

The Holidays Act is Being Repealed

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Brooke Van Velden, Minister for Workplace Relations and Safety has announced that the Holidays Act 2003 (HA) is being repealed with a new Employment Leave Act.

The proposed new act aims to simplify entitlements, improve fairness, and better reflect modern working arrangements. We have summarised the key changes and what they mean for both employers and employees.

Annual Leave

Under the HA, employees are entitled to four weeks' annual leave after 12 months of continuous employment. This is provided as a "lump sum" entitlement.

Under the new act, leave will accrue from day one. The rate of accrual will be of 0.0769 hours per contracted hour worked. Accrual continues during paid leave, parental leave, and jury service. Annual leave will not accrue during periods of unpaid leave, or while receiving accident compensation payments.

The way annual leave is taken will also change with leave being taken in hours, not weeks, making it easier to manage for variable work patterns. Employees will also be able to request to be paid out up to 25% of their annual leave every 12 months.

Sick Leave

Currently, sick leave is granted as a 10-day lump sum after six months, with a cap of 20 days.
Under the new Act, sick leave will accrue from an employee's first day at 0.0385 hours per contracted hour worked, up to a 160-hour cap (equivalent to 20 eight-hour workdays).

It can be taken in hours, offering more flexibility for short absences. Like annual leave, sick leave will accrue during paid leave, parental leave, and jury service.

Bereavement and Family Violence Leave

Employees will also be entitled to bereavement and family violence leave from their first day of employment instead of after six months.
Leave will remain a day-based entitlement, as opposed to hours-based like annual leave and sick leave. However, it can be taken in part days.

Public Holidays and Alternative Holidays

Determining whether a public holiday falls on an "Otherwise Working Day" (OWD) has long been a challenge for employers. The new act will provide a clearer OWD test for employees without a fixed schedule. What constitutes an OWD will be based on whether the employee has worked 50% of corresponding weekdays.

Alternative holidays will accrue hour-for-hour when working on a public holiday that is an OWD. These can be taken on any day that could have been worked and cashed out at any time.

Leave Payments

The current system involves complex calculations, often resulting in lower pay for leave taken after parental or volunteer leave.
Under the new act, all leave will be paid at an hourly rate based on the base wage for the day of leave. Pieces rates will be averaged, and fixed allowances will be paid in full. Leave taken after parental or volunteer leave will be paid as normal, removing previous overrides.

Casual and Fixed-Term Workers

Casual and fixed-term employees will no longer accrue annual leave or sick leave. The new Act will introduce a leave compensation payment for casual workers. The leave compensation payment of 12.5% will be paid on all hours worked by a ‘casual’ worker and every additional hour worked by permanent employees. This will not apply to permanent employees whose salary is set at a level which compensates for additional hours worked.
Fixed term workers will begin to accrue leave from day one. Previously, fixed-term workers who worked a fixed term of less than 12 months did not accrue annual leave and typically agreed to an 8% “pay as you go” arrangement.

Conclusion

There will be a 24-month implementation period between the Employment Leave Bill being passed and when the new Act comes into force. This will give employers and payroll providers time to update their systems and processes.

This overhaul is designed to make leave entitlements clearer, fairer, and more adaptable to today’s workforce. Employers should begin reviewing their payroll systems and employment agreements to prepare for the transition.

For further information or tailored advice regarding these changes, please contact a member of our employment team.

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