**When the employee takes annual leave, the employer will need to identify the amount of leave being taken in a manner that is consistent with the agreement on how the entitlement will be met.**

**The entitlement balance will then need to be reduced by a corresponding amount.**

**Annual leave pay will need to be calculated based on:**

- **the amount of leave being taken (in weeks or part weeks); times**
- **the greater of:**
  - (a) ordinary weekly pay; or**
  - (b) average weekly earnings in the 12 months prior to the holiday.**

**Where holidays are accrued, the payment should be made to the employee in the unit of accrual, (for example if the employee accrued in hours they should be paid in hours) but always based on the employee's ordinary weekly pay or average weekly earnings (for example an employee could have a notional average hourly rate and ordinary hourly rate).**

Where the entitlement to annual leave has been accrued in hours or days then the calculations will need to be adjusted to reflect that. The key principle is that any method of calculation is based on average weekly earnings and ordinary weekly pay. It is also strongly recommended that the divisor for the purposes of calculating average or ordinary weekly pay be consistent with the method of accrual. (For example, if your accrual is based on ordinary hours then ordinary hours should be used in the divisor).

More detail on the calculation of [ordinary weekly pay](#) and [average weekly earnings](#) is in the [Definitions](#) and in [Appendix 1](#).

## 4. DEFINITIONS

### *Part 1: Preliminary Provisions*

#### 4.1 Payment Types

*Sections 8, 9, 10, 14*

There are four different types/groups of payments defined in the Act. Of those the following three are used in various formulae (and the fourth is used in the determination of relevant daily pay):

- those included in the definition of gross earnings (Gross Earnings) under Section 14(a);
- those included in the definition of “ordinary weekly pay” under Section 8(1)(a) and (b) (referred to as Gross Earnings (Ordinary));
- those not included in “ordinary weekly pay” under Section 8(1) – these payments are defined in Section 8(1)(c)(i) to (iii) (referred to as Gross Earnings (Conditional));
- those excluded from the definition of gross earnings (referred to as Excluded Earnings) under Section 14(b) and 14(c).

Payroll software must be able to distinguish between each type of payment and enable the total of each type to be calculated for single pay periods or consecutive multiple pay periods.

#### **Relevant Daily Pay**

There is an additional type of payment which will need to be considered for the purposes of determining (rather than calculating) relevant daily pay only. (Refer to 4.4 for detail.)

The list of what types of payment are in each category is in [Appendix 3](#).

#### **Payments under the Act**

In addition to being able to distinguish between payment types for the purposes of calculating average, ordinary and relevant daily pay the Act also requires, where software is being used as the holiday and leave record, that it must also distinguish between and record the amounts of the various types of payment required under the Act.

##### **2.1.1 Minimum Requirement**

Payroll software must be able to distinguish between each type of payment below.<sup>2</sup>

The following three totals need to be able to be calculated for a single or multiple pay periods in the previous 12 months:

- Gross Earnings (Ordinary) plus Gross Earnings (Conditional)
- Gross Earnings (Conditional)
- Gross Earnings (Ordinary).

---

<sup>2</sup> Payments of these types must be distinguished to enable the calculation of ordinary pay, average earnings and relevant daily pay.

### 2.1.2 Holiday and Leave Record Only

All payments for annual leave, sick leave or bereavement leave must be recorded and identified as such.

All payments for a public holiday or alternative holiday for which the employee was paid but did not work must be recorded and identified as such.

All payments for a public holiday which the employee worked must be recorded and identified as such.

The payments referred to above can be recorded as a total for a pay period as long as:

- each of the types (annual leave, sick leave, public holiday etc as above) are distinguished from each other
- it is clear how the total payment was calculated (i.e. the amount of each type of holiday or leave taken should be clear).

The cash value of any board or lodgings must be recorded.

### 2.1.3 Full Version

As in 4.1.2 above.

## 4.2 Average Weekly Earnings

Sections 21, 22, 24

(Refer [Appendix 4](#) for the relevant Flow Chart.)

Average Weekly Earnings are used to calculate annual leave pay.

NB: Once average weekly earnings have been determined they are then compared to the employee's ordinary weekly pay.

### Calculation

They are based on the employee's average earnings in the 12 months immediately before the end of the last pay period before the start of the annual leave.

Average **weekly** earnings are:

$$\frac{\text{Gross earnings in previous 12 months pay periods}^3}{52}$$

**NB:** This calculation should only be done once regardless of the length of the annual leave i.e. if an employee has been on annual leave for 5 weeks and is paid fortnightly, this calculation is done once at the end of the last pay period before the annual leave and the result applied to the entire 5 weeks. It would only be permissible to repeat the calculation if the result was the same or higher than the calculation at the start of the leave.

### Calculation in hours or days

Where the entitlement to annual leave has been accrued in hours or days then the calculations will need to be adjusted to reflect that. The key principle is that any method of calculation is based on average weekly earnings. This divisor must be consistent with the method of accrual.<sup>4</sup>

---

<sup>3</sup> Up to the end of the last pay period prior to the commencement of the annual leave.

<sup>4</sup> For example if the leave is accrued on ordinary hours only the divisor should be ordinary hours. If leave is accrued on 4 days a week then the divisor will be based on 4 days a week.

For example:

If the annual leave accrual is 4/52 of ordinary hours worked then the following calculations should apply:

Average **hourly** earnings are calculated as follows:

Gross earnings in previous 12 months pay periods

Total ordinary hours in the previous 12 months pay periods

Or if the annual leave accrual is 4/52 of 3 days a week then the following calculations would apply:

Average **daily** earnings are calculated as follows:

Gross earnings in previous 12 months pay periods

156 (i.e. 3 days per week \* 52 weeks per year)

Detailed examples are contained in [Appendix 1](#).

### **Calculation when employee has worked for less than 12 months**

If the employee has worked less than 12 months then the average weekly earnings are based on the total number of weeks worked immediately before the end of the last pay period before the annual leave:

**Gross earnings in all the previous pay periods**

**Total number of weeks in all the previous pay periods**

Calculations in hours or days would be based on the same principle.

### **Calculation when employee has had unpaid leave longer than 1 week**

When an employee has had unpaid leave (excluding parental leave, volunteers leave, accident compensation, sick leave or bereavement leave) of longer than a week then there are two options:

- (a) The anniversary date will be adjusted to reflect the length of unpaid leave (refer [Date Commenced Employment and Anniversary Date](#)). In this case there is **no** change to the method of calculation as outlined above i.e. the divisor will remain at 52. This is the default option.

However it is permissible for the calculation to reflect the number of weeks actually worked as this will result in a higher value which will result in a provision better than the Act. This will be the effect where a calculation is done using the actual number of days or hours worked as the divisor – therefore this method is permitted.

- (b) The employer and employee **agree** that the anniversary date will not be adjusted to reflect the length of unpaid leave. In this case the divisor must be adjusted to reflect the period of unpaid leave over 1 week e.g. if the employee had 3 weeks unpaid leave then the divisor would be 50 (52 – 2). The adjustment of the divisor is related to the period of the calculation i.e. would be done whenever that period of unpaid leave of over one week was within the previous 12 months' pay periods.

Where a calculation is done using the actual number of days or hours worked as the divisor then as long as the unpaid days or hours of the second or subsequent weeks are **not** included in the calculation<sup>5</sup> then this will result in either the same or a higher value which will result in a provision better than the Act. Therefore this method is permitted.

---

<sup>5</sup> Which would usually be the case.

## **Calculation when employee has a period of parental leave**

When an employee takes leave under the Parental Leave and Employment Protection Act 1987 (refer [Calculating Annual Leave Entitlement](#) for more detail) the calculation of average weekly earnings is unchanged.

### **2.1.4 Minimum Requirement**

The gross earnings for the 12 months prior to end of the pay period prior to the start of the annual leave will need to be able to be determined.

Where annual leave is expressed in either hours or days then the total number of relevant hours or days in the 12 months prior to the end of the pay period prior to the start of the annual leave being taken will need to be able to be determined.

### **2.1.5 Holiday and Leave Record Only**

As in 4.2.1 above.

### **2.1.6 Full Version**

All of the calculations and methods above will need to be available. They should also be transparent so that a Labour Inspector or employee can check that the calculation is correct.

## **4.3 Ordinary Weekly Pay**

Sections 8, 21, 22, 24

Ordinary weekly pay is also used to calculate annual leave pay.

### **Determination**

Ordinary weekly pay will be the greater of:

- (a) the amount of pay that the employee receives under his or her employment agreement for an ordinary working week (at the beginning of the annual leave). Refer to Appendix 3 for what types of payment are included/excluded.

**OR**

- (b) where (a) can not be determined, then based on the following calculation:

**Gross earnings for previous 4 weeks**  
**(or pay period before calculation is made if longer than 4 weeks) – Gross earnings (conditional)**

**4**

Refer to [Appendix 5](#) for a flow chart for this calculation.

**OR**

- (c) if a special rate of ordinary weekly pay for the purpose of calculating annual leave pay is specified in an employment agreement and is equal to or greater than the amount under (a) or (b) then that amount (otherwise just use (a) or (b) above).

**NB:** This determination should only be done once regardless of the length of the annual leave i.e. if an employee has been on annual leave for 5 weeks and is paid fortnightly this determination is done once at the beginning of the annual leave and the result applied to the entire 5 weeks. It would only be permissible to repeat the determination if the result was the same or higher than the determination at the start of the leave.

### **Calculation in days or hours**

Where the entitlement to annual leave has been accrued in hours or days then the calculations will need to be adjusted to reflect that. The key principle is that any method of calculation is based on ordinary weekly pay. Where method (b) is being used to determine ordinary pay then the divisor must be consistent with the method of accrual.

