

## A-Z Guide

# Public Holidays



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## Use This Guide to Understand

- There are 12 public holidays provided to employees in New Zealand.
- Employers may be liable to pay an employee if:
  - an employee works on any part of a public holiday
  - an employee does not work a public holiday, but would have worked the day if it had not been a public holiday (an 'otherwise working day').
- Payment for the day is at the rate of either Relevant Daily Pay or Average Daily Pay, as appropriate.
- An employee may be entitled to an alternative holiday if:
  - they work on a public holiday and that day is an otherwise working day
  - they were on call on the public holiday but did not work, and the restrictions on them that day meant that they did not enjoy a whole holiday.
- The payment for an alternative holiday must not be less than the employee's Relevant Daily Pay (or Average Daily Pay) when the alternative holiday is taken.
- An employee cannot take an annual holiday on a day on which a public holiday falls.
- If an employee is scheduled to work on a public holiday (that is an otherwise working day) but is sick, the employee should be paid as if he or she has taken the public holiday.
- In certain circumstances alternative holidays may be exchanged for money.
- Alternative holidays not taken before the employment ends are paid in the employee's final pay.

## Public Holidays

Public holidays are provided for in the Holidays Act 2003. The Act sets out the minimum entitlements to public holidays for all employees in New Zealand.

You can provide an employee with enhanced or additional entitlements by agreement, however you cannot exclude, restrict, or reduce an employee's entitlements under the Act. Any such term in an employment agreement is ineffective.

An employee who has several part-time jobs has separate entitlements with each employer – each employment is a separate and distinct relationship under the Act.

The Act lists the following days as public holidays:

- Christmas Day
- Boxing Day
- New Year's Day
- 2 January
- Waitangi Day
- Good Friday
- Easter Monday
- ANZAC Day
- Queen's Birthday (observed on the first Monday in June)
- Matariki Observance Day (set out in Schedule 1 of the Te Kāhui o Matariki Public Holiday Act 2022)
- Labour Day (being the fourth Monday in October)
- The day of the anniversary of a province or the day locally observed as that day.



If two or more of the public holidays fall on the same day, the public holidays must be treated as one day.

This A-Z Guide deals with public holidays. Separate A-Z guides deal with:

- Annual Holidays
- Sick Leave
- Domestic Leave
- Bereavement Leave
- Leave Forms
- Parental Leave
- Holidays Act

## Entitlement to Public Holidays

An employee may be entitled to 12 public holidays, and payment for those holidays, if the holidays fall on days which, but for the public holidays, would otherwise be working days for the employee. As of 8 April 2022, the Te Kāhui o Matariki Public Holiday Act 2022 came into effect establishing Matariki, the Māori New Year, as a national public holiday, beginning on 24 June 2022. As Matariki is based on lunar cycles in June or July, the Act also established the dates Matariki will be observed until 2052.

### Enjoying the day off

An employee is entitled to enjoy a day off work on a public holiday, unless under the terms of the employment agreement the employee can be required to work on the day. If the employee is required to work on the public holiday and refuses to work and is absent. An employee is still entitled to receive Relevant Daily Pay, if that day but for the public holiday, would have been an 'otherwise working day' for the employee.

However, as it may have been a requirement for the employee to work as per the terms of their employment agreement, the employer may view the refusal to work and absence as a form of misconduct.

If the public holiday is not an 'otherwise working day' for the employee, the parties can reach agreement about whether or not the employee will work that day.

### Payment for the day

Payment for a public holiday is dependent on whether the day is an otherwise working day for the employee, and whether the employee worked that day. If the employee is entitled to payment for a public holiday, that payment must be made in the pay that relates to the pay period during which the public holiday occurs.

In this table RDP means the employee's Relevant Daily Pay and ADP means the employee's Average Daily Pay (defined below).



Was the day an Otherwise Working Day?	Did the employee work on the day?	They are entitled to be paid:
Yes	No	RDP, or if it is not possible or practicable to determine RDP, then ADP should be paid.
Yes	Yes	At the rate of the portion of the employee's RDP that relates to the time worked that day, plus half that amount again (time and a half). The employee is also entitled to an Alternative Holiday.
No	No	Nothing, as they would not have worked that day regardless of it being a public holiday.
No	Yes	At the rate of the portion of the employee's RDP that relates to the time worked that day, plus half that amount again (time and a half).

