



# Assessing whether your payroll system can comply with the Holidays Act 2003

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- Updated information about public holidays.

This document is designed to help employers and payroll practitioners check that their payroll system is capable of being used in a manner that can comply with the minimum requirements of the [Holidays Act 2003 \('the Act'\)](#) and provide employees the correct pay and entitlements for holidays and leave. Employers should also check that the payroll system they choose is capable of being used in a manner that can comply with all other relevant employment legislation, including the Minimum Wage Act 1983, Employment Relations Act 2000, Parental Leave and Employment Protection Act 1987, and Wages Protection Act 1983.

The Act provides minimum holiday and leave entitlements and payments that employers must meet. Employers are free to choose the work arrangements that best suit their business objectives as long as they are consistent with the law. They should be aware that complicated pay and/or variable or unpredictable work arrangements are likely to increase the time and cost of complying with the Act.

Employers should make sure that the system they choose is correctly configured for their organisation, including their employee work patterns; and is also supported by compliant policies and processes, well trained staff, and regular monitoring and updates when needed (do not take a 'set and forget' approach).

There are several points where complying with the Act means a decision must be made using judgement based on the specific facts of an employee's work and/or pay arrangements. Some of these decisions require the agreement of the employee. A payroll system cannot exercise judgement, but will need to be able to record, determine and calculate payments and entitlements based on the decision made. You may want to incorporate flags or alerts in a format useful to your staff into your process where a judgement call must be made.



A payroll system must:

- be consistent with the Act, rather than other non-legislative systems or practices
- be able to be configured in such a way that all leave calculations performed by the payroll system meet the requirements set out in the Act
- be able to be kept up to date, and to account for changes to work patterns
- be able to redetermine/recalculate relevant entitlements every time leave or holidays are taken
- be consistent with other relevant employment legislation.

The payroll system must be able to:

- accurately record time worked, and days and dates worked
- accurately record leave and holidays entitled, taken and paid out, and remuneration paid (unless this information is clearly recorded elsewhere)
- reflect how the business operates, including complexity or changes in employee work patterns, (sometimes unique)
- be configured to reflect additional entitlements agreed by the employer in employment agreements and workplace policies (eg, allowances, other benefits).

Each of the sections below has general guidance for checking your system can be compliant with the Act and provide employees with at least the minimum pay and entitlements for holidays and leave. If your organisation has employment agreements or policies that provide for more than the minimum pay and entitlements, you should check that your payroll system can also be configured to correctly determine/ calculate and provide these.

For more information and examples of how to apply the Act see [www.employment.govt.nz](http://www.employment.govt.nz). [The Holidays Act 2003 Guidance on annual holidays, bereavement leave, alternative holidays, public holidays and sick leave document](#) should be referred to for specific examples and detailed guidance.



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## Holidays Act 2003 entitlements

Check that your system is providing the correct entitlements:

### Annual holidays

- All employees are entitled to a minimum of four weeks' annual holidays each year after working continuously for 12 months. The entitlement of four weeks must represent what genuinely constitutes four working weeks for that employee. This means taking into account work patterns, rostering systems and other relevant factors.
- An employee may take annual holidays in advance of their entitlement if their employer agrees. The employer does not have to agree.
- The concept of 'accrued' holidays can be a useful tool for employers to use as an estimate of their financial liability for annual holidays. However, it is not a concept found in the Act. If a payroll system records accrued annual holidays, it is important to understand that the employee's annual holidays' entitlement after their next anniversary date for annual holidays may be different from their accrued holidays balance just before their anniversary date. This is particularly the case if the employee's work pattern has changed throughout the year and the accrued holidays have not been recorded in weeks or the accrued balance hasn't been updated to reflect the work pattern change.

*Relevant sections in the Act include:*

[s 16 Entitlement to annual holidays](#)

[s 17 How employee's entitlement to annual holidays may be met](#)

### Employees paid annual holidays as pay-as-you-go

- Check that the payroll system is set up so that there are checks in place to ensure that an employee becomes entitled to annual holidays in the usual way if they had been receiving annual holidays on a pay-as-you-go basis and then subsequently no longer qualify for pay-as-you-go because of work pattern changes or extension of a fixed-term employment agreement.

