

Key information on Holidays Act



LEGAL MATTERS

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Ten things you should know about the Holidays Act:

1. Advice of rights.

Employers must advise employees of their entitlements under the Act. That information is available from the union (if they are a member) and the Ministry of Business, Innovation and Employment.

To show that this has been done these points should be included in all employment agreements, along with a provision concerning the opportunity to take independent advice.

2. Four weeks' holiday.

This cannot be bargained away. Leave is to be expressed as so many weeks. Employees can request that up to one week of annual leave be paid out. Employers may not request employees to seek a payout.

3. Annual holidays must be taken.

Employers must allow employees to take all their annual holidays. They can require them to take them by giving 14 days' notice.

4. Annual leave does not

lapse.

If employees fail to take holidays, clauses preventing carrying forward are of no effect. Holidays remain due until they are taken. Holidays are paid based on the last 12 months, not when the leave was earned.

5. Two weeks' uninterrupted leave.

Employees are entitled to take two weeks of their leave in an uninterrupted block.

6. Sick leave.

Sick leave of five days after six months continuous service must be allowed. A further five days is due after each subsequent 12 months. Special rules apply to part-timers under minimum weekly/monthly hours. Part-time leave is still five days, but pay is based on the hours normally worked.

Sick leave can be accumulated up to 15 days so an employee can have 20 days owing.

7. Sickness while on holiday.

If employees are sick while on holiday the employer may agree to them taking sick leave and they can take their holidays at some other point. If they fall sick before they start their holiday, they are entitled to take sick leave and transfer the holiday to another time.

Employers can request evidence of sickness, at an employee's expense, after three consecutive calendar days of sickness.

Employers may request a medical certificate from a sick employee before three consecutive calendar days are com-

pleted, provided they meet the employee's reasonable expenses in obtaining proof.

8. Public holidays.

If employees are required to work on a public holiday, they will be paid at time and a half for the hours worked on that day and will be given a day in lieu to be taken at an agreed time.

Agreements may not state that the pay includes the extra pay. It must be paid on top of ordinary pay.

9. Closedowns.

Only one per year is allowed. That is where the business is closed and annual leave must be taken.

10. Bereavement leave.

Three days for the death of a spouse, parent, child, brother or sister, grandparent, grandchild or spouse's parent.

One day on the death of another person, if the employer accepts that a bereavement has been suffered.

Relevant factors include closeness of the relationship, responsibility for arrangements and cultural responsibilities. If more than one bereavement is suffered at the same time then the employee is entitled to leave for each.

The mechanisms for calculating leave and public holiday pay are complicated. The onus is on the employer to get it right.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733 484. If you have a legal inquiry, email Alan on aknowsley@raineycollins.co.nz.