## Relevant Daily Pay

Relevant daily pay means the amount of pay that the employee would have received had the employee worked on the day concerned. It includes:

- Productivity or incentive-based payments (including commission) if those payments would have otherwise been received on the day concerned
- Payments for overtime if those payments would have otherwise been received on the day concerned
- The cash value of any board or lodgings provided by the employer to the employee, unless the work done by the employer requires the employee to stay overnight in a place of residence other than the employee's usual place of residence, or if the board or lodgings are provided because of special circumstances.

Relevant daily pay does not include any extra amount that would be paid in compliance with the requirement to pay time and a half, and does not include the payment of any employer contribution to a superannuation scheme for the benefit of the employee.

## Average Daily Pay

If it is not possible to determine an employee's Relevant Daily Pay because they have irregular work patterns, it is calculated by using the Average Daily Pay calculation:

$$\text{Average Daily Pay} = \frac{a}{b}$$

Where:

**a** is the employee's Gross Earnings for the last 52 calendar weeks

**b** is the number of whole or part days during which the employee earned those Gross Earnings (including paid leave but excluding other days not worked)



## Gross earnings

Gross earnings, in relation to an employee for the period during which the earnings are being assessed, means all the payments that the employer is required to pay under the employee's employment agreement. This includes:

- salary or wages
- allowances (except non-taxable payments to reimburse the employee for any actual costs incurred by the employee related to their employment)
- payments for annual holidays, public holidays, sick leave, bereavement leave
- productivity or incentive-based payments (including commission)
- overtime
- the cash value of any board or lodgings
- first week lost earnings for ACC

Gross earnings do not include any payments that the employer is not bound, by the terms of the employment agreement, to pay to the employee, for example:

- any discretionary payments
- any payment for absence provided for by the Volunteers Employment Protection Act 1973
- any payment to reimburse an employee for costs incurred in or related to the employee's employment
- reimbursements of actual costs, or reasonably-assessed amounts to reimburse the employee for costs incurred by the employee related to the employment
- superannuation payments
- cashed-out statutory annual leave

## What is an Otherwise Working Day?

If an employee would have worked a particular day, had the public holiday not fallen on that day, then the day is considered to be an 'otherwise working day'. It can be difficult to work out whether a day is an otherwise working day, particularly where the employee's hours or days of work are variable.

You should agree with your employee on what would otherwise be a working day in the employee's employment agreement. The employee's entitlements to a public holiday, an alternative holiday, sick leave, and bereavement leave will depend on this. Even if an employee would only have worked for a short period of time on a public holiday, that day must be treated as a day that would otherwise be a working day for the employee. If it is not clear whether a day would otherwise be a working day for the employee, the employer and employee must take into account, with a view to reaching agreement on the matter:

- The terms of the employment agreement
- The employee's work patterns
- Whether, but for the day being a public holiday, an alternative holiday, or a day on which the employee was on sick leave or bereavement leave, the employee would have worked on the day concerned
- Any other relevant factors including:
  - whether the employee works for the employer only when work is available
  - the employer's rosters or other similar systems
  - the reasonable expectations of the employer and the employee that the employee would work on the day concerned

If an employer and employee are unable to agree on whether a day would otherwise be a working day for the employee a labour inspector may make a determination. A labour inspector's determination is binding unless the Employment Relations Authority determines otherwise.



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## Shorter hours on a public holiday

Although the Holidays Act stipulates a time and a half payment for staff who work on a public holiday, the Act does not guarantee that staff will be better off monetarily. The Act only requires staff be paid the portion of their Relevant Daily Pay (or Average Daily Pay) that relates to the time actually worked, at the time and a half rate. If the working day is shortened on a public holiday this could mean less pay overall than a normal working day.

However an employment agreement may specify a minimum number of hours to be provided to an employee for any day or week. Consequently employers may be contractually obliged to pay an employee who works on a public holiday for a full day so that the required number of hours is met (a 'top up'). The employer in this situation will need to ensure that they meet both the contractual and the Holidays Act requirements.