For example:

If the annual leave accrual is 4/52 of ordinary hours worked and the payroll period is weekly or fortnightly then the following calculations should apply:

Ordinary **hourly pay** will be the greater of:

- (a) the amount of pay that the employee receives under his or her employment agreement for an ordinary hour – including all of the relevant types of payments (at the beginning of the annual leave); or
- (b) where (a) can not be determined, then based on the following calculation:

#### **Gross earnings in previous 4 weeks pay periods – gross earnings (conditional)**

##### **Total ordinary hours in the previous 4 weeks pay periods**

- (c) if a special rate of ordinary hourly pay for the purpose of calculating annual leave pay is specified in an employment agreement then that amount can be used if it would be equal to or greater than the amount under (a) or (b) (otherwise just use (a) or (b) above).

Or if the annual leave accrual is 4/52 of 3 days a week and the payroll period is weekly or fortnightly then the following calculations would apply:

Ordinary **daily pay** will be the greater of:

- (a) the amount of pay that the employee receives under his or her employment agreement for an ordinary day (at the beginning of the annual leave); or
- (b) where (a) can not be determined, then based on the following calculation:

#### **Gross earnings in previous 4 weeks pay periods – gross earnings (conditional)** **12 (i.e. 3 days per week \* 4)**

- (c) if a special rate of ordinary daily pay for the purpose of calculating annual leave pay is specified in an employment agreement, then that amount can be used if it would be equal to or greater than (a) or (b) (otherwise just use (a) or (b) above).

Further examples are contained in [Appendix 1](#).

### **Calculation when employee has had unpaid leave**

The ordinary weekly pay calculation remains unchanged if an employee has unpaid leave in the preceding 4 weeks pay periods. Where the formula in section 8(2) is used to calculate ordinary weekly pay and the calculation is made in weeks then any period of unpaid leave will result in a lower rate of ordinary weekly pay.

A calculation that is done using the actual number of days or hours worked as the divisor will possibly result in a higher value which will result in a provision better than the Act – therefore this method is permitted.

### **2.1.7 Minimum Requirement**

The gross earnings (ordinary) for the 4 weeks (or the length of the pay period if longer than 4 weeks) prior to end of the pay period prior to the start of the annual leave will need to be able to be determined.

Where annual leave is expressed in either hours or days then the total number of relevant hours or days in the 4 weeks (or the length of the pay period if longer than 4 weeks) prior to the end of the pay period prior to the start of the annual leave being taken will need to be able to be determined.

### **2.1.8 Holiday and Leave Record Only**

As in 4.3.1 above.

### **2.1.9 Full Version**

Where method (a) above in 4.3 will be used to determine ordinary weekly/daily/hourly pay then this should be stored as a value.

Likewise where (c) above in 4.3 will be used to determine ordinary weekly/daily/hourly pay then this should be stored as a value identified as a special rate for this purpose.

Where (b) above in 4.3 will be used to determine ordinary weekly/daily/hourly pay then the calculations will need to be available. They should also be transparent so that a Labour Inspector or employee can check that the calculation is correct.

## **4.4 Relevant Daily Pay**

*Sections 49, 50, 52, 53, 60, 71*

Relevant daily pay is used to calculate payments for public holidays, alternative holidays, sick leave and bereavement Leave. It is the amount of pay that the employee would have received had the employee worked on the day concerned.

### **Determination**

(a) the amount of pay that the employee would have received had the employee worked on the day concerned including any overtime or irregular payments that would have been paid to the employee had they worked that day (however, if overtime is worked due to the employee's absence then this is not included in relevant daily pay).

### **OR**

(b) where (a) can not be determined then based on the following calculation:

**Gross earnings in previous 4 weeks pay periods<sup>6</sup>**  
**Number of whole or part days the employee was paid in the previous 4 weeks pay periods**

Refer to [Appendix 6](#) for a flow chart for this calculation.

### **OR**

(c) if a special rate of relevant daily pay for the purpose of calculating payment for a public holiday is specified in an employment agreement then that amount can be used if it is equal to or greater than the amount in (a) or (b) (otherwise just use (a) or (b) above).

---

<sup>6</sup> Or the gross earnings from the previous pay period if longer than 4 weeks.

Refer [Appendix 2](#) for examples of calculation of relevant daily pay.

#### **2.1.10 Minimum Requirement**

The gross earnings for the 4 weeks (or the length of the pay period if longer than 4 weeks) prior to end of the pay period prior to the start of the annual leave will need to be able to be determined.

The total number of relevant days or part days in the 4 weeks (or the length of the pay period if longer than 4 weeks) prior to the end of the pay period prior to the start of the annual leave being taken will need to be able to be determined.

#### **2.1.11 Holiday and Leave Record Only**

As in 4.4.1 above.

#### **2.1.12 Full Version**

Where (a) in 4.4 above is to be used to determine relevant daily pay then that value will need to be stored. Where it varies from one day of the week to another then the relevant daily pay will need to be stored for each day of the week.

Where (b) in 4.4 above will be used to determine relevant daily pay then the calculation will need to be available. It should also be transparent so that a Labour Inspector or employee can check that the calculation is correct.

Where (c) in 4.4 above will be used to determine relevant daily pay then this should be stored as a value identified as a special rate for this purpose.

## 5. ANNUAL LEAVE

### Part 2 Subpart 1

#### 5.1 Date Commenced Employment and Anniversary Date

Sections 16, 35

The anniversary date should be updated as follows:

(a) At start of employment

**Anniversary Date = Date Commenced + 1 Year**

(b) When the anniversary date is reached then the

**Anniversary Date = Current Anniversary Date + 1 Year**

(c) When an employee has unpaid leave other than:

(i) parental leave under the Parental Leave and Employment Protection Act 1987

(ii) volunteers leave within the meaning of the Volunteers Employment Protection Act 1973

(iii) while receiving weekly compensation under the Injury Prevention, Rehabilitation and Compensation Act 2001 or former Act

(iv) unpaid sick or bereavement leave

for a period of more than a week then either the anniversary date is changed as follows:

**Anniversary Date = Current Anniversary Date + Length of unpaid leave in days including weekends – 7<sup>7</sup>**

**Or** where the employer and employee agreed then there is no update i.e.

**Anniversary Date = Current Anniversary Date<sup>8</sup>**

(d) When an employee is not yet entitled to annual leave and an employer has a close down period and an employee is required to take leave then

**Anniversary Date = The first date the premises were closed or the work was discontinued or a proximate nominated date + 1 Year.**

##### 2.1.13 Minimum Requirement

None.

##### 2.1.14 Holiday and Leave Record Only

The date the employee commenced employment must be stored for each employee.

The annual leave anniversary date must be stored for each employee. This date will mark the next date the employee becomes entitled to annual leave.

---

<sup>7</sup> For example if the employee has 1 week and 3 days unpaid leave then the anniversary date will be increased by 3 days.

<sup>8</sup> This will change the method of calculation of average weekly earnings (see 4.2).

### **2.1.15 Full Version**

Where appropriate above then the date should be updated automatically but given the discretion in 3 and 4 then the anniversary date may be changed. Such changes should be recorded alongside the reason for the change.

The date should be stored, as in 5.1.2.

## **5.2 Calculating Annual Leave Entitlement**

*Sections 16, 17, 20, 32, 33, 34, 35*

After the end of each complete 12 months of continuous employment an employee is entitled to not less than 4 weeks paid annual leave. The way that this entitlement is to be met should be agreed between the employer and employee. Any agreement must genuinely reflect the right to receive 4 weeks annual leave per year and should ideally be recorded somewhere.

When the employee takes annual leave, the employer will need to identify the amount of leave being taken in a manner that is consistent with the agreement on how the entitlement will be met. The entitlement balance will then need to be reduced by a corresponding amount. In all of the following sections below this is what is meant by “determine the length of annual leave as a number or portion of weeks/days/hours” and guidance is given as to how to do this in Principles 1 – Definitions and Annual Leave with examples in [Appendix 1](#).

### **2.1.16 Minimum Requirement**

None.

### **2.1.17 Holiday and Leave Record Only**

The current annual leave entitlement must be stored for each employee.

The dates on which annual leave was taken and total payment for any annual leave must be stored for each employee.

A more complete record would also include:

- A. The date and amount (in weeks/days/hours) of each increase of entitlement to annual leave.
- B. The date and amount (in weeks/days/hours) of annual leave taken.

The sum of all the amounts (in weeks/days/hours) in A less the sum of all the amounts (in weeks/days/hours) in B should always equal the current entitlement.

### **2.1.18 Full Version**

All of the above should be included.

### **Annual Leave Accrual and record of Annual Leave Entitlement Changes**

Many payroll systems accrue annual leave at the end of each payroll period on the basis of the time worked in that period. The accrued annual leave can be stored in weeks/days/hours as per the agreement between the employer and employee. In addition many systems keep a record of all changes to the annual leave entitlement.

The following relates to those systems.

The accrued annual leave must be kept separate from the current entitlement.<sup>9</sup>

The accrued annual leave should be transferred to the current entitlement on the employee's annual leave anniversary date (refer [Date Commenced Employment and Anniversary Date](#)). Where that date falls within a payroll period it is acceptable to transfer the accrued leave on the last date of that payroll period. However the anniversary date should not be changed to that date as employees become entitled to take their annual leave from that date.

### **Calculations to increase Annual Leave Entitlement**

(a) When an employee starts work their Accrued Leave and Annual Leave Entitlement will be set to their starting value (usually zero)

(b) At the end of each pay period the Accrued Leave will be increased as follows:<sup>10</sup>

$$\text{Accrued Leave} = \text{Accrued Leave} + \text{Length of pay period (in days/hours/weeks)} * 4/52$$

Where 4/52 is assuming the employee receives 4 weeks leave per year. Where an employee receives more than 4 weeks leave then the percentage for any annual leave over 4 weeks will be determined by agreement.

(c) At the end of the pay period which contains the employee's anniversary date a record of increase of entitlement will be created. This record will identify the:

- (i) last date of accrual i.e. when the entitlement was to<sup>11</sup> (this will usually be the end of the payroll period but may be the anniversary date)
- (ii) amount of the increase.