*Relevant sections in the Act include:*

[s 28 When annual holiday pay may be paid with employee's pay](#)

### Moving the anniversary/ entitlement date for annual holidays

Only in the following two circumstances can the employee's anniversary date be moved:

- If a workplace has a customary closedown period, and at the date of that closedown an employee has not yet become entitled to annual holidays (eg because they have worked there for less than 12 months). In this situation the employee's anniversary date must be reset to the date of the start of the closedown, or to another date nominated by the employer that is close to the start of the closedown. Check that your payroll system can be



configured to move the anniversary to the date of the start of the closedown or nominated date. Even if it can be, it is likely this will have to be entered into the system.

- If an employee takes a continuous period of leave without pay for more than one week (not including unpaid sick or unpaid bereavement leave) EITHER:
  - their anniversary date for entitlement to annual holidays moves out by the amount of unpaid leave taken (not including the first week); OR
  - the employer can agree with the employee that their anniversary date for annual holidays entitlement won't change. In this case, the employer must also reduce the divisor for calculating average weekly earnings for annual holidays by the number of weeks or part weeks greater than one week that the employee was on leave without pay. If there are agreements with all employees in place (eg in the employment agreements) that the anniversary date will not change, then the payroll system may be configured to automatically reduce the divisor in the average weekly pay formula by the number of weeks or part weeks greater than one week that the employee was on leave without pay. Alternatively the payroll system may be set up to provide for the anniversary date to be moved by the amount unpaid leave taken in excess of one week.

*Relevant sections in the Act include:*

[s 35 Effect of closedown period on anniversary date of employee not entitled to annual holidays](#)

[s 16 Entitlement to annual holidays](#)

## **Public holidays**

- All employees are entitled to up to 12 public holidays each year if they fall on a day that would otherwise be a working day for the employee.
- Where it is not clear whether a given day would otherwise be a working day for the employee, the Act lists relevant factors which need to be considered with a view to reaching agreement between the employer and employee on whether a day is an otherwise working day for an employee. Where the employee's work pattern is unpredictable, whether a day is an otherwise working day may need to be determined before being entered into the payroll system manually. You should make sure that the system is not set to determine whether a day is an otherwise working day for the employee (for all leave and holiday purposes) by using a blanket formula (unless this is guaranteed to always be in the employee's favour).
- An employee and employer may agree to transfer part of or all of a public holiday to another day for that employee. In this case, the employer should check that the payroll system can accommodate this, and record agreement.
- If a public holiday falls on a weekend day that is not an otherwise working day for an employee, the public holiday must be moved to the following Monday for that employee (or Tuesday if a public holiday over the Christmas and New Year period falls on a Sunday). Check that the system is able to do this.

*Relevant sections in the Act include:*

[s 43 Purpose of this subpart](#)

[s 44A Transferring part of public holiday](#)

[s 44B Transferring whole of public holiday](#)

[s 45 Transfer of public holidays over Christmas and New Year](#)

[s 45A Transfer of Waitangi Day and ANZAC Day public holidays](#)



## Alternative holidays

- If an employee works on a public holiday that would otherwise be a working day for them they must receive an alternative holiday on pay, unless they work (or are on call) for the employer only on public holidays.
- If an employee doesn't work on a public holiday but is on-call and has to limit their activities on the day to the extent that they haven't enjoyed a full holiday, but they are not called out, the employee is entitled to a whole working day off work as a paid alternative holiday if the day would otherwise be a working day for them (and they are not employed to work or be on call only on public holidays).

*Relevant sections in the Act include:*

[s 56 Alternative holiday must be provided if employee works on public holiday](#)

[s 59 Entitlement to alternative holiday if employee on call on public holiday](#)

## Sick and bereavement leave entitlements

- After 6 months current continuous employment, the Act provides employees with at least five days' sick leave and also access to bereavement leave. If an employee does not work continuously (i.e. works intermittently) then they will still become entitled to sick leave and bereavement leave if, over a period of 6 months, they have worked for the employer for an average of at least 10 hours per week, including no less than 40 hours in every month or one hour in every week (the 'work test'). Check whether the payroll system is configured to correctly apply this test.
- At the end of the 6-month period of continuous employment (or 6-month period over which they meet the work test), the employee receives the sick and bereavement leave entitlement for the next 12-month period. Even if the employee's work pattern varies in future and they are no longer meet the qualifying criteria for sick leave, their existing unused sick leave balance does not expire and they can continue to use it. Up to 15 days unused sick leave must be carried over up to a maximum of 20 days' current entitlement in any year. Check whether the payroll system is configured to provide this.

