

Leave Entitlements are Changing: Here's what you need to know

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Introduction

This week, Workplace Relations and Safety Minister Brooke van Velden announced the Holidays Act 2003, which has long been criticised for being overly complicated and difficult for employers to interpret and apply correctly, will be replaced by the proposed Employment Leave Act.

This complete overhaul aims to simplify rules, lower costs for employers and provide employees with transparency and certainty. As Minister van Velden put it, “employers will finally have certainty with straightforward rules they can understand and apply.”

We summarise the key changes announced, below:

Annual and Sick Leave

Currently, employees must work for six months before becoming entitled to sick leave, and 12 months before becoming entitled to annual leave. This is set to change. Permanent and fixed term employees will start accruing annual and sick leave entitlements from their first day of work.

Leave will be calculated (and taken) in hours, not days or weeks. This change will provide greater flexibility for employees, who will be able to take say an hour of sick leave to attend a doctor's appointment, rather than having a half day of leave entitlement deducted as is currently the case for many employees.

Bonuses, commission payments and allowances no longer considered

In a significant change from the current Act, additional payments such as bonuses, commissions and allowances will not be considered for the purposes of calculating employees' hourly leave rate. This will help simplify leave calculations for employers of employees who have additional pay components over their base salary or wages. The flipside of this proposed change is that for employees for whom these additional components make up a substantial portion of their pay, leave entitlements will be paid at a lower rate than would apply under the current Act.

Proportional sick leave entitlements

Leave accrual will be proportionate to contracted hours worked. While a full-time employee will still get the equivalent of ten days of sick leave, part-time employees will get a reduced sick leave entitlement proportionate to the hours they work.

No accrual while on ACC

Employees absent from work on ACC will no longer continue to accrue annual leave while they are not working.

Cashing up annual leave

Additionally, employees will be able to request to cash up to 25% of their annual leave balance each year – a change from the current limit of one week. This means that employees who have more than the current minimum four weeks' annual leave entitlement will be able to cash up more annual leave balance, if they want to.

Bereavement and Family Violence Leave

These entitlements will be available for all employees from their first day of work rather than after six months of working. This leave will continue to be calculated in days, not hours.

Parental Leave

Under the current Act, employees returning from parental leave often receive reduced holiday pay due to leave being calculated from their average earnings from the previous 12 months. That calculation will be done away with under the proposed new Act, with employees entitled to annual leave at their full rate on returning from parental leave. Employees on parental leave will still continue to accrue leave while they are away, as under the current legislation.

New Pay-as-you-go Rate

Casual employees who do not accrue annual or sick leave entitlements will receive a 12.5% payment on top of their wage, instead of the current 8% rate.

This 12.5% top up rate will also apply to employees working above their contracted hours, rather than accruing additional annual and sick leave entitlements.

Public Holidays

A new “otherwise working day” test for public holidays has also been signalled. Employees will be entitled to alternative holidays if they have worked 50% or more of the relevant days in the previous weeks. At this stage it remains unclear over what period the 50% test will be applied to.

Employees who work a public holiday that would otherwise be a working day will also accrue alternative holiday hours based on the hours actually worked on the public holiday. This differs from the current Act, under which an employee becomes entitled to a whole alternative holiday regardless of how much time they actually work on a public holiday. Employees will also be able to cash up alternative holiday entitlements at any time, rather than having to wait for 12 months to cash up under the current Act.

What's Next?

The Bill is still to be drafted, and is expected to be introduced to Parliament early in 2026. If the Bill is passed, there will be a 24-month implementation period before it comes into force. This gives payroll providers time to update their systems to be compliant with the new Act, and employers time to make necessary changes to employment agreements and business

and payroll systems. In the meantime, it is important that employers still abide by the Holidays Act 2003.

Our View

The current Holidays Act 2003 has been notoriously complicated and difficult for employers to comply with. There have been numerous cases of employers being found in breach of their obligations under the Act over the years, including several high-profile ones involving government agencies. Those cases have seen employers liable for significant holidays arrears payments to current and former employees, as well as untold hours and cost to track down former employees owed holidays arrears, and to rectify non-compliant payroll systems.

Any change that will reduce complexity and the risk of non-compliance must surely be a good thing from an employer perspective. However, there will be some trade-offs with the proposed amendments.

Some employees - particularly part-time employees and those for whom bonuses, commission payments and other allowances make up a significant part of their remuneration - will be worse off under the proposed changes. Likewise, while the change to annual leave entitlements for employees returning from parental leave will benefit those employees and simplify leave calculations for employers, it will likely come at an increased cost to many employers.

Getting the balance right between simplifying rules and improving ease of compliance, and not unreasonably reducing employee entitlements has been a challenge for multiple governments. There's a reason it's taken 22 years to get to this point. Overall though, we think the proposed changes are a step in the right direction.

If you have any questions on how these changes may affect you, or what steps you can take to prepare, please contact our employment team at Gallaway Cook Allan.

With thanks to Isabella Aldrich for her assistance in drafting this article.