

Employers – Other leave

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Public holidays

If an employee normally works on a particular day and it falls on a public holiday, then they are entitled to a paid day off. If they work instead, they're entitled to be paid at time and a half and get an alternative day off.

All employees are entitled to public holidays, whether the employee is casual, fixed-term, part-time or full-time. Public holidays are in addition to annual leave/holidays, and there's no minimum period of time an employee has to be employed to get public holiday benefits.

There are 11 public holidays a year (also known as statutory or stat holidays).

Note: For more information, please refer to 'Public holidays' and 'Public holidays and anniversary dates' at employment.govt.nz.

Alternative holidays

An alternative holiday day is also known as a lieu day or a day off in lieu. If an employee has missed out on having a day off work on a public holiday, an alternative holiday gives them a day off at another time.

An employee receives their relevant daily pay or average daily pay (these terms will be explained later) for the whole day taken as the alternative holiday.

Scenario

Hannah gets an alternative holiday for working three hours on Easter Monday. Hannah and her employer agree on her taking the alternative holiday on the following Friday. On Friday, Hannah would usually work eight hours, so her employer will pay her for eight hours work.

Note: For more information, refer to the 'Alternative holidays' section at employment.govt.nz.

Sick leave

Sick leave is paid time off work when one of the following people is sick or injured:

- the employee
- their spouse or partner
- a dependent child
- another dependent person.

All employees are entitled to at least five paid days of sick leave after they have six months' current continuous employment with the same employer. Every 12 months after that, each employee gets at least another five days' sick leave.

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Sick leave continued

Payment for sick leave is at the rate the employee would ordinarily be paid on the day leave is taken, i.e. relevant daily pay or their average daily pay where applicable.

Note: This applies to most employees who've been in continuous employment for 6 months. Otherwise, in order to qualify for sick leave, the employee will have had to work at least an average of 10 hours per week since they started the job, and at least one hour in every week or 40 hours in every month.

Scenario

James normally works eight hours on Tuesdays to Fridays and four hours on Saturdays. If James is sick on a Saturday, the employer should pay James his relevant daily pay for the sick day, i.e. four hours. If relevant daily pay is used for the calculation, the payment must include overtime if the employee would have worked overtime on the day if they hadn't been sick.

Note: For more information, refer to the 'Sick leave' section at employment.govt.nz.

Bereavement leave

Bereavement leave is a special kind of paid leave that all employees who meet certain criteria can use if someone close to them dies.

This type of leave gives an employee time to grieve and to take care of matters to do with the bereavement. This can be taken at any time and for any purpose relating to the death, and employees don't have to use bereavement leave straight away or on consecutive days.

Employers often agree to give employees additional bereavement leave above the minimum entitlement, depending on the circumstances (for example, if a funeral is being held a long distance away).

After they have worked for an employer continuously for six months, employees can use three days' bereavement leave per death of the following people:

- a spouse or partner
- a parent or child
- a sibling
- a grandparent
- a grandchild
- a spouse or partner's parent.

Note: This applies to most employees who've been in continuous employment for six months. Otherwise, in order to qualify for bereavement leave, the employee will have had to work at least an average of 10 hours per week since they started the job, and at least one hour in every week or 40 hours in every month.

Employees can also use one day of bereavement leave on the death of another person if their employer accepts they've had a bereavement.

Payment for bereavement leave should be the employee's relevant daily pay or their average daily pay where applicable. Payment for bereavement leave is made in the normal pay cycle.

Note: For full information, you should refer to the 'Bereavement leave' section at employment.govt.nz.

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Key terms for other leave

Some of the following terms relate to the correct rate of pay for other leave. It's very important to calculate the right rate of pay for leave and holidays.

Annual leave/holidays are calculated on a weekly basis, whereas by contrast public holidays, alternative holidays, sick leave and bereavement leave are calculated on a daily basis.

As an employer, understanding these terms will help you to maintain your employee's minimum entitlements.

- otherwise working day
- relevant daily pay
- average daily pay
- time and a half
- penal rates
- Mondayisation.

Otherwise working day

To work out an employee's rights to public holidays, alternative holidays, sick leave and bereavement leave, you need to know whether the employee would have otherwise worked that day. In most cases it's easy to work out, because there is a working pattern or roster.

When an employee does not have a clear work pattern, it may be harder to decide if a day is an otherwise working day.

Scenario

Erina alternates her shifts with Ross. Erina's roster requires three 10-hour days on Monday to Wednesday one week (week one) and the same hours on Thursday to Saturday the following week (week two).

If week one coincides with the week in which Good Friday falls, Erina will not get paid for Good Friday or Easter Monday (which will fall in week two), because she would not have been scheduled to work on that Friday or Monday.

Note: For more information, refer to the 'Otherwise working day' and 'Otherwise working day calculator' section at employment.govt.nz.

Relevant daily pay and average daily pay

Sick leave, bereavement leave, alternative holidays and public holidays are usually paid at the rate of relevant daily pay. When it's not practical to calculate relevant daily pay, average daily pay is used instead. Average daily pay may also be used if the employee's daily pay varies within the pay period.

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Relevant daily pay and average daily pay continued

Relevant daily pay

Relevant daily pay means paying an employee what they would have earned if they were at work on the day. This also:

- includes payments such as commission and bonuses if the employee would have received them on the day
- includes overtime, if the employee would have received it on the day
- includes the cash value of board or lodgings if this has been provided by the employer
- excludes any employer contribution payment into an employee superannuation fund.