*Relevant sections in the Act include:*

[s 63 Entitlement to sick leave and bereavement leave](#)

[s 66 Sick leave may be carried over](#)

## Employees on 'casual' employment agreements

- Just because an employee is called 'casual' by the employer or is employed under a 'casual' employment agreement, does not automatically mean that they will not be entitled to paid public holidays, alternative holidays, and sick and bereavement leave. As with all other employees, it will depend whether they have met the relevant tests for becoming entitled to the type of leave or holiday under consideration and whether the day would otherwise have been a working day for that employee. It may be possible for the system to indicate if a work pattern exists, which should be taken into consideration.



- This decision as to whether a day is an otherwise working day for an employee employed on a casual employment agreement will need to be made by the employer as it is generally not possible for a system to do this for an employee with an irregular work pattern. If it is not clear whether a day is an otherwise working day, the employer and employee must take into account the factors contained in the Act with a view to reaching agreement. If it is decided that the day is an otherwise working day for the employee, there must be a process to enable this decision to be input into the payroll system. Casual employees must not have a clause in their employment agreement stating that they do not have otherwise working days (this goes against the Holidays Act 2003 and is a breach of the Employment Relations Act 2000).
- Just because an employee is on a 'casual' employment agreement does not mean that they can automatically be paid holiday pay with their regular pay (PAYG) . The test is:
  - whether their work pattern is so intermittent or irregular that it is impractical to provide four weeks' paid annual holiday; AND
  - The employee has agreed in their employment agreement to PAYG; AND
  - The PAYG holiday pay is a separate and identifiable component of the employee's pay.
- If the work pattern changes to become regular the employee will not qualify for pay-as-you-go holiday pay and must move to receiving four weeks' paid annual holiday. This decision must be made by the employer not the payroll system.

*Relevant sections in the Act include:*

[s 8 When annual holiday pay may be paid with employee's pay](#)  
[s 12 Determination of what would otherwise be working day](#)

## **Employees on fixed-term employment agreements**

Just because an employee is on a fixed-term employment agreement, does not automatically mean that they will not be entitled to paid public holidays, alternative holidays, sick and bereavement leave. As with all other employees, it will depend on whether they have met the test for becoming entitled to the type of leave or holiday and whether the day would otherwise have been a working day for that employee.

Nor does the fact that an employee is on a fixed-term employment agreement' automatically mean that they can be paid holiday pay with their regular pay (PAYG). The test is:

- The fixed-term agreement must be genuine and in accordance with section 66 of the Employment Relations Act 2000; AND
- the fixed terms agreement must be for less than 12 months; AND
- the employee must agree in their employment agreement to PAYG; AND
- the PAYG holiday pay is a separate and identifiable component of the employee's pay.



If the fixed term is extended to be 12 months or more, the employee must move to receiving four weeks' paid annual holiday.

## Holidays Act 2003 Payment rates

Check that your system is providing the right rate of payment for each type of holiday and leave

### Annual holidays

These must be paid at the rate of the greater of ordinary weekly pay or average weekly pay.

- Check that when annual holidays are taken by an employee who has become entitled to annual holidays, the payroll system considers ordinary weekly pay (at the beginning of the annual holiday) and average weekly earnings (for the 12 months immediately before the end of the last pay period before the annual holiday) and then pays the greater of the two. The one exception to this relates to holidays taken in the first 12 months back at work after a return from parental leave.
- If it is not possible to determine an employee's ordinary weekly pay (including payment for board and lodging and regular overtime and/or incentive payments), then the 4 week formula must be calculated and this is then compared to the employee's average weekly earnings, and the greater of the calculations must be used. Make sure that your payroll system correctly includes all the components of gross earnings.
- Check that the system is set up so that the employee is paid before the holiday unless they have agreed to be paid in the pay period relating that in which the holiday is taken.
- Check that if an employee takes one period of annual holidays that falls across multiple pay periods that the payment calculation is done at the beginning of the holiday for the entire annual holiday.