Both the Annual Leave Entitlement and Accrued Leave will be updated as follows:

$$\text{Annual Leave Entitlement} = \text{Annual Leave Entitlement} + \text{Accrued Leave}$$

$$\text{Accrued Leave} = 0$$

### **Calculations to decrease Annual Leave Entitlement**

(a) Determine the length of annual leave as a number or portion of weeks/days/hours (refer [Principles 1](#) for guidance on how this is to be determined).

(b) At the end of each pay period in which the leave occurred a record of decrease of entitlement will be created. This record will identify the:

- (i) Dates of the annual leave either start and finish or each individual day
- (ii) Length (in weeks/days/hours) of annual leave from the start to finish date;
- (iii) Total payment for the annual leave (refer [Calculating Annual Leave Payment](#) for details)

$$\text{Annual Leave Entitlement} = \text{Annual Leave Entitlement} - \text{Length of leave (in days/hours/weeks)}$$

---

<sup>9</sup> There are two reasons for this. Firstly it is important where an employee does not think they have entitlement to leave that they have not yet acquired. Secondly when an employee ceases employment they will receive 8% of gross earnings for accrued leave and payment for annual leave to which they are already entitled. This is the minimum and the employer can pay at one rate if it would be equal or greater than 8%.

<sup>10</sup> Where the length of the pay period reflects the number of weeks/days/hours that contribute to the accrual.

<sup>11</sup> The employee is entitled to apply for leave from their anniversary date not from the accrual date.

## Calculations where Annual Leave is anticipated

Where an employer allows an employee to anticipate annual leave then the calculations will be as follows.

- (a) Determine the length of annual leave as a number or portion of weeks/days/hours (refer to the [Principles 1](#) for guidance on how this is to be determined).
- (b) If the current Annual Leave Entitlement is less than or equal to 0 then at the end of each pay period in which the leave occurred a record of decrease of entitlement will be created. This record will identify the:
  - (i) Dates of the annual leave either start and finish or each individual day
  - (ii) Length (in weeks/days/hours) of annual leave from the start to finish date;
  - (iii) Total payment for the annual leave (refer [Calculating Annual Leave Payment](#) for details)
  - (iv) That the leave was anticipated Annual Leave<sup>12</sup>

**Annual Leave Entitlement = Annual Leave Entitlement – Length of leave  
(in days/hours/weeks)**

(this will result in a negative Annual Leave Entitlement).

- (c) If the current Annual Leave Entitlement is greater than 0, but less than the period the employee wishes to take, then at the end of each pay period in which the leave occurred two records<sup>13</sup> of decrease of entitlement will be created. The first record will identify the portion of the leave not taken in advance:
  - (i) Dates of the annual leave either start and finish (or date when entitlement ended) or each individual day
  - (ii) Length (in weeks/days/hours) of annual leave the employee was entitled to.
  - (iii) Total payment for this portion of the annual leave (refer [Calculating Annual Leave Payment](#) for details)

**Annual Leave Entitlement = Annual Leave Entitlement – Length of leave  
entitled (in days/hours/weeks)**

(this will result in a Annual Leave Entitlement of zero).

The second record will identify the:

- (i) Dates of the annual leave either start (or date when anticipated leave started) and finish or each individual day
- (ii) Finish date of the annual leave
- (iii) Length (in weeks/days/hours) that was anticipated annual leave<sup>14</sup>
- (iv) Total payment for this part of the annual leave (refer [Calculating Annual Leave Payment](#) for details)

**Annual Leave Entitlement = Annual Leave Entitlement – Length of leave  
anticipated (in days/hours/weeks)**

(this will result in a Annual Leave Entitlement of less than zero).

---

<sup>12</sup> This is so that any payments for anticipated leave are able to be identified if employment ends.

<sup>13</sup> This is so that any payments for anticipated leave are able to be identified if employment ends.

<sup>14</sup> This is so that any payments for anticipated leave are able to be identified if employment ends.

**Calculations to Annual Leave Entitlement during closedown where an employee has an annual leave entitlement greater than zero**

- (a) Calculate the length (in weeks/days/hours) of the closedown period. Determine whether the length of the closedown period (in weeks/days/hours) is greater or less than the employee's current Annual Leave Entitlement.
- (b) Where the employee's current annual leave entitlement is greater than the length of the closedown period, then at the end of each pay period during which the close down occurred a record of decrease of annual leave entitlement will be created. This record will identify the:
  - (i) Dates of the annual leave either start and finish or each individual day
  - (ii) Length (in weeks/days/hours) of annual leave during the closedown
  - (iii) That the leave was taken as a result of a closedown
  - (iv) Total payment for the annual leave (refer [Calculating Annual Leave Payment](#) for details)

**Annual Leave Entitlement = Annual Leave Entitlement – Length of leave  
(in days/hours/weeks)**

- (c) Where the employee's current annual leave entitlement is not greater than the length of the closedown period, the existing entitlement must be taken by the employee.
  - (i) Dates of the annual leave either start and finish (or date when entitlement ended) or each individual day
  - (ii) Length (in weeks/days/hours) of annual leave the employee was entitled to
  - (iii) That the leave was taken as a result of a closedown
  - (iv) Total payment for this portion of the annual leave (refer [Calculating Annual Leave Payment](#) for details)

**Annual Leave Entitlement = Annual Leave Entitlement – Length of leave the  
employee is entitled to (in days/hours/weeks)**

(This will result in an Annual Leave Entitlement of zero).

The remainder of the close down will either be not required to be paid by the employer (this period should not be treated as "unpaid leave" under section 16), and therefore have no impact on annual leave entitlement, or be taken as anticipated leave. Where anticipated leave is taken a record of decrease of annual leave entitlement will be created for each pay period of the close down. This record will identify the portion of the close down covered by anticipated annual leave:

- (i) Dates of the annual leave either start (or date when anticipated leave started) and finish or each individual day
- (ii) Length (in weeks/days/hours) that was anticipated annual leave
- (iii) That the leave was taken as a result of a closedown
- (iv) Total payment for this part of the annual leave (refer [Calculating Annual Leave Payment](#) for details)

**Annual Leave Entitlement = Annual Leave Entitlement – Length of leave  
anticipated (in days/hours/weeks)**

(This will result in an Annual Leave Entitlement of less than zero).

## **Calculations to Annual Leave Entitlement during closedown where an employee has an annual leave entitlement of less than or equal to zero**

- (a) An employer and employee may agree that the period of close down may be treated as anticipated leave. However as the anniversary date will now be one year after the start of close down, the accrued leave must be transferred to the annual leave entitlement and the close down leave deducted from that.

**Annual Leave Entitlement = Annual Leave Entitlement + Accrued Leave**

**Accrued Leave = 0**

At the end of each pay period in which the close down occurred a record of decrease of annual leave entitlement will be created. This record will identify the:

- (i) Dates of the annual leave either start and finish or each individual day
- (ii) Length (in weeks/days/hours) of annual leave from the start to finish date
- (iii) That the leave was anticipated Annual Leave taken as a result of a closedown
- (iv) Total payment for the annual leave (refer [Calculating Annual Leave Payment](#) for details)

**Annual Leave Entitlement = Annual Leave Entitlement – Length of leave  
(in days/hours/weeks)**

- (b) If the employer and employee do not agree that the period of close down may be treated as anticipated leave then a payment based on 8% of gross earnings will be made (refer [Calculating Annual Leave Payment](#) for details); the anniversary date will be changed to the start of the close down or to a nominated closedown date ([refer 5.1](#)) and the accrued leave will be reset to zero as at the new anniversary period. A record of decrease in accrual will need to be made that specifies the new anniversary date and that accrued leave was reset to zero as a result of a close down.

**Accrued Leave = 0**

## **5.3 Calculating Annual Leave Payment**

*Sections 21, 22, 23, 24, 25, 26, 28, 33, 34, Schedule 3*

### **Annual Leave Taken – Payment Calculated**

When annual leave is taken (after entitlement has arisen, in advance, or as a result of a closedown) the payment is calculated by determining the length of annual leave as a number or portion of weeks/days/hours (refer to [Principles 1](#) and [Appendix 1](#) for more detail on how to do this) and paying that at a rate that is based on the greater of average weekly earnings ([refer 4.2](#)) and ordinary weekly pay ([refer 4.3](#)).

### **Parental Leave**

The following applies if an employee becomes entitled to annual leave on pay during:

- A period of parental leave under the Parental Leave and Employment Protection Act 1987 (PLEPA);
- A period of preference in obtaining employment under the PLEPA; or
- The period of 12 months commencing with the date on which the employee returns to work after a period of parental leave under the PLEPA or a period of preference.

When annual leave relating to that entitlement is taken the payment is calculated by determining the length of annual leave as a number or portion of weeks/days/hours (refer to [Principles 1](#) and [Appendix 1](#) for more detail on how to do this) and paying that at a rate that

is based on average weekly earnings ([refer 4.2](#)) – **not** the greater of average weekly earnings or ordinary weekly pay.

### **Annual Leave paid at 8%**

When employment ends within 12 months, before a further entitlement has arisen or where there is a closedown and an employee has no entitlement to holidays then annual leave pay is based on 8% of gross earnings for the relevant period less any relevant payments already made. See below ([refer 5.3.3](#) for Calculation of annual leave pay when employment ends) for more detail on this calculation and ([refer 5.6](#) for payments for casual or fixed term employees).

#### **2.1.19 Minimum Requirement**

The following three totals need to be able to be calculated for a single or multiple pay periods in the previous 12 months:

- Gross Earnings (Ordinary) plus Gross Earnings (Conditional)
- Gross Earnings (Conditional)
- Gross Earnings (Ordinary).

#### **2.1.20 Holiday and Leave Record Only**

All payments for annual leave must be recorded and identified as such. The payments can be recorded as a total for a pay period as long as:

- it is recorded as a payment for an annual leave
- it is clear how the total payment was calculated.<sup>15</sup>

#### **2.1.21 Full Version**

All of the above should be included plus the following calculations will need to be available. It should also be transparent so that a Labour Inspector or employee can check that the calculation is correct.