Average daily pay

If it's not practical to work out relevant daily pay, an employer should use average daily pay. Average daily pay may also be used if the employee's daily pay varies within the pay period. Average daily pay is a daily average of the employee's gross earnings over the past 52 weeks. This is worked out by:

- adding up the employee's gross earnings for the period
- dividing this by the number of whole or part days the employee either worked or was on paid leave or holidays during that period.

Note: For more information, refer to the 'Relevant daily pay and average daily pay' section at employment.govt.nz.

Penal rates

Employees working on a public holiday get at least one and a half times (also called time and a half) their relevant daily pay or average daily pay for the hours worked.

A penal rate is an additional amount that will be paid to the employee for working on a particular day or type of day such as:

- Saturday payment
- Sunday payment
- Public holiday payment.

If the employer and employee agree on a penal rate, it must be specified in an employment agreement.

If a public holiday falls on this type of day and the employee works on that day, they get paid the greater of the penal rate or time and a half. The employee isn't entitled to time and a half on top of the penal rate.

Note: For more information, refer to the 'Time and a half and penal rates' section at employment.govt.nz.

Mondayisation

Mondayisation happens when a public holiday which falls on a Saturday or Sunday is moved to the following Monday or in some cases Tuesday.

Note: For more information, refer to the 'Public holidays falling on a weekend' section at employment.govt.nz.

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Parental leave

Employees may be able to take parental leave from work to care for their new child.

There are several types of parental leave available to an employee:

- **Primary carer leave** - up to 18 weeks' paid leave for the primary carer of the child.
- **Special leave** - up to ten days' unpaid special leave for pregnancy-related reasons such as antenatal classes, scans or midwife appointments.
- **Partner's leave** - up to two weeks' unpaid leave for the partner of the primary carer of the child.
- **Extended leave** - up to 52 weeks' unpaid leave for either the primary carer or partner.
- **Negotiated carer leave** - unpaid leave employees can negotiate with their employer if they don't qualify for primary carer leave.

If the employee's baby is born prematurely (before 37 weeks), they may be entitled to additional leave and payments.

As an employer, you should be aware of other aspects of parental leave:

- **Parental leave eligibility** - employees may be able to take leave from work to care for their new child.
- **Parental leave payment** (paid parental) - employees and self-employed people may be able to get a government-funded parental leave payment while they're not working and are caring for a new child.
- **Parental leave scenarios** - scenarios where employees can and can't take parental leave.

Note: For more information, refer to the 'Types of parental leave' and 'Parental leave' section at employment.govt.nz.

More types of leave

There are many additional types of leave that an employer may provide to an employee. Some are legislated, meaning set out in law, while some are negotiable between the parties. These include (but aren't limited to):

- **Defence Force volunteers** - an employer has to let an employee take leave and must keep their job open while the employee undertakes training or service for the Armed Forces. (By law.)
- **Election voting leave** - leave to vote in general elections or by-elections. (By law.)
- **Stress leave** - an employer may provide an employee with sick leave if they have work-related stress. (Negotiable.)
- **Garden leave** - this isn't referred to in employment legislation but is a term sometimes used to describe a period when an employee retains their employment and receives full pay, but doesn't report to work. (Negotiable.)
- **Leave without pay** - an employee can take leave without pay if their employer agrees. The agreement should be recorded in writing. (Negotiable.)
- **Long service leave** - an employer and employee can negotiate long service leave and long service leave benefits. (Negotiable.)

Also, during and after a disaster or emergency, employers and employees need to consider issues such as health and safety, emotional wellbeing and payment options.

Note: For more information, refer to the 'Other types of leave' section at employment.govt.nz.

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The importance of record keeping

As an employer, you must keep accurate wage, time, holidays and leave records that comply with the Employment Relations Act 2000 and the Holidays Act 2003. You must be able to show that you've given your employees their minimum entitlements.

Good record keeping takes time, but it pays for itself by:

- preventing misunderstandings
- protecting you from litigation
- ensuring no overpayments or underpayments occur.

Note: For more information, refer to the 'Keeping accurate records' section at employment.govt.nz.

More information

The Employment New Zealand site provides detailed information on employment rights and obligations: Go to www.employment.govt.nz – the leading source of information on employment in New Zealand.

If you still need information call the Employment New Zealand phone line on 0800 20 90 20 toll free. A translation service is available. You can make contact anonymously or via a third party.

These services are available to you free of charge.

About the MBIE Employment Learning Modules Fact Sheets

This fact sheet is designed to support a series of learning modules (including interactive quizzes) about minimum employment rights provided free of charge by MBIE. We encourage you to have a look at these modules to learn even more about your employment obligations.

Legal disclaimer:

The modules are designed to provide a brief overview of key points only, to encourage further learning, and refer to more detailed information at employment.govt.nz.

- The modules do not purport to be a qualification and do not infer that any legal competence has been attained.
- It remains the responsibility of any person who has completed any module to comply with all legal requirements applicable to them under New Zealand law.
- MBIE encourages all users to familiarise themselves with relevant New Zealand law. Where this is not practical or the user is unsure of any legal aspect they are advised to obtain suitable professional advice."