*Relevant sections in the Act include:*

[s 21 Calculation of annual holiday pay](#)

[s 8 Meaning of ordinary weekly pay](#)

- In the case of annual holidays that an employee becomes entitled to during parental leave (or the parental leave preference period) check that the payroll systems pays can be configured so that these holidays can be paid at the rate of the employee's average weekly earnings for the 12 months immediately before the end of the past pay period before the annual holiday is taken (or paid out). The system must have the ability to accommodate any contractual provisions providing for a higher payment or payments in lump sums. The system must allocate the holidays in the order that the employee becomes entitled to them. Annual holidays that an employee became entitled to before taking parental leave started are not affected and must be paid at the greater of ordinary weekly pay and average weekly earnings as usual.

*Relevant sections include:*

[s 42 Parental Leave and Employment Protection Act 1987, Employer's obligations in respect of remuneration and holiday pay.](#)





- Check that for annual holidays taken in advance by an employee with less than 12 months employment their average weekly earnings is calculated using the gross earnings for the period of employment before the end of the last pay period before the annual holiday divided by the number of whole or part weeks that the employee has worked for the employer in this period.
- Check that for employees paid annual holidays on a pay-as-you-go basis that the payroll system is correctly calculating the payment of 8% gross earnings each pay and that the correct components are included in gross earnings.
- Check that if you accept requests from employees to pay out a portion of their annual holidays, the payroll system can correctly make the payment and deduct the correct amount from the employee's annual holidays balance. The system (or the employer) must check that the employee does not have more than 1 week of the employee's legislative minimum annual holiday paid out in each entitlement year. The employee request also needs to be recorded.

*Relevant sections in the Act include:*

[s 21 Calculation of annual holiday pay](#)

[s 5 Interpretation \(average weekly earnings\)](#)

[s 8 Meaning of ordinary weekly pay](#)

[s 42 Parental Leave and Employment Protection Act 1987, Employer's obligations in respect of remuneration and holiday pay.](#)

[s 28A Employee may request portion of annual holidays be paid out](#)

## **Bereavement leave, alternative holidays, unworked public holidays, sick leave**

These must be paid at the rate of relevant daily pay or average daily pay.

- Check that your payroll system has the functionality to calculate both relevant daily pay and average daily pay.
- Relevant daily pay should be used, except in specific circumstances where the employee meets the tests for using average daily pay.
- Average daily pay may be used only in two circumstances:
  - where an employee's daily pay varies in the pay period where the leave or holiday is taken or
  - if it is not possible or practicable to determine an employee's relevant daily.
- It is recommended that the payroll system is not set to automatically pay an employee average daily pay as the default option because average daily pay can only be used in specific circumstances and it is difficult to guarantee that these circumstances will exist on each occasion that the employee takes the relevant leave or holidays.
- It is recommended that the payroll system is not set to default to average daily pay on each occasion the employee's daily pay happens to vary in the pay period. If the variation is so regular and predictable that is clear what the employee would have earned for working on the day, it is recommended that the employer chose to use relevant daily pay. This is because employees generally expect to be paid the amount they would have received for



working on the day and using relevant daily pay (where it can be determined) will always comply with the Holidays Act 2003.

*Relevant sections in the Act include:*

[s 9 Meaning of relevant daily pay](#)

[s 9A Average daily pay](#)

## Worked public holidays

These are paid at the rate of the greater of:

- that part of relevant daily pay (less any penal rates) for the time worked on the day multiplied by time and a half; or
- that part of the employee's relevant daily pay for the time worked on the day, including any penal rates

Check that the payroll system compares time and a half x relevant daily pay (not including penal rates) and relevant daily pay (including penal rates) and pays the greater amount.

Even if using average daily pay instead of relevant daily pay may be an option if the employee's daily pay varies in the pay period, it is not recommended because it will always be possible to determine the employee's relevant daily pay if they work on the day and this is what employees would generally expect to be paid.

*Relevant sections in the Act include:*

[s50 Employer must pay employee at least time and a half for working on public holiday](#)

## Formulas and definitions

Check the payroll system is using correct formulas and definitions:

### Otherwise working day

Check the payroll system identifies what an otherwise working day is for each individual employee with a consistent work pattern.