## Mondayisation

### ANZAC Day and Waitangi Day

If Waitangi Day or ANZAC Day fall on a Saturday or Sunday, and that day is not an otherwise working day for that employee, then the holiday is transferred to the following Monday. If the following Monday is an otherwise working day for the employee, then the employee will be entitled to the public holiday.

However, if the following Monday is not an otherwise working day, then the employee will not be entitled to a public holiday. Employees who usually work on Saturday or Sunday will observe the public holiday when it falls, and the day will not transfer.

### Christmas and New Year holidays

Special rules apply to the following days:

- Christmas Day
- Boxing Day
- New Year's Day
- 2 January

If any of these days falls on a Saturday in a given year, and that day would otherwise be a working day for the employee, the public holiday is treated as falling on the Saturday and will not transfer.

The same applies where one of these days falls on a Sunday, and that day would otherwise be a working day for the employee. The public holiday is treated as falling on that Sunday and will not transfer.

However, if any of these days falls on a Saturday, and that day would not otherwise be a working day for the employee, the public holiday must be treated as falling on the following Monday.

If any of these days falls on a Sunday, and that day would not otherwise be a working day for the employee, the public holiday must be treated as falling on the following Tuesday.

This provision does not entitle an employee to more than 4 public holidays for Christmas Day, Boxing Day, New Year's Day and 2 January.



### Example 1

#### **Public holidays – no transfer**

Christmas Day and Boxing Day, and New Year's Day and 2 January, fall on Saturday and Sunday respectively. The employee normally works on Saturdays and Sundays, so these days, but for the public holidays, would otherwise be working days for the employee. The days will not transfer.

If the employee is not required to work those days, the employee is entitled to Relevant Daily Pay (or Average Daily Pay) for each of the public holidays.

### Example 2

#### **Transfer of public holidays and not required to work**

Christmas Day and Boxing Day, and New Year's Day and 2 January, fall on Saturday and Sunday respectively. The employee does not normally work on Saturdays and Sundays, so these days, but for the public holidays, would not otherwise be working days for the employee. All four public holidays transfer to the following Mondays and Tuesdays.

The employee does not normally work on Mondays, and is therefore not entitled to be paid for the two Mondays. The employee does normally work on Tuesdays, so when the employee does not work they are entitled to be paid their Relevant Daily Pay (or Average Daily Pay) for each Tuesday.

### Example 3

#### **Transfer of public holidays and required to work**

Christmas Day and Boxing Day, and New Year's Day and 2 January, fall on Saturday and Sunday respectively. The employee does not normally work on Saturdays and Sundays, so these days, but for the public holidays, would not otherwise be working days for the employee. All four public holidays transfer to the following Mondays and Tuesdays.

The employee does not normally work on Mondays, so when the employee agrees to work to cover other employees (who are on holiday) the employer is required to pay the employee at the rate of the portion of the employee's RDP that relates to the time worked that day, plus half that amount again (time and a half). The employer is not required to provide the employee with an alternative holiday instead of the holiday.

The employee normally works on Tuesdays, so when the employee is required to work on that day the employer is required to pay the employee payment for working on the public holiday (as above, at time and a half) and provide the employee with an alternative holiday instead of the holiday.

## Transfer of Public Holidays

The Act allows employers and employees to agree to transfer a public holiday to any 24 hour period.

This means a public holiday may be agreed to be transferred:

- By a few hours to match shift arrangements
- To a completely different day (and not necessarily midnight to midnight)

In the absence of a written agreement, a public holiday is observed midnight to midnight on the traditional day.

So how does this work in practice? See examples 5 and 6 for the two most common situations.

### Example 5

#### **Transfer the public holiday by just a few hours**

A food production company works rostered shifts from 10pm to 6am. The shift falling on 24/25 April means that two hours are not on a public holiday and the other six hours fall on ANZAC Day. The next shift starts at 10pm on Anzac Day meaning two hours of that shift will be a public holiday and the remaining six hours are not.



The employee and employer can agree in writing (not necessarily as part of an employment agreement) that ANZAC Day starts at 10pm on 24 April and finishes at 9.59 pm on 25 April. This agreement can be reached even if one person works the shift commencing 10pm 24 April and a different person works the shift commencing 10pm 25 April, as long as all employees concerned have agreed.

