Your holiday pay entitlements

LEGAL MATTERS

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Different rules apply for different employees when it comes to annual leave.

Entitlements after 12 months

Permanent employees who have worked for 12 months or more have a minimum entitlement to paid leave equal to four weeks.

The amount paid for a week's leave is the greater of either the ordinary weekly pay for that employee or the average weekly pay across the last year for that employee.

That means if an employee started work on $30,000 in January, and had an increase in pay in December to $40,000, and then took a holiday the following January, she would be paid at the higher rate of pay when on annual leave (even though she accrued most of her entitlement in the year when her salary was $10,000 less).

Similarly, if an employee worked from January until August as a fulltime employee, and then you agreed she could work part-time, if she took a week's leave in September her week on annual leave would be paid at a rate which was equal to her average weekly pay from the last year (even though that is a lot higher than what she would have received if she had been at work).

Where an employee has an early exit

If employment ends before an employee has completed 12 months' service (and they therefore have not yet earned the right to four weeks), they are entitled to a payment equal to 8 per cent of gross earnings during employment.

Gross earnings includes any payments the employer has ever made to the employee, so includes overtime, allowances, commissions and so on.

Part-timers – what is a "week"?

For casual or part-time permanent workers, the employer and the employee need to agree on what an average working week is.

For example, if a person works 10 hours a week, they will be entitled to four weeks of 10 hours, or 40 hours of holiday pay.

A part-time worker's entitlement is also to four weeks of annual holidays after 12 months of service.

The part-time worker would be paid the greater of either the hours they would normally work during those four weeks or a larger amount if the average weekly payment over the last year was greater.

If rosters vary, it will obviously be concerning to employers if employees take leave only in weeks where their average hours are high.

To minimise any issues around this, employers might enforce "close-down periods" or require leave to be taken at certain times as part of their employment policies.

Employees on short fixed-term agreements or with intermittent work patterns

For some casual or short fixed-term workers, there is the option of being able to be paid the 8 per cent of their gross earnings each pay if it is too difficult to pay them otherwise.

If that is the agreement then you must separately identify the 8 per cent holiday pay in each pay.

Employees paid on this method are not entitled to paid time off for annual holidays.

The difficulty with this is that in some jobs, workers are classified as "casual" when, in fact, they have regular patterns of work and are actually part-time permanent workers (for example, supermarket workers or those in hospitality).

If workers are permanent part-time employees, they are entitled to four weeks' leave after 12 months' service.

If you use the pay-as-you-go method when not entitled to, or fail to comply with all requirements, then you will be liable to pay the annual holidays entitlement again, even if you have already paid the 8 per cent each week.

Extra entitlements

The leave entitlements discussed above are those set as minimum entitlements under statute.

Employers and employees are also free to negotiate better terms for employees, such as extra annual leave over the four weeks.

Employers must provide the greater of the minimum legal entitlement (four weeks) or what is in the employment agreement.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733484. If you have a legal inquiry you would like discussed in this column email aknowsley@raineycollins.co.nz.