#### **Calculation of Annual Leave Pay – Standard Calculation During Employment**

- (a) Determine the length of annual leave as a number or portion of weeks/days/hours – this must be same determination as that for the reduction in the Annual Leave Entitlement
- (b) Determine the Ordinary Weekly/Daily/Hourly Pay as per Section 4.3.
- (c) Determine the Average Weekly/Daily/Hourly Earnings as per Section 4.2.
- (d) Determine the greater of the Ordinary Weekly/Daily/Hourly Pay and the Average Weekly/Daily/Hourly Earnings and use this as the annual leave payment rate.
- (e) Multiply the length of the annual leave entitlement by the annual leave payment rate.

#### **Calculation of Annual Leave Pay when employment ends**

- (a) If Annual Leave Entitlement is greater than zero then:
  - (i) Calculate payment for the whole annual leave entitlement using the same method as the Standard Calculation as if the next day on which the employee would otherwise work after the last day of employment was the first day of Annual Leave. This gives Annual Leave Payment A.

---

<sup>15</sup> The record needs to show whether the employee's entitlement has had a period of parental leave attached to it.

- (ii) Determine the anniversary date for the last increase of Annual Leave Entitlement (i.e. the employee's last anniversary date).
- (iii) Determine the total gross earnings since the date above until and including the last day of employment.<sup>16</sup> NB: these earnings will include the Annual Leave Payment A above.

It has been drawn to our attention that some payroll software does not include the Annual Leave Payment A in the calculation of total gross earnings. This can result in the employee being paid less than what they are entitled to under the Act. Payroll software must be clear that gross earnings includes payment for annual holidays taken since the employee last became entitled to leave.

(iv) Annual Leave Payment B = Total Gross Earnings as in paragraph (a)(iii) above \* 0.08.

(v) Total Annual Leave Payment = Annual Leave Payment A + Annual Leave Payment B.

(b) If Annual Leave Entitlement equals zero then:

(i) Determine the Anniversary Date for the last increase of Annual Leave Entitlement (the employee's last anniversary date). If there has not been any Annual Leave Entitlement then this date will be the date the employee started employment (because the employee has worked for less than 12 months).

(ii) Determine the total gross earnings since the date above until the last day of employment.<sup>17</sup>

(iii) Annual Leave Payment = Total Gross Earnings calculated under paragraph (ii) above \* 0.08.

(c) If Annual Leave Entitlement is less than zero then:

(i) Determine the Anniversary Date for the last increase of Annual Leave Entitlement (the employee's last anniversary date). If there has not been any Annual Leave Entitlement (because the employee has worked for less than 12 months) then this date will be the date the employee started employment.

(ii) Determine the total gross earnings since the date above until the last day of employment.<sup>18</sup>

(iii) Annual Leave Payment A = Total Gross Earnings (calculated under paragraph (ii) above) \* 0.08.

(iv) Calculate the payment made to the employee for the anticipated annual leave that resulted in an annual leave entitlement of zero (anticipated annual leave) – use the annual leave records to determine this. This amount is Annual Leave Payment B.

(v) Calculate any payments made under section 22 (Leave taken in advance) since the annual leave entitlement became zero. This amount is Annual Leave Payment C.

(vi) Total Annual Leave Payment = Annual Leave Payment A – (Annual Leave Payment B + Annual Leave Payment C).

### **Calculations for Annual Leave Pay during closedown where an employee has an annual leave entitlement greater than zero**

(a) If the length (in weeks/days/hours) of the closedown period is less than or equal to the current annual leave entitlement then calculate annual leave payment using the same

<sup>16</sup> Where the anniversary date falls in the middle of a pay period refer 5.7 below.

<sup>17</sup> Where the anniversary date falls in the middle of a pay period refer 5.7 below.

<sup>18</sup> Where the anniversary date falls in the middle of a pay period refer 5.7 below.

method as the Standard Calculation as if the dates/length of the close down were those of Annual Leave.

- (b) If the length (in weeks/days/hours) of the closedown period is greater than the current annual leave entitlement then the existing entitlement must be taken – use the same method as the Standard Calculation but the dates/length will be restricted to the dates/length from when the closedown starts until the entitlement has ended.
- (c) For the remainder of the closedown period, the employer and employee may agree to let the employee take this portion of the closedown period as anticipated leave. If this occurs then use the same method as the Standard Calculation but the dates/length will be restricted from when the entitlement above ended to when the closedown ends.
- (d) If the length (in weeks/days/hours) of the closedown period is greater than the current annual leave entitlement and the employer and employee do not agree to let the employee take the remainder as anticipated leave then there is no payment for the remainder of the period.

### **Calculations for Annual Leave Holiday Pay during closedown where an employee has an annual leave entitlement of less than or equal to zero**

- (a) If the employer and employee agree that the period of closedown may be treated as anticipated leave then calculate annual leave payment using the same method as the Standard Calculation as if the dates/length of the close down were the those of Annual Leave.
- (b) If the employer and employee do not agree that the period of closedown may be treated as anticipated leave then:
  - (i) Determine the Anniversary Date for the last increase of Annual Leave Entitlement (this will be the employee's last anniversary date). If the employee has worked for less than 12 months then it will be the date the employee started employment..
  - (ii) Determine the total gross earnings since the date above until and including the last day of work before the closedown.<sup>19</sup>
  - (iii) Annual Leave Payment A = Total Gross Earnings \* 0.08.
  - (iv) Calculate any payments made to the employee for anticipated annual leave since the employee's last anniversary date – use the annual leave records to determine this. This amount is annual leave payment B.
  - (v) Calculate any payments made under section 28 (annual leave payment paid with employee's pay) since the employee's last anniversary date. This amount is annual leave payment C
  - (vi) Total annual leave payment = annual leave payment A – (annual leave payment B.+ annual leave payment C).

NB: When the employee is paid under this criteria their anniversary date will be reset to the start of the closedown or the nominated date ([refer 5.2.3](#)).

## **5.4 When Annual Leave Payment is to be made**

### *Section 27*

An employer must pay an employee for annual leave before the annual leave is taken unless the employer and employee agree that the employee is to be paid in the pay that relates to the period during which the annual leave is taken.

---

<sup>19</sup> Where the anniversary date falls in the middle of a pay period refer 5.7 below.

### **2.1.22 Minimum Requirement**

All payroll software must enable this provision to be met and record whether there has been an alternative agreement reached between the employer and employee.

## **5.5 Public Holiday occurs during Annual Leave**

### *Section 40*

A public holiday that occurs during an employee's annual leave (including any annual leave added to the end of employment) must be treated as a public holiday and not as part of the employee's annual leave. Note that if an employee leaves their employment and has an entitlement to annual leave, any public holidays that would fall within the period of that annual leave if it had been taken at the end of employment must be treated as public holidays and not as annual leave.

### **2.1.23 Minimum Requirement**

None.

### **2.1.24 Holiday and Leave Record Only**

The leave record must distinguish which days were taken as annual leave and which were public holidays and the payments for those days.

### **2.1.25 Full Version**

Payroll software should prevent annual leave from being assigned to a public holiday.

## **5.6 Payment of Annual leave Pay with employee's pay**

### *Section 28*

It is still permissible under restricted circumstances for an employer to pay annual leave pay with the employee's pay. Refer to section 28 of the Holidays Act 2003 for full details of conditions which must apply before this is permissible, these include:

- (a) if the employee:
  - (i) is employed in accordance with section 66 of the Employment Relations Act 2000 on a fixed-term agreement to work for less than 12 months; or
  - (ii) works for the employer on a basis that is so intermittent or irregular that it is impracticable for the employer to provide the employee with 4 weeks' annual leave under section 16; and
- (b) the employee agrees in his or her employment agreement; and
- (c) the annual leave pay is paid as an identifiable component of the employee's pay; and
- (d) the annual leave pay is paid at a rate not less than 8% of the employee's gross earnings.

### **2.1.26 Minimum Requirement**

The annual leave component of wages must be an identifiable component of the employee's pay and must be paid at a rate not less than 8% of the employee's gross earnings.

It has been drawn to our attention that this has been a common practice in the past. Material relating to payroll software must make it clear that where an employer makes a payment of this type when the employment does not comply with section 28 then the employee will still be entitled to paid annual leave regardless of any payments made during the year.

Where an employee is receiving annual leave pay as a component of their regular pay (refer 5.6 above) then records should include the grounds used to justify this payment method.

### **5.7 Where Anniversary Date is in the middle of a Pay Period**

(When employment ends or closedown)

Where the employee's anniversary date falls in the middle of a pay period and you are unable to determine the portion of accrued annual leave and/or gross earnings to the anniversary date rather than the end of the payroll period, then use the following method to determine whether to pay the accrued annual leave using the same method as the Standard Calculation or at 8% of gross earnings.

- (a) Calculate the amount the employee would have been paid if that payroll period (includes previous Anniversary Date) accrued leave amount was paid as annual leave.
- (b) Calculate the gross earnings \* 0.08 for that payroll period.
- (c) Determine which is greater:
  - (i) If the annual leave payment was greater than gross earnings \*0.08 then ensure that the annual leave entitlement includes that accrued leave and calculate gross earnings \* 0.08 from the beginning of the next payroll period.
  - (ii) If gross earnings \*0.08 is greater than the annual leave payment then ensure that the annual leave entitlement does not include that payroll period and include it in the calculation of gross earnings \* 0.08.

## **6. PRINCIPLES 2 – PUBLIC HOLIDAYS**

**Each employee shall have an entitlement to 11 public holidays if those holidays fall on days that would otherwise be working days for the employee.**

[Refer to 7.1](#) for the list of days that are public holidays.