**Example 6**

***Transfer to a completely different day***

ANZAC Day falls on a Thursday and a group of employees and their employer agree to transfer that day to Friday to create a long weekend.

OR

An employee of Muslim belief asks to work Good Friday and Easter Monday and instead have the day Ramadan ends and the following day off work as public holidays. The end of Ramadan varies as it is set by the Moon.

Note: Payment for the public holidays in the examples above assumes that the days are otherwise working days for employees.

## Entitlement to Alternative Holidays

If an employee is required to work on a public holiday that falls on a day which, but for the public holiday, would otherwise be a working day for the employee, the employer is required to pay the employee for working on that day and also to provide the employee with an alternative holiday.

When an employee is on call on a public holiday that falls on a day which, but for the public holiday, would otherwise be a working day for the employee, and the nature of the restriction imposed by the on call condition on the employee's freedom is such that, for all practical purposes the employee has not had a whole holiday, the employer must provide the employee with an alternative holiday.

### Taking an alternative holiday

An alternative holiday must be taken on a day that is agreed between the employer and employee, on a day that would otherwise be a working day for the employee. The alternative holiday must be a whole working day off for the employee, regardless of the amount of time the employee actually worked on the public holiday. If the employer and employee cannot agree when the day is to be taken, the employer can determine the date on a reasonable basis. The employer must give at least 14 days' notice.

### Cashing up instead

If 12 months have passed since an employee became entitled to an alternative holiday and the employee and employer cannot agree when the employee is to take the alternative holiday, then if the employee requests and the employer agrees to that request, the alternative holiday may be cashed up. The employee and employer must reach agreement on the amount to be paid in exchange for the alternative holiday.





## Payment of alternative holidays

The payment of the alternative holiday must be in the pay that relates to the pay period in which the alternative holiday occurs. If an employer and employee agree to the cashing up of an alternative holiday then the employer must make the payment of the alternative holiday as soon as practicable after that agreement is reached.

If an employee's employment has ended and the employee has not taken an alternative holiday to which the employee is entitled, then the payment of the alternative holiday must be in the pay that relates to the employee's final period of employment.

## Other Issues

### Employment agreements

The Holidays Act requires that all employment agreements confirm the right of the employee to be paid at least the portion of the employee's Relevant Daily Pay (or Average Daily Pay) plus half that rate again for work on a public holiday.

### Annual holidays

When an employee is taking annual holidays and a public holiday occurs, then that day must be treated as a public holiday and not as part of the employee's annual holidays. The employee is entitled to be paid for the public holiday if the holiday would have otherwise been a working day for them.

### Employment has ended

When an employee's employment ends and the employee is entitled to annual holidays, all or some of which have not been taken, then for the purposes of determining whether or not the employee is entitled to payment for a public holiday that occurs after the employment has ended, you must treat the remaining annual holiday entitlement as being taken immediately after the date on which the employee's employment came to an end.

Where a public holiday occurs on an otherwise working day during the time a remaining annual leave entitlement is being taken at the end of the employee's employment, the employee is entitled to payment for the public holiday.

If an employee's employment ends and the employee has no entitled leave (for example, the employee has only a part-year accrual of annual leave), then the employee will not be paid in respect of any public holidays that occur on otherwise working days after the employment ends.

#### Example 7

When the employee's employment ends the employee, who worked Monday to Friday, has 10 days of annual holiday entitlement remaining to be taken. The employee's employment ends the week before Easter. The public holidays that will occur on otherwise working days in the 2 weeks immediately after the date on which the employee's employment ended are Good Friday, Easter Monday, and ANZAC Day (Friday). Refer to the **A-Z Guide on Annual Holidays** for more information.

M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W
AH	AH	AH	AH	PH	X	X	PH	AH	AH	AH	PH	X	X	AH	AH	AH



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## Sick leave, bereavement leave and family violence leave

If an employee is scheduled to work on a public holiday that falls on a day which, but for the public holiday, would otherwise be a working day for the employee and the employee:

- (or the employee's spouse or dependant) is sick or injured; or
- suffers a bereavement; or
- becomes entitled to take family violence leave

then it follows that the employee is entitled to take the public holiday that he or she would otherwise have taken or worked. The employee is entitled to be paid for the day at the rate of their Relevant Daily Pay (or Average Daily Pay), and no sick leave, bereavement leave or family violence leave is to be deducted from their entitlement.

