

Leave Entitlements Under Holidays Act 2003

The Forum is receiving reports about confusion over holiday entitlements under the new legislation. This circular sets out the minimum entitlements required under the Act which come into effect on 1 April 2004.

Annual leave

- Minimum of 3 weeks leave per year, after 12 months' service
- Minimum of 4 weeks leave will apply from 1 April 2007

Public Holidays

- Employees are entitled to a paid day off if the public holiday would otherwise be a working day for them (i.e. if they normally work on that day)
- Anyone who works on a public holiday is entitled to at least time-and-a-half pay, in addition to a day in lieu
- The day in lieu does not apply to on-call employees or employees who are only employed to work on public holidays

Sick leave

- Minimum of 5 days' sick leave after 6 months' service
- Sick leave can also be taken to care for a spouse or dependent
- Leave can accrue up to a maximum of 20 days
- Employers can request a medical certificate after a continuous absence of 3 calendar days

Bereavement leave

- Minimum of 3 days' leave for the death of an immediate family member
- The 3 days' leave do not have to be taken in one block
- Up to 1 days' leave for death outside the immediate family, if the employer accepts that the employee has suffered a bereavement. In considering whether a bereavement has occurred for that employee, the employer should consider:
 1. how close the association was between the employee and the other person
 2. whether the employee is responsible for any aspects of the ceremonies around the death
 3. whether the employee has any cultural responsibilities he or she needs to fulfil in respect of the death.

Members should be aware that the requirements of this Act mean that annual leave still accrues when an employee is on long term parental or sick leave, even if unpaid. This can create a situation where a person could return from, for example, a 12 month sickness absence and then claim 3 weeks' annual leave. The cost of this problem will be compounded where another employee has been employed as cover, as this new person will also be entitled to annual leave.

All employers will need to review their practices to ensure they meet the new requirements. This includes:

- ensuring that they and their employees understand the public holiday provisions, which will apply from the Easter holidays in April 2004
- ideally checking all employment agreements, and working through any required changes with employees or their unions
- ensuring that records, holiday policies and procedures reflect at least the minimum provisions of the Holidays Act 2003
- preparing to implement four weeks' annual leave from 1 April 2007

All relevant information can be found on the Department of Labour's Employment Relations Service web page www.ers.dol.govt.nz.