If the employee does not work to a consistent work pattern, the decision as to whether a day is an otherwise working day for them will generally need to be made each time a public holiday falls, or the employee wants to take sick leave, bereavement leave or an alternative holiday. As it is generally not possible for a system to make this decision it must be inputted into the system. The Act states that where it is not clear whether a day is an otherwise working day the employer and employee must take into account the factors specified in the Act with a view to reaching agreement.

*Relevant sections in the Act include:*

[s 12 Determination of what would otherwise be working day](#)

### Gross earnings

Check the payroll system is correctly including (or excluding) payments in gross earnings. This is important because gross earnings are used for a number of calculations, such as average weekly earnings, ordinary weekly pay (using the 4 week formula), average daily pay, payment for closedown



for employees with no entitlement to annual holidays, the annual holidays component of final pay and pay-as-you-go holiday pay.

Gross earnings includes payments that the employer is required to pay to the employee under the employee's employment agreement, including eg salary or wages, taxable allowances (but not reimbursing allowances), commissions, and overtime payments. If you are unsure whether a payment should be included in gross earnings, it should be included or legal advice should be sought before excluding it.

*Relevant sections in the Act include:*

[s 14 Meaning of gross earnings](#)

## Ordinary weekly pay

Check that the payroll system can be configured to include all relevant payments and correctly determines ordinary weekly pay. Ordinary weekly pay means the amount of pay that the employee receives under their employment agreement for an ordinary working week.

It includes:

- productivity or incentive-based payments (including commission) if those payments are a regular part of the employee's pay
- payments for overtime if those payments are a regular part of the employee's pay
- the cash value of any board or lodgings provided by the employer to the employee

It does not include:

- productivity or incentive-based payments that are not a regular part of the employee's pay
- payments for overtime that are not a regular part of the employee's pay
- any one-off or exceptional payments
- any discretionary payments that the employer is not bound to pay under the terms of the employee's employment agreement
- any payment of any employer contribution to a superannuation scheme for the employee's benefit.

If it is not possible to determine an employee's ordinary weekly pay then the formula set out in the Act must be used. The formula is:

$(a-b)/4$  where:

- a is the employee's gross earnings for the 4 calendar weeks before the end of the pay period immediately before the calculation is made (or if the pay period is longer than 4 weeks, then the pay period before the calculation is made)
- b is the total amount of payments set out in section 8(1)(c)(i) to (ii) of the Act, being productivity or incentive-based payments or payments for overtime that are not a regular part of the employee's pay, any one-off or exceptional payments, any discretionary payments that the employer is not bound to pay under the terms of the employee's employment agreement, and any payment of any employer contribution to a superannuation scheme for the employee's benefit.



Check the payroll system is appropriately using the formula for determining ordinary weekly pay and that the formula is only used when it is not possible to determine what the employee receives under their employment agreement for an ordinary working week, rather than by default.

Note that the divisor remains '4', even if the pay period is longer than 4 weeks.

*Relevant sections in the Act include:*

[s 8 Meaning of ordinary weekly pay](#)

## **Regular payments**

It is important to check what additional (contractual) payments are made to each employee to determine what an employee would receive on an ordinary working week/day, for the determination of ordinary weekly pay or relevant daily pay.

*Relevant sections in the Act include:*

[s 8 Meaning of ordinary weekly pay](#)

## **Average weekly earnings**

When calculating average weekly earnings, be aware that section 5 of the Act sets out the formula that must be used.

Average weekly earnings are worked out by calculating the employee's gross earnings over the 12 months prior to the end of the last payroll period before the annual holiday is taken, and dividing that figure by 52.

*Relevant sections in the Act include:*

[s 5 Holidays Act 2003 Interpretation](#)

## **Average daily pay**

When calculating average daily pay, be aware that section 9A(2) of the Act sets out the formula that must be used.

Check that the payroll system calculates average daily pay using the following formula:

a/b where:

- a is the employee's gross earnings for the 52 calendar weeks before the end of the pay period immediately before the calculation is made
- b is the number of whole or part days during which the employee earned those gross earnings, including any day on which the employee was on a paid holiday or paid leave; but excluding any other day on which the employee did not actually work.

*Relevant sections in the Act include:*

[s 9A Holidays Act 2003](#)



## Relevant daily pay

Relevant daily pay means paying an employee what they would have received if they were at work on the day. It includes:

- payments such as regular (taxable) allowances, productivity or incentives, commission and bonuses if the employee would have received them on the day
- overtime payments, if the employee would have received them on the day
- the cash value of board or lodgings if this has been provided by the employer.