## Parental leave

If an employee is on parental leave when a public holiday falls there is no entitlement to the public holiday.

## Holiday and leave records

The Holidays Act requires an employer to keep a holiday and leave record for each employee that records (amongst other things):

- The dates of, and payments for, any public holiday on which the employee worked; and
- The number of hours that the employee worked on any public holiday; and
- That date on which the employee became entitled to any alternative holiday; and
- The details of the dates of, and payments for, any public holiday or alternative holiday on which the employee did not work, but for which the employee had an entitlement to holiday pay
- The details of any payment to which the employee is entitled which relates to payment in exchange for an alternative holiday
- The date of the termination of the employee's employment
- The amount paid to the employee as holiday pay upon termination of the employee's employment

A holiday and leave record must be kept in written form or in a form or in a manner that allows the information recorded to be easily accessed and converted into written form.

The information entered in an employee's holiday and leave record must be kept for not less than 6 years after the date on which the information is entered. However, EMA Advice recommends that you keep the information for the duration of the employee's employment, and for not less than 6 years after the employee's employment ends.

If a request for access to, or a copy of, or a certified extract from, information in relation to an employee is made by:

- The employee
- An authorised representative (of the employee)
- An authorised representative of a union of which the employee is a member
- A labour inspector

Then an employer who receives such a request must comply with the request as soon as practicable by allowing that person to view the record or by providing a copy or certified extract of the information concerned.

Refer to the **A-Z Guide on Records and the Holidays Act**, for more information.



# Enforcement

## Rights and obligations

The Holidays Act stipulates that when dealing with each other an employer and employee must act in good faith.

The Act also requires that an employer must inform a new employee, at the time the employee enters into an employment agreement with the employer, about the employee's entitlements under the Act and that the employee can obtain further information about his or her entitlements from either the union of which the employee is a member (if applicable) or the Ministry of Business, Innovation and Employment.

The provisions of the Holidays Act may be enforced by:

- An employee
- An authorised representative of an employee
- A representative of a union of which the employee is a member
- An employer
- A labour inspector

However, any entitlements that an employee enjoys that are additional to the minimum entitlements contained in this Act may be enforced only by an employee, an authorised representative (of an employee), or a representative of a union of which the employee is a member.

While any of the above persons may enforce the Act, only a labour inspector may bring an action for a penalty against an employer for failure to comply with the Act.

An action to recover unpaid holiday pay or unpaid leave pay may be brought by any person who may enforce the provisions of the Act.

The Act may be enforced by applying to the Employment Relations Authority.

Every labour inspector has, in addition to the powers conferred by this Act, powers of entry under the Employment Relations Act 2000. These powers enable a labour inspector to enter, at any reasonable hour, any premises where any person is employed or where the labour inspector has reasonable cause to believe that any person is employed, and to:

- Interview any person, or any employer, or any employee
- Require the production of, and to inspect and take copies from any holiday and leave record
- Require any employer to supply to the labour inspector a copy of the holiday and leave record or employment agreement or both of any employee of that employer
- Question any employer about compliance with the Holidays Act



## Determinations by labour inspectors

The Holidays Act 2003 provides that, where an employer and employee are unable to agree, a labour inspector may make a determination about:

- For the purposes of the ordinary weekly pay or Relevant Daily Pay of the employee, the cash value of any board or lodgings provided by the employer to the employee
- The Relevant Daily Pay
- Whether a day would otherwise be a working day for the employee
- The amount of pay the employee must receive for working on a public holiday which occurs on a day that would otherwise be a working day for the employee

A labour inspector may bring an action against an employer, for the employer's failure to comply with any of the provisions of the Act relating to public holidays.

## For Your Business

It is important to make sure that you are familiar with the requirements around public holidays. If you have any questions that remain unanswered by this guide, or need assistance with the drafting or redrafting of your employment agreements, or just want to talk to a real person about public holiday issues, contact EMA Advice.

### Remember

- Always call AdviceLine to check you have the latest guide
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get one of our consultants to draft an agreement template that's tailor-made for your business.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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