**If an employee does not usually work on the day of the public holiday and does not actually work on that day then they have no entitlement to be paid for the public holiday.**

**Payment for work on a public holiday is the greater of:**

- **Relevant daily pay, less penal rates, plus half that amount again (time and a half) or**
- **Relevant daily pay (including penal rates).**

**Penal rates are amounts paid for working on a particular day (e.g. Saturday or Sunday) or on a public holiday.**

**If the employee does not usually work on the day of the public holiday, but does work, they will be entitled to payment at time and a half for the time worked, but not an alternative holiday.**

**If the employee usually works on the day of the public holiday and the employee is not required to work on that day then they are entitled to receive payment of not less than the relevant daily pay for that day.**

**If the employee usually works on the day of the public holiday and the employee is required to work on that day they are entitled to receive payment at time and half for the time they work on that day. They are also entitled to an alternative holiday. When they take the alternative holiday they will be entitled to receive payment of not less than the relevant daily pay for that day.**

**If the employee is specifically employed only to work on public holidays they must be paid at time and a half for the time worked on the public holiday.**

Relevant daily pay is defined [above in 4.4](#) with examples in [Appendix 2](#).

## **7. PUBLIC HOLIDAYS**

### *Part 2 Subpart 3*

### **7.1 Days that are public holidays**

#### *Section 44*

The following are public holidays:

- Christmas Day (25 December)
- Boxing Day (26 December)
- New Year's Day (1 January)
- Day after New Year's Day (2 January)
- Good Friday
- Easter Monday
- ANZAC Day
- Labour Day (4<sup>th</sup> Monday in October)
- Queen's Birthday (1<sup>st</sup> Monday in June)
- Waitangi Day
- Local Anniversary Day (anniversary of a province or the day locally observed as that day).

When any of the first 4 days listed above fall on a Saturday/Sunday and the employee does not usually work on that day then the public holiday is transferred to the following Monday/Tuesday (i.e. if the day falls on a Saturday, it will be transferred to the Monday, and if it falls on a Sunday it will be transferred to a Tuesday. This should be recorded.)

#### **2.1.27 Minimum Requirement**

None.

#### **2.1.28 Holiday and Leave Record Only**

None.

#### **2.1.29 Full Version**

The payroll software should identify all the public holidays for each year.

## **7.2 Entitlement to a public holiday**

### *Sections 40, 46, 47, 48*

If an employee would not otherwise work on the day of the public holiday and does not actually work on that day then they have no entitlement to be paid for the public holiday.

If the employee would not otherwise work on the day on which a public holiday falls, but does work, they will be entitled to payment at time and a half for the time worked, but not an alternative holiday.

If the employee would otherwise work on the day of the public holiday and the employee does not work on that day then they are entitled to receive payment of not less than the relevant daily pay for that day.

If the employee would otherwise work on the day of the public holiday and the employee is required to work on that day they are entitled to receive payment at time and half for the time they work on that day. They are also entitled to an alternative holiday. When they take the alternative holiday they will be entitled to receive payment of not less than the relevant daily pay for that day.

If an employee is specifically employed only to work on public holidays they are entitled to receive payment at time and a half for the time they work on the public holiday.

#### **2.1.30 Minimum Requirement**

None.

#### **2.1.31 Holiday and Leave Record Only**

The dates of and payment for any public holiday the employee would otherwise work and did not work must be stored for each employee.

The dates of and payment for any public holiday the employee would otherwise work and did work must be stored for each employee.

The hours the employee worked on the public holiday must be stored for each employee.

The dates of and payment for any public holiday the employee would otherwise not work and did work must be stored for each employee.

The dates of and payment for any alternative holidays.

#### **2.1.32 Full Version**

Where employees work regular hours and that information is stored then the software should identify which employees would usually work on the public holiday or the alternative holiday.

### **7.3 Payment for a public holiday not worked**

#### *Section 49*

The payment for a public holiday when the employee does not work will be the relevant daily pay ([refer 4.4](#)).

#### **2.1.33 Minimum Requirement**

As outlined in 4.4.1 the software must be able to provide the information required to determine relevant daily pay.

#### **2.1.34 Holiday and Leave Record Only**

As above in 7.2.2 the dates and payments for all payments relating to public holidays must be stored for each employee.

#### **2.1.35 Full Version**

As outlined in 4.4.3 the software must be able to be used to determine relevant daily pay.

## **7.4 Payment for a public holiday worked**

### *Section 50*

The calculation of payment for a Public Holiday where the employee works is as follows:

- (a) Determine the time the employee worked on the public holiday
- (b) Determine the portion of the employee's relevant daily pay that relates to the time actually worked including all penal rates
- (c) Determine the portion of the employee's relevant daily pay that relates to the time actually worked less any penal rates multiplied by 1.5
- (d) Pay the employee the greater of (b) or (c).

Penal rates are additional rates to compensate an employee for working on a particular day of the week (usually Saturday or Sundays) or on a public holiday.

## **7.5 Entitlement to an alternative holiday**

### *Sections 56,59*

As noted above an employee who works (or is on call where the nature of the restriction is such that the employee has not had a holiday) on a public holiday that would otherwise be a working day for the employee (regardless of how long they worked) is entitled to an alternative holiday. Employees who *only* work on or who are *only* on call for public holidays are not entitled to alternative holidays.

If the alternative holiday has not been taken within 12 months of the entitlement arising then the employee may exchange the alternative holiday for a cash payment.

### **2.1.36 Minimum Requirement**

None.

### **2.1.37 Holiday and Leave Record Only**

The number of alternative holidays an employee is entitled to should be stored for each employee.

The dates of and payment for any alternative holiday the employee takes must be stored for each employee.

### **2.1.38 Full Version**

As in 7.5.2 above.

## **7.6 Payment for an alternative holiday**

### *Sections 60, 61*

The payment for an alternative holiday will be the relevant daily pay ([refer 4.4](#)).

Where an alternative public holiday is exchanged for payment the amount will be that agreed between the employer and the employee.

### **2.1.39 Minimum Requirement**

None.

#### **2.1.40 Holiday and Leave Record Only**

The dates of and payment for any alternative holiday the employee exchanges for a payment be stored for each employee.

#### **2.1.41 Full Version**

As in 7.6.2 above.

## **8. SICK LEAVE AND BEREAVEMENT LEAVE**

### *Part 2 Subpart 4*

#### **8.1 Sick Leave Entitlement Date**

##### *Section 63*

An employee has an entitlement to 5 days' sick leave after 6 months continuous service with the employer.

An employee who does not meet the above test becomes entitled to 5 days' sick leave if the employee has, over a period of 6 months, worked for that employer for:

- (a) at least an average of 10 hours a week during that period; and
- (b) no less than 1 hour in every week during that period or no less than 40 hours in every month during that period.

The employee and employer can agree to the employee taking sick leave in advance of this date and taking it off the entitlement when it arises after 6 months. Any such agreement should ideally be recorded in writing.

If the employee or the employee's spouse or partner or dependant falls sick before scheduled annual leave the employee is entitled to take the period of their sickness as sick leave. If the employee falls sick during a period of annual leave, their employer can agree to the employee taking the period of the sickness as sick leave instead of annual leave.

If an employee was scheduled or agreed to work on a public holiday but does not work because they or a spouse or partner or dependant is sick:

- they must be paid relevant daily pay (not time and a half)
- the day must be treated as a public holiday (no sick leave may be deducted).

##### **2.1.42 Minimum Requirement**

None.

##### **2.1.43 Holiday and Leave Record Only**

The date the employee's employment commenced must be stored for all employees.

##### **2.1.44 Full Version**

The sick leave anniversary date must be stored for each employee. This date will mark the next date the employee's sick leave will be increased.

For employees who have had six months continuous employment or employees whose employment is not continuous during six months but have worked:

- an average of at least 10 hours per week, and
- at least one hour per week or 40 hours per month

the sick leave anniversary date should be updated as follows:

- (a) At start of employment

**Anniversary Date = Date Commenced + 6 months**

(b) When the anniversary date is reached then the

$$\text{Anniversary Date} = \text{Current Anniversary Date} + 1 \text{ Year}$$

## 8.2 Entitlement to Sick Leave

### *Sections 63 and 66*

An employee has an entitlement to 5 days sick leave after 6 months continuous service with the employer. The entitlement is increased by 5 days for each subsequent 12 months continuous service up to a maximum of 20 days current entitlement. An employer can allow an employee to increase this maximum.

Or

An employee has an entitlement to 5 days sick leave after they have worked a certain amount of hours for an employer for a period of 6 months, as described in 8.1 above. The entitlement is increased by 5 days for each 12 month period in which the employee continues to work in accordance with 8.1 above.

If the employee, at the end of a 12 month period, does not meet the test, they will get a new sick leave entitlement once they have met the test over a 6 month period. However, they will not lose any outstanding sick leave entitlement that they have not yet taken (and may carry over any unused sick leave to a maximum of 20 days).

### 2.1.45 Minimum Requirement

None.

### 2.1.46 Holiday and Leave Record Only

The current sick leave entitlement must be stored for each employee.

The dates on which sick leave was taken and total payment for any sick leave must be stored for each employee.

A more complete record would also include the date and number of days of each increase to the sick leave entitlement.

### 2.1.47 Full Version

All of the above.

### Calculations to increase Sick Leave

- (a) When an employee starts work their Sick Leave Entitlement will be set to their starting value (usually zero).
- (b) At the end of the pay period which contains the employee's sick leave anniversary date a record of increase of entitlement will be created. This record will identify the:
  - (i) date of the increase – should be the anniversary date
  - (ii) amount of the increase

If Current Sick Leave Entitlement is less than or equal to 15 then

$$\text{Sick Leave Entitlement} = \text{Current Sick Leave Entitlement} + 5$$

Else

Sick Leave Entitlement = 20 (unless the employer has agreed to increase the maximum current entitlement).

### **Calculations to decrease Sick Leave Entitlement**

At the end of the pay period in which the leave occurred a record of decrease of entitlement will be created. This record will identify the:

- Start date of sick leave
- Finish date of the sick leave
- Total days of sick leave from the start to finish date
- Total payment for the sick leave ([refer 8.4](#) for calculation details)

**Sick Leave Entitlement = Current Sick Leave Entitlement – Total Days of Sick Leave**

## **8.3 Entitlement to Bereavement Leave**

*Sections 69 and 70*

An employee's entitlement to bereavement leave arises after they have completed 6 months service (as per the entitlement to sick leave – see 8.1) and they suffer a bereavement as described in Section 69(2).