Relevant daily pay does not include:

- employer contribution payments into an employee superannuation fund
- reimbursements payable to the employee for the day.

*Relevant sections in the Act include:*

[s 9 Holidays Act 2003 Meaning of relevant daily pay](#)

## Penal rates

A penal rate is an additional amount that the employer and employee agree will be paid to the employee for working on a particular day or type of day. Penal rates are usually specified in employment agreements. Examples of penal rates for the purposes of calculating payment for working on a public holiday include additional rates for working on Saturdays or Sundays, or public holiday rates.

Allowances, such as wet weather allowance, shift allowance, night rates, overtime rates and special rates for working a sixth or seventh day in a row are not penal rates for the purposes of calculating payment for working on a public holiday.

## Recording employees' work patterns and remuneration

### Check that your payroll system is accurately recording each employee's current work pattern:

The law requires employers to keep accurate wages and time and holiday and leave records for each employee. This includes a record of the days worked, the hours worked each day (including overtime worked on each day) and the pay received for those hours. For more information about record keeping requirements see <https://www.employment.govt.nz/hours-and-wages/keeping-accurate-records/>

#### Record of days worked and hours worked each day

The days worked and hours worked each day by an employee is part of their work pattern. These records are used to work out pay and entitlements for leave and holidays (and also to ensure that the employee is receiving at least the minimum wage for their hours worked).

Even for salaried workers it is important to understand the hours/days that are worked. However, keeping a record of time worked each day may not be necessary if the employee works the same hours on the same days every week and there is a clear record of this (eg in their employment agreement). However, you must be certain that the employee only ever works those hours. It is important to remember that an indication of hours and/or days of work set out in an employment



agreement may not be accurate over time, and it is important to confirm that any assumptions about hours of work remain accurate.

*Relevant sections in the Act include:*

[s 12 Determination of what would otherwise be a working day](#)

[s 81 Holidays and leave record](#)

### **Record of amount paid for the hours worked each day**

- This is also part of an employee's work pattern and is used to determine what an employee should be paid for leave on certain days/weeks (and eg to work out whether a day is an otherwise working day for the employee).

*Relevant sections in the Act include:*

[s 5 Interpretation \(average weekly earnings\)](#)

[s 9 Meaning of relevant daily pay](#)

[s 9A Average daily pay](#)

[s 81 Holidays and leave record](#)

### **Additional payments**

- Most additional payments (eg allowances or bonuses) that an employee receives need to be considered for the purpose of determining payments for holidays and leave.
- The law requires records of these payments to be kept.

*Relevant sections in the Act include:*

[s 14 Meaning of gross earnings](#)

### **Overtime hours and payments**

- It is important to record on which days the employee works overtime.
- It is also important to record any scheduled overtime that the employee will be working in the future if this is known. This is used when determining relevant daily pay and is also used to determine the amount of hours an employee would otherwise have worked on a day.

*Relevant sections in the Act include:*

[s 8 Meaning of ordinary weekly pay](#)

[s 9 Meaning of relevant daily pay](#)

## **Check the payroll system is calculating remuneration correctly**

### **Interpretation of employment agreements**

- Provisions in the employment agreement may affect how the employee is paid for work, leave and holidays.
- This may also include other agreements and workplace policies. It is important that any employee or workplace-specific provisions are able to be configured into the payroll system and that a process is in place to make sure that happens and that updates are done if the policy or practice changes.
- If an employment agreement specifies a special rate eg for ordinary weekly pay, or relevant daily pay, this may be used, but only if it is at least as much as what would be calculated or determined under the Act.
- All employees must receive at least their minimum entitlements under the Act.



Relevant sections in the Act include:

[s 6 Relationship between Act and employment agreements](#)

[s 9 Meaning of relevant daily pay](#)

[s 14 Meaning of gross earnings](#)

## Check your payroll system can carry out the necessary functions:

### Formulas

A payroll system needs to be able to alternate between determination of pay and calculating using formulas in response to different circumstances. There may be a human judgement required eg when it is impossible or impractical to determine relevant daily pay (and so average daily pay may be used), or when it is not possible to determine ordinary weekly pay (and so the formula must be used).