An employee has an entitlement to 3 days bereavement leave for a close relative (the employee's spouse or partner, parent, child, brother, sister, grandparent, grandchild and/or spouse's or partner's parent) and 1 days bereavement leave for other people where the employer accepts the employee has suffered a bereavement.

*Note: The 3 days do not have to be taken consecutively. For example a person might take 2 days leave at the time of the funeral and 1 day for the unveiling.*

There is no upper limit to the employee's entitlement so the entitlement can not be stored in the same way as sick leave or annual leave.

An employee is only entitled to bereavement leave if they usually work on the day that they required bereavement leave.

If an employee is scheduled or agrees to work on a public holidays but then suffers a bereavement:

- They must be paid their relevant daily pay for the day (not time and a half)
- The day must be treated as a public holiday ( no bereavement leave may be deducted).

### **2.1.48 Minimum Requirement**

None.

### **2.1.49 Holiday and Leave Record Only**

The dates on which bereavement leave was taken and total payment for any bereavement leave must be stored for each employee.

### **2.1.50 Full Version**

As above in 8.3.2.

## **8.4 Payment for Sick or Bereavement Leave**

### *Section 71*

The payment for sick leave or bereavement leave will be based on the relevant daily pay ([refer 4.4](#)).

#### **2.1.51 Minimum Requirement**

As outlined in 4.4.1 the software must be able to provide the information required to determine relevant daily pay.

#### **2.1.52 Holiday and Leave Record Only**

As above in 8.2.2 and 8.3.2 the dates and payments for all payments relating to sick and bereavement leave must be stored for each employee.

#### **2.1.53 Full Version**

As outlined in 4.4.3 the software must be able to be used to determine relevant daily pay.

## 9. HOLIDAY AND LEAVE RECORD

### *Section 81*

### **9.1 Holiday and Leave Record Required<sup>20</sup>**

Every employer is required to keep a holiday and leave record that complies with Section 81 of the Act. *Section 81(1)*

The holiday and leave record may be incorporated into payroll software as long as it complies with the requirements below. *Section 81(3)(b)*

You should inform purchasers whether or not your software meets the requirements to be a holiday and leave record.

### **9.2 Information to be stored in the Holiday and Leave Record**

#### *Section 81(2)*

**For payroll software to constitute a holiday and leave record it must include the following information:**

- Name of the employee
- Date on which the employee's employment commenced
- Days on which the employee actually works, if the information is relevant to the calculation of entitlements or payment for entitlements under this Act
- Employee's current entitlement to annual leave
- Date on which the employee last became entitled to annual leave
- Employee's current entitlement to sick leave
- Dates on which any annual leave, sick leave or bereavement leave has been taken
- Amount of payment for any annual leave, sick leave or bereavement leave that has been taken
- The dates of, and payment for, any public holiday on which the employee worked
- The number of hours that the employee worked on any public holiday
- 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 in exchange for an alternative holiday
- Date of termination of the employee's employment (if applicable)
- The amount paid to the employee as holiday pay upon the termination of the employee's employment (if applicable).

---

<sup>20</sup> The Act allows for the holiday and leave record to be kept as part of payroll software by not insisting that it be a written record and by allowing for it to form part of the wages and time record. It is important that employers are clear whether their payroll software will constitute a holiday and leave record as they need to know whether they need to keep any additional written records to comply with the Act.

### **9.3 Written Form**

#### *Section 81(3)*

For payroll software to constitute a holiday and leave record it must allow the information in the record to be easily accessed and converted into written form.<sup>21</sup>

### **9.4 Kept for Six Years**

#### *Section 81(4)*

Employers are required to keep the information for not less than 6 years after the date the information was entered which means that software should contain protections from accidental deletion of data from periods within the last 6 years.

---

<sup>21</sup> This requirement means that where payroll software is being used as the holiday and leave record there should be a mechanism to print all of the holiday and leave information for an employee. This does not need to be in a single report but must be easily produced by the software.

## APPENDIX 1: ANNUAL LEAVE EXAMPLES

### Annual leave Example 1

#### (Agreement based on accrued hours)

Entitlement is:

- recorded in hours
- agreed in the employment agreement to be based on 4/52 of the **ordinary hours (i.e. excluding overtime hours) worked in the year when entitlement arose**
- reduced in **hours** when the leave is taken

**No change to method of calculation when work patterns changed..**

Payment is:

- an hourly rate based on greater of ordinary weekly pay and average weekly earnings.

This kind of agreement would be based on the principle that everyone should get 8% of the ordinary hours they worked in the year the entitlement arose with payment being made at an hourly rate.

Each employee would accrue 4/52 of an hour's annual leave for each ordinary hour worked in the period when the entitlement arose. When they take leave their entitlement will be reduced by the number of hours of leave that was taken.

In the below examples, the figures in the column entitled "Annual leave entitlement in hours" relate to each employee's actual leave entitlement rather than their accrued leave. All examples relate to situations where the employee has not taken any annual leave in advance.

#### Employee A works:

| MONTH  | DAYS PER WEEK | ORDINARY HOURS PER WEEK | ORDINARY WEEKLY PAY | ANNUAL LEAVE ENTITLEMENT IN HOURS |
|--------|---------------|-------------------------|---------------------|-----------------------------------|
| 1 – 12 | 4             | 32                      | \$480               | -                                 |
| 13     | 4             | 32                      | \$480               | 128                               |
| 14-24  | 5             | 40                      | \$640               | 128                               |

Employee A above takes 8 hours (one 8 hour day) leave in the 21<sup>st</sup> week after they start working 40 hours per week (i.e. in their 18<sup>th</sup> month). Their leave entitlement would be reduced to 120 hours.

Employee A had a pay rise from \$15.00 to \$16.00 an hour when they went full-time.

Their payment will be 8 hours multiplied by the greater of:

- Ordinary hourly rate in their employment agreement of \$16 or
- Average hourly pay (over previous 12 months) =

$$\frac{\text{Gross earnings in previous 12 months pay periods}}{\text{Total ordinary hours in previous 12 months pay periods}} = \frac{(20 * 640) + (32 * 480)}{(20 * 40) + (32 * 32)} = \frac{\$28,160}{1,824} = \$15.43$$

Which is  $8 * \$16 = \$128$ .

**Employee B works:**

| MONTH | DAYS PER WEEK | ORDINARY HOURS PER WEEK | WEEKLY PAY | ANNUAL LEAVE ENTITLEMENT IN HOURS |
|-------|---------------|-------------------------|------------|-----------------------------------|
| 1-12  | 5             | 40                      | \$600      | -                                 |
| 13    | 5             | 40                      | \$600      | 160                               |
| 14-24 | 3             | 21                      | \$294      | 160                               |

Employee B takes 7 hours (one 7 hour day) leave in the 21<sup>st</sup> week after they start working 21 hours per week (i.e. in their 18<sup>th</sup> month). Their leave entitlement would be reduced to 153 hours.

Employee B’s weekly pay has been reduced from \$15.00 to \$14.00 an hour since they went part time as they no longer qualify for an allowance.

Their payment will be 7 hours multiplied by the greater of:

- (a) Ordinary hourly rate in their employment agreement of \$14 or
- (b) Average hourly pay (over previous 12 months) =

$$\frac{\text{Gross earnings in previous 12 months pay periods}}{\text{Total ordinary hours in previous 12 months pay periods}} = \frac{(20 * 294) + (32 * 600)}{(20 * 21) + (32 * 40)} = \frac{\$ 25,080}{1,700} = \$14.75$$

Which is  $7 * \$14.75 = \$103.25$ .

**Employee C has worked:**

|                         | MONDAY | TUESDAY | WEDNESDAY | THURSDAY | FRIDAY | TOTAL |
|-------------------------|--------|---------|-----------|----------|--------|-------|
| <b>Hours</b>            | 8      | 8       | 8         | 5        | 5      | 34    |
| <b>Average Overtime</b> | -      | -       | 2         | -        | -      | 2     |
| <b>Pay</b>              | \$120  | \$120   | \$150     | \$75     | \$75   | \$540 |

for their entire 25 months of employment. Their leave entitlement at the end of one year will be based on their ordinary hours (34 hours per week) which will be 136 hours.

Employee C takes Friday off which as the work pattern is considered in hours will be 5 hours and their leave entitlement would be reduced to 131 hours.

Their payment will be 5 hours multiplied by the greater of:

- (a) Ordinary hourly rate in their employment agreement of \$15 or
- (b) Average hourly pay (over previous 12 months) =

$$\frac{\text{Gross earnings in previous 12 months pay periods}}{\text{Total ordinary hours in previous 12 months pay periods}} = \frac{(540 * 52)}{(36 * 52)} = \frac{\$ 28,080}{1,872} = \$15.00$$

Which is  $5 * \$15.00 = \$75.00$ .

## Annual leave Example 2

### (Agreement based on weeks)

Entitlement is:

- based on **weeks**
- reduced based on the work pattern **at the time the leave is taken**
- reduced in proportions of weeks based on the work pattern in **hours** not days

**No change to method of calculation** when work patterns changed.

This kind of agreement would be based on the principle that everyone should get an entitlement to annual leave of exactly 4 weeks a year (no less and no more).

Each employee would accrue exactly 4 weeks annual leave for each year of continuous service. When they take leave their leave entitlement will be reduced by the:

$$\frac{\text{number of hours of leave}}{\text{total ordinary hours in 'current' week}}$$

In the below examples, the figures in the column entitled "Annual leave entitlement in weeks" relate to each employee's actual leave entitlement rather than their accrued leave. All examples relate to situations where the employee has not taken any annual leave in advance.

#### Employee A works:

| MONTH  | ORDINARY WEEKLY PAY | ANNUAL LEAVE ENTITLEMENT IN WEEKS |
|--------|---------------------|-----------------------------------|
| 1 – 12 | \$450               | -                                 |
| 13     | \$450               | 4                                 |
| 14-24  | \$600               | 4                                 |

Employee A above takes 8 hours (one 8 hour day) leave in the 21<sup>st</sup> week after they start working 40 hours per week (i.e. in their 18<sup>th</sup> month). The proportion of a week taken will be 8/40 (i.e. 20%) of a week and their leave entitlement would be reduced to 3.8 weeks.

Their payment will be 0.20 multiplied by the greater of:

- Ordinary weekly pay of \$600 and
- Average weekly pay calculated as  $((20 * 600) + (32 * 450))/52 = \$507.69$

Which is  $0.2 * \$600 = \$120$ .

**Employee B works:**

| MONTH | ORDINARY WEEKLY PAY | ANNUAL LEAVE ENTITLEMENT IN WEEKS |
|-------|---------------------|-----------------------------------|
| 1-12  | \$660               | -                                 |
| 13    | \$660               | 4                                 |
| 14-24 | \$315               | 4                                 |

Employee B takes 7 hours (one 7 hour day) leave in the 21<sup>st</sup> week after they start working 21 hours per week (i.e. in their 18<sup>th</sup> month). The proportion of a week taken will be 7/21 (i.e. 33%) of a week and their leave entitlement would be reduced to 3.67 weeks.

Their payment will be 0.33 multiplied by the greater of:

- (a) Ordinary weekly pay of \$315 and
- (b) Average weekly pay calculated as  $((20 * 315) + (32 * 660))/52 = \$527.30$

Which is  $0.33 * \$527.30 = \$174.00$ .

**Employee C has worked:**

|         | MONDAY | TUESDAY | WEDNESDAY | THURSDAY | FRIDAY | TOTAL |
|---------|--------|---------|-----------|----------|--------|-------|
| Hours   | 8      | 8       | 8         | 5        | 5      | 34    |
| Ord Pay | \$120  | \$120   | \$120     | \$75     | \$75   | \$510 |

for their entire 25 months of employment.

Employee C takes Friday off which as the work pattern is considered in hours will be 5 hours out of a total of 34 hours. The proportion of a week taken will be 5/34 (i.e. 14.7%) of a week and their leave entitlement would be reduced to 3.85 weeks.

Their payment will be 0.147 multiplied by the greater of:

- (a) Ordinary weekly pay of \$510 and
- (b) Average weekly pay calculated as  $(52 * \$510)/52 = \$510$

Which is  $0.147 * \$510 = \$75.00$

NB: Either rounding or not rounding to decimal places is acceptable as long as the proportion deducted from annual leave and the proportion of the payment is the same.

### Annual leave Example 3

#### (Agreement based on accrued days with negotiation when working patterns change)

Entitlement is:

- recorded in days
- based on 4/52 of an agreed working week expressed in days
- reduced based on the work pattern **at the time the leave is taken**
- reduced based on the work pattern in **days**

**Change to method of entitlement including conversion of accrued entitlement when work patterns changed.**

Payment is:

- based on greater of ordinary daily rate and average daily rate.

Note this agreement is dependent on there being a clear definition of a daily rate.

This kind of agreement would be based on the principle that everyone should get 8% of the days they worked in the year the entitlement arose with payment being made at a daily rate.

In the below examples, the figures in the column entitled "Annual leave entitlement in days" relate to each employee's actual leave entitlement rather than their accrued leave. All examples relate to situations where the employee has not taken any annual leave in advance.

#### Employee A works:

| MONTH  | DAYS PER WEEK | HOURS PER WEEK | ORDINARY WEEKLY PAY | ANNUAL LEAVE ENTITLEMENT IN DAYS |
|--------|---------------|----------------|---------------------|----------------------------------|
| 1 – 12 | 4             | 32             | \$480               | -                                |
| 13     | 4             | 32             | \$480               | 16                               |
| 14-24  | 5             | 40             | \$640               | 16                               |
| 25     | 5             | 40             | \$640               | 20                               |

The agreement is that accrual will be 4/52 of every day worked.

#### Employee A: Renegotiation Agreement

When the employee changed their hours of work the employer and employee agreed that the leave entitlement would continue to be calculated in days and when the employee took a week off their leave entitlement would be reduced by 5 days. Payment would stay the same i.e. that the employee would be paid the appropriate daily rate for each day they took.

Employee A above takes 1 days leave in the 21<sup>st</sup> week after they start working 40 hours per week (i.e. in their 18<sup>th</sup> month). Their leave entitlement would be reduced to 15 days.

Employee A's pay increased from \$15.00 to \$16.00 an hour when since they went full-time.

Their payment will be 1 day multiplied by the greater of:

- (a) Ordinary daily pay of \$128 or
- (b) Average daily pay (over previous 12 months) =

$$\frac{\text{Gross earnings in previous 12 months pay periods}}{\text{Total days in previous 12 months pay periods}} = \frac{(20 * 640) + (32 * 480)}{(20 * 5) + (32 * 4)} = \frac{\$ 28,160.00}{228} = \$123.50$$

Which is 1 \* \$128 = \$128.

**Employee B works:**

| MONTH | DAYS PER WEEK | HOURS PER WEEK | ORDINARY WEEKLY PAY | ANNUAL LEAVE ENTITLEMENT |
|-------|---------------|----------------|---------------------|--------------------------|
| 1-12  | 5             | 40             | \$600               | -                        |
| 13    | 5             | 40             | \$600               | 20 days                  |
| 14-24 | variable      | 21             | \$294               | 160 hours                |

The initial agreement was that accrual will be 4/52 of 5 days a week.

**Employee B: Renegotiation Agreement**

When the employee changed their hours of work the employer and employee agreed that the leave entitlement would be changed so that it is now accrued on the basis of hours worked as it is no longer easily calculated in days. The existing entitlement was converted from days to hours based on the 8 hour day the employee was working when the entitlement arose. The employer and employee agreed that over the next year one day’s leave would be considered to be 8 hours leave.

Employee B takes one day’s leave in the 21<sup>st</sup> week after they start working variable days/hours (i.e. in their 18<sup>th</sup> month). Their leave entitlement would be reduced to 152 hours.

Employee B’s pay had been reduced from \$15.00 to \$14.00 since Employee B started working 21 hours.

Their payment will be 8 multiplied by the greater of:

- (a) Ordinary hourly rate in their employment agreement of \$14 or
- (b) Average hourly pay (over previous 12 months) =

$$\frac{\text{Gross earnings in previous 12 months pay periods}}{\text{Total ordinary hours in previous 12 months pay periods}} = \frac{(20 * 294) + (32 * 600)}{(20 * 21) + (32 * 40)} = \frac{\$ 25,080.00}{1,700} = \$14.75$$

Which is 8 \* \$14.75 = \$118.02.

**Employee C has worked:**

|         | MONDAY | TUESDAY | WEDNESDAY | THURSDAY | FRIDAY | TOTAL |
|---------|--------|---------|-----------|----------|--------|-------|
| Hours   | 8      | 8       | 8         | 5        | 5      | 34    |
| Ord Pay | \$120  | \$120   | \$120     | \$75     | \$75   | \$510 |

for their entire 25 months of employment. The agreement is that accrual will be 4/52 of 5 days a week.

The leave entitlement at the end of one year will be 20 days.

Employee C takes Friday off which as the work pattern is considered in days will be 1 day out of a total of 5 days. Their leave entitlement would be reduced to 19 days.

Their payment will be 1 multiplied by:

$$\text{Ordinary daily pay} = \frac{\$510}{5} = \$102.00$$

NB: As the employee's daily rate has been constant for the entire period there is no need to make the comparison but otherwise it would have been the greater of average and ordinary as per the examples above.

## APPENDIX 2: RELEVANT DAILY PAY EXAMPLES

### Example 1: Employee A regularly works/is paid:

|         | MONDAY | TUESDAY | WEDNESDAY | THURSDAY | FRIDAY | TOTAL |
|---------|--------|---------|-----------|----------|--------|-------|
| Hours   | 8      | 8       | 8         | 5        | 5      | 34    |
| Payment | \$120  | \$120   | \$120     | \$75     | \$75   | \$510 |

If Monday is a public holiday and they don't work during that day then they will receive a \$120 payment for that day, as this is their relevant daily pay.

If Monday is a public holiday and they work for 4 hours, receive an alternative holiday and take it on a Friday then they will receive:

$\$15 * 1.5 * 4$  (i.e. four hours at time and a half for the Monday) = \$90 payment for working on the Monday and

\$75 when they take their alternative holiday on the Friday.

### Example 2: Employee B works irregular hours but regular days:

| PAY PERIOD |         | MON   | TUE   | WED   | THURS | FRI   | TOTAL |
|------------|---------|-------|-------|-------|-------|-------|-------|
| 1 wk ago   | Hours   | 8     | 4     | 3     | 0     | 8     | 23    |
|            | Payment | \$120 | \$60  | \$45  |       | \$120 | \$345 |
| 2 wks ago  | Hours   | 2     | 2     | 5     | 0     | 5     | 14    |
|            | Payment | \$30  | \$30  | \$75  |       | \$75  | \$210 |
| 3 wks ago  | Hours   | 8     | 8     | 8     | 0     | 5     | 29    |
|            | Payment | \$120 | \$120 | \$120 |       | \$75  | \$435 |
| 4 wks ago  | Hours   | 5     | 2     | 2     | 0     | 5     | 14    |
|            | Payment | \$75  | \$30  | \$30  |       | \$75  | \$210 |

If Monday is a public holiday and they don't work during that day then they will receive

#### **Gross earnings in previous 4 weeks pay periods**

#### **Number of whole or part days the employee was paid in the previous 4 weeks pay periods**

$$(\$345 + \$210 + \$435 + \$210) = \$75$$

16

If Monday is a public holiday and they work for 4 hours, receive an alternative holiday and take it on the following Tuesday then they will receive:

$\$15 * 4 * 1.5$  (i.e. four hours at time and a half for the Monday) = \$90 payment for working on the Monday and

\$75 when they take their alternative holiday on the following Tuesday.