Check that the systems and procedures that are in place ensure that the correct formulas are used each time. For example, if you cannot be certain of an employee's ordinary weekly pay for a given week, the formula for determining ordinary weekly pay should then be used, and should be used consistently.

Relevant sections in the Act include:

[s 8 Meaning of ordinary weekly pay](#)

[s 9 Meaning of relevant daily pay](#)

[s 9A Average daily pay](#)

### Paying entitlements on termination

- Payroll must be set up to pay all relevant entitlements on termination of employment. This includes eg annual holidays, public holidays, notional public holidays, and unused alternative holidays.
- Payment must be made in the pay that relates to the employee's final period of employment, and no later than their last day of work.
- Any unused alternative holidays must be paid at the rate of the employee's relevant daily pay (or average daily pay) for their last day of employment; in the pay that relates to the employee's final period of employment.
- Any unused annual holiday entitlement remaining at termination is notionally added on to the termination date (e.g. if three weeks annual holidays are owed then these will be 'added on' to the end date of employment). Any public holidays that fall during that notional extended period and are otherwise working days for the employee are treated and paid as public holidays for the employee. For each public holiday that is paid in this way, an annual holiday day is effectively not being used and will then be added on the notional extended period to form a new notional extended period. This may then result in the employee becoming entitled to additional public holidays.
- Any part year worked must be paid at the rate of 8% of gross earnings for that part of the year (minus any annual holidays taken in advance or cashed up).



- Most other payments to employees in addition to wages and salaries (including allowances and bonuses) must be included in gross earnings for the purpose of calculating the 8%. It is important to check which of these payments need to be included.

*Relevant sections in the Act include:*

[s 14 Meaning of gross earnings](#)

[s 23 Calculation of annual holiday pay if employment ends within 12 months](#)

[s 24 Calculation of annual holiday pay if employment ends and entitlement to holidays has arisen](#)

[s 25 Calculation of annual holiday pay if employment ends before further entitlement has arisen](#)

[s 60 Payment for alternative holiday](#)

### **Closedown periods**

If your business has a customary annual closedown period (which meets the requirements of and definitions in the Act) during which employees must take annual holidays, there are rules that must be followed and it is important that the payroll system can accommodate these:

- For employees who are not entitled to annual holidays, the employer must pay them 8% of their gross earnings since the start of their employment (or since their last anniversary date for annual holidays) less any amount paid for holidays taken in advance or paid on a pay-as-you-go basis. The employee's anniversary date must be moved to the start of the closedown period (or another date reasonably close to the closedown start date, nominated by the employer). They can (with the employer's agreement) take annual holidays in advance during the closedown.
- For employee's who have become entitled to annual holidays, these employees must (with 14 days' notice) take as many days of annual holidays that they are entitled to to cover the closedown period. If they do not have enough days, they can (with the employer's agreement) take annual holidays in advance or leave without pay.

*Relevant sections in the Act include:*

[s 12 Determination of what would otherwise be a working day](#)

[s 29 Meaning of a closedown period](#)

[s 30 Frequency of closedown periods](#)

[s 32 Requirement to take annual holidays during closedown period](#)

[s 33 Payment of annual holiday pay during closedown period for employee entitled to annual holidays](#)

### **Record of annual holidays paid out**

The payroll system must allow for the cashing up of one week of the employee's holiday entitlement per entitlement year, unless the business has a specific policy otherwise.

The system must only allow a cash up of a maximum of one week (out of the four weeks minimum legislative entitlement per year provided) each entitlement year. Only annual holidays which the employee is already entitled to can be cashed up. Annual holidays to which the employee will not become entitled until their next annual holiday anniversary cannot be cashed up.





A maximum of 1 week's annual holiday may be cashed up in any 1 entitlement year.

If an employee is entitled to extra annual holidays in addition to the legal minimum the employer may also agree to cash up the extra holidays. However, it will be necessary to record these additional contractual holidays entitlements, and any "cashing up" of them, separately to minimum entitlements, so as to be able to demonstrate that only one week per year of the statutory minimum holidays entitlements has been the subject of "cashing up".

*Relevant sections in the Act include:*

[s 28A Employee may request portion of annual holidays be paid out](#)

[s 28B Payment for annual holidays paid out](#)