## APPENDIX 3: PAYMENT TYPES

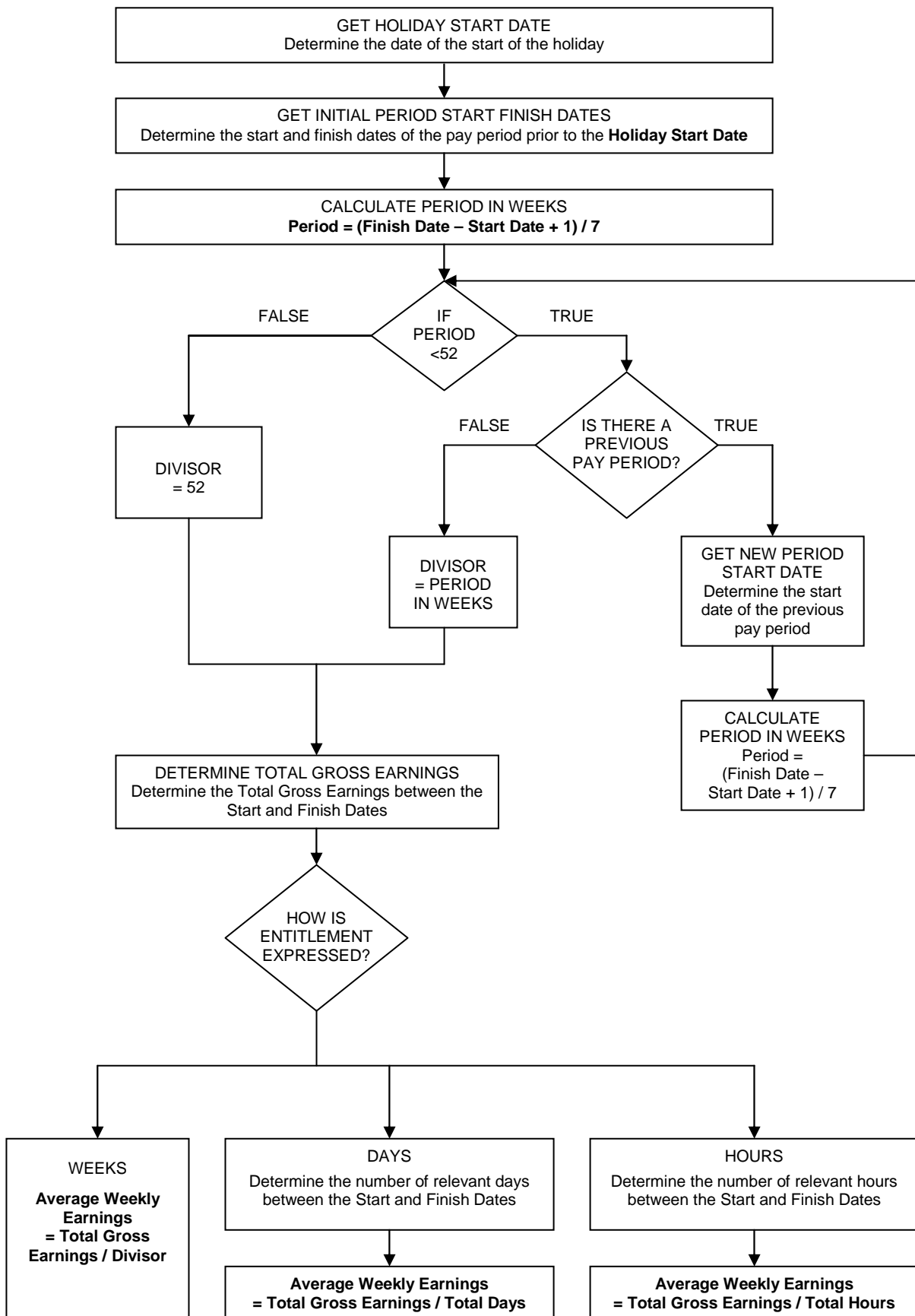
Sections 8, 9, 10, 14

The following table elaborates on what is included in each payment type (for an explanation of the payment types [refer 4.1](#) of this document):

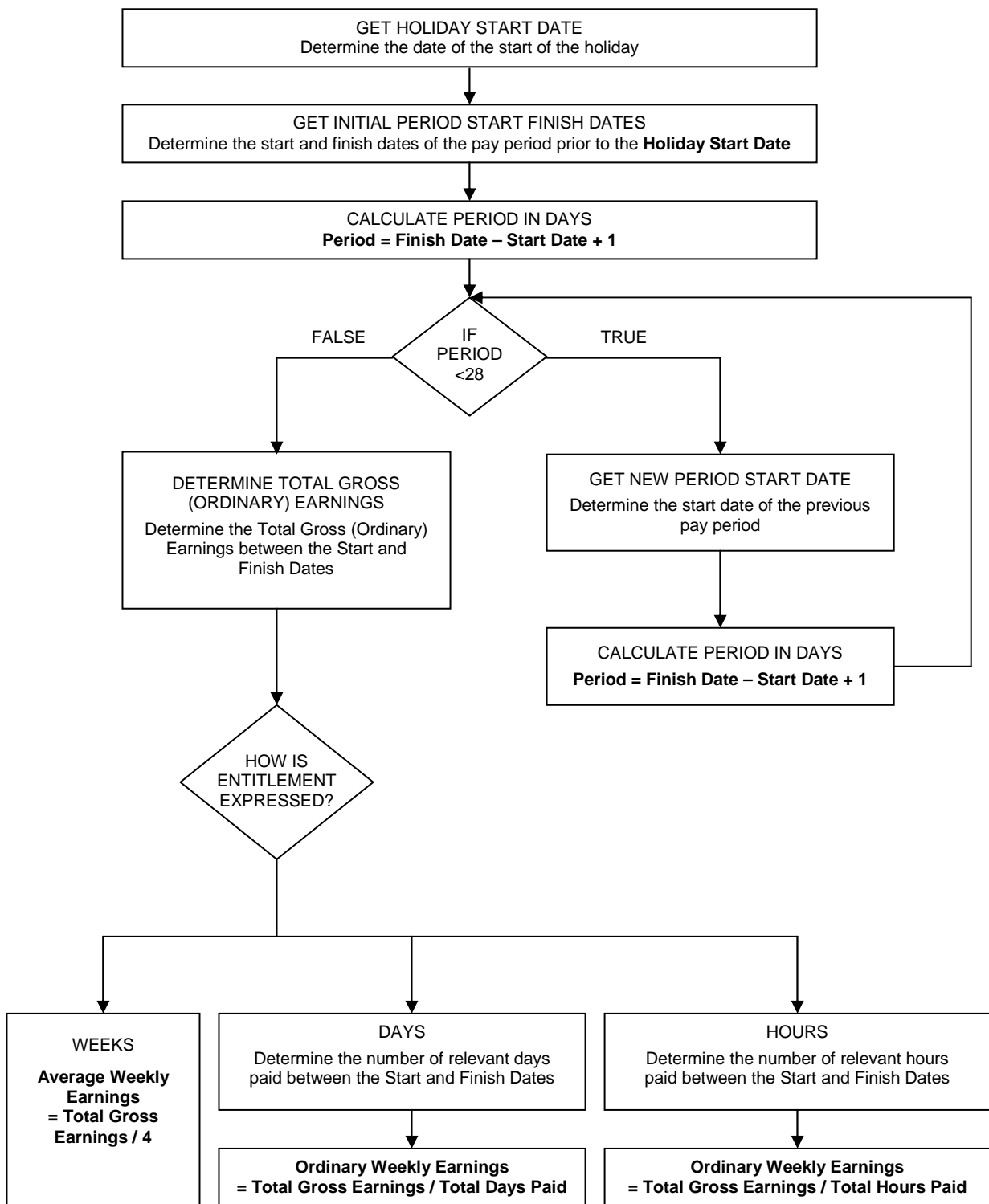
| PAYMENT  | PAYMENT TYPE                 |
|--|------------------------------|
| Salary or wages  | Gross Earnings (Ordinary)    |
| Allowances   | Gross Earnings (Ordinary)    |
| Payment for leave (annual, public holiday, alternative holiday, sick or bereavement)   | Gross Earnings (Ordinary)    |
| Productivity or incentive-based payments (including Commission) – regular  | Gross Earnings (Ordinary)    |
| Cash value of any board or lodgings provided by the employer <sup>22</sup>   | Gross Earnings (Ordinary)    |
| Payments for overtime – regular  | Gross Earnings (Ordinary)    |
| First week compensation payable by the employer under section 97 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 or former Act | Gross Earnings (Ordinary)    |
| Any one-off or exceptional payments  | Gross Earnings (Conditional) |
| Productivity or incentive-based payments (including Commission) – irregular  | Gross Earnings (Conditional) |
| Payments for overtime – irregular  | Gross Earnings (Conditional) |
| Any discretionary payments   | Excluded Earnings            |
| Any weekly compensation payable by the ACC under the Injury Prevention, Rehabilitation, and Compensation Act 2001 or former Act                    | Excluded Earnings            |
| Any payment for absence from work while the employee is on volunteers leave within the meaning of the Volunteers Employment Protection Act 1973    | Excluded Earnings            |
| Any Payments to reimburse the employee for any actual or reasonable cost incurred by the employee related to his or her employment                 | Excluded Earnings            |
| Any Payments of a reasonably assessed amount to reimburse the employee for any costs incurred by the employee related to his or her employment     | Excluded Earnings            |
| Any payment of any employer contribution to a superannuation scheme for the benefit of the employee  | Excluded Earnings            |

<sup>22</sup> These can be excluded when the work done by the employee requires the employee to stay overnight in a residence other than the employee's usual place of residence or if the board or lodgings are provided because of special circumstances.

## APPENDIX 4: FLOW CHART – AVERAGE EARNINGS



## APPENDIX 5: FLOW CHART – ORDINARY PAY



## APPENDIX 6: FLOW CHART – RELEVANT DAILY PAY

