

Sent by: Yvonne
Bruorton/MOH

08/03/2016 12:33 p.m.

To: "Michael Johnson" <michael.johnson@parliament.govt.nz>,
cc: John Hazeldine@MOH,
bcc:

Subject: Re: Holidays Act message to CE's

Hi Michael

I gather you are interested in whether the DHB payrolls are compliant with the requirements of the Holidays Act. We completed a survey of DHBs in 2015 when the matter first came to light. The response email and table is attached below. There was a very tight timeframe for response and at the time we sent the response we had responses from 12 DHBs. We subsequently did hear from all but one DHB and all were compliant. I can update the table if necessary.

Regards
Yvonne

Yvonne Bruorton
Chief Advisor Employment Relations
DHB Performance
National Health Board Business Unit
Ministry of Health
DDI: 04 496 2236
Mobile: s 9(2)(a)

www.moh.govt.nz
Mail to: Yvonne_Bruorton@moh.govt.nz

----- Document: Re: Holidays Act message to CE's, forwarded by Yvonne Bruorton on 08/03/2016 12:29 pm -----

Sent By: Yvonne Bruorton/MOH on 15/04/2015 7:04:57 p.m.
To: tim.ingleton@ssc.govt.nz
Copy To: "Andrew Hampton [SSC]" <Andrew.Hampton@ssc.govt.nz>,
"john_hazeldine@moh.govt.nz" <john_hazeldine@moh.govt.nz>, "Marilyn Rimmer [SSC]" <Marilyn.Rimmer@ssc.govt.nz>, "Michael_Hundleby@moh.govt.nz" <Michael_Hundleby@moh.govt.nz>,
"Mary Slater [SSC]" <mary.slater@ssc.govt.nz>, Chris Picard/MOH, Debbie Hunt/MOH, Barbara Phillips/MOH, Teresa Wall/MOH, Chai Chuah/MOH, "Jo Waugh" <jo_waugh@moh.govt.nz>, Raewyn Cairns/MOH, Katie Bunker/MOH
Subject: Re: Holidays Act message to CE's

Dear Tim

Please find a table attached which summarises the responses from 12 of the 20 DHBs. Unfortunately the timing was a little short to guarantee a response from all 20 DHBs however we will continue to follow up with those that have not responded to date. You will note that with the exception of one small issue

s 9(2)(ba)(i)

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and an issue affecting possibly all the respondent DHBs are compliant with the Holidays Act 2003;

this would perhaps indicate that it is likely the remaining DHBs are also compliant given that many use the same payroll systems.

Please let us know if you wish to receive all the outstanding DHB responses or whether you would be happy for us to report on an exceptions basis.

Regards
Yvonne



DHB payroll compliance table.docx

The attached table is withheld in full under section 9(2)(ba)(i) of the Official Information Act. The release of this information would be likely to prejudice the future supply of similar information. The greater public interest is ensuring that similar information continues to be provided in the future.

Yvonne Bruorton
Chief Advisor Employment Relations
DHB Performance
National Health Board Business Unit
Ministry of Health
DDI: 04 496 2236
Mobile: s 9(2)(a)

www.moh.govt.nz

Mail to: Yvonne_Bruorton@moh.govt.nz

"Mary Slater [SSC]" [IN-CONFIDENCE] Hello Michael... 02/04/2015 12:32:55 p.m.

From: "Mary Slater [SSC]" <mary.slater@ssc.govt.nz>
To: "Michael_Hundleby@moh.govt.nz" <Michael_Hundleby@moh.govt.nz>, "john_hazeldine@moh.govt.nz" <john_hazeldine@moh.govt.nz>, "Yvonne_Bruorton@moh.govt.nz" <Yvonne_Bruorton@moh.govt.nz>,
Cc: "Andrew Hampton [SSC]" <Andrew.Hampton@ssc.govt.nz>, "Marilyn Rimmer [SSC]" <Marilyn.Rimmer@ssc.govt.nz>
Date: 02/04/2015 12:32 p.m.
Subject: Holidays Act message to CE's

[IN-CONFIDENCE]

Hello Michael, John and Yvonne

Forwarding this to you in case Chai hasn't had a chance to do so yet.

I have had some contact with John and Yvonne about this (thanks Yvonne for your letter).

Essentially, we'd now be very grateful for any indication you can give us, by 15 April, about the likelihood of breaches in DHBs - in addition to the requested assessment of the Ministry's position.

Cheers, and happy to discuss

Mary

Sent to departmental CEs 1 April 2015

[IN-CONFIDENCE]

Kia ora

On 20 March 2015 I e-mailed you about an issue that has been identified regarding potential miscalculation of leave payments under the Holidays Act 2003 (the Act).

Ministry of Business, Innovation and Employment (MBIE) is aware that some employers have had issues with how leave payments are calculated under the Holidays Act 2003 – mainly affecting people who work variable hours from day to day, and/or from week to week. Employees who have additional payments on top of their salaries or wages may also be affected (such as overtime, allowances, incentive-based payments and board or lodgings). The issue appears to apply to the calculation of payments for all forms of holidays and leave.

MBIE has developed guidance to help employers assess whether their payroll systems are likely to be compliant and whether an audit of compliance with the Act is required. This guidance can be found at <http://www.dol.govt.nz/er/publications/assessing-your-payroll-system.pdf>. I suggest that chief executives also consider forwarding this advice to larger Crown entities in their sectors.

While it is your responsibility as employers to identify and resolve any breaches of the Act, the SSC and Treasury have a responsibility for assessing and reporting to Ministers on any cross system implications. An immediate priority is to determine the financial impact of any potential breaches.

As a first step we ask that by 15 April you provide me with an initial assessment of whether there are potential breaches in your organisation, the potential scale of these and an indication of whether these costs can be met from within baselines. Please provide this assessment of scale in dollar terms (if possible back-pay owed and separately the estimate of ongoing future cost to comply); however, if this is not feasible by 15 April then an indication of the number of employees potentially affected.

SSC and MBIE are coordinating external communications. If you have any media inquiries relating to this, and to ensure uniformity of messaging, please advise me at tim.ingleton@ssc.govt.nz as soon as possible.

Ngā mihi

Andrew

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Mary Slater
Assistant Commissioner
State Services Commission
DDI: +64 4 495 6637
Mob: § 9(2)(a)
Fax: +64 4 495 6686
mary.slater@ssc.govt.nz
www.ssc.govt.nz | newzealand.govt.nz

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Sent by: Yvonne
Bruorton/MOH

31/03/2016 01:07 p.m.

To: "Michael Johnson" <michael.johnson@parliament.govt.nz>,
Stuart.Mackinnon@parliament.govt.nz,
cc: Jayne Conaghan/MOH@MOH, Sam Kunowski/MOH@MOH,
Stuart.mackinnon@parliament.govt.nz, "Rachel Gully"
<rachel_gully@moh.govt.nz>,
bcc:

Subject: Holiday pay payroll issue and DHBs

Hi Michael

You will recall you and I spoke about the payroll issue a couple of weeks ago and I provided you with the table indicating the review results we had for all DHBs. I've attached it again for information.

Stuart, I understand you were asking for details - when the issue was first raised last year we did a survey of all DHBs, through the provision of a checklist, and the results are covered in the attached table. When the issue arose again more recently with the Police and MBIE issues we double checked with the DHBs. We can confidently say that all DHBs are compliant with the legislation. Many had done further checks when the MBIE issue arose. The issue is mainly around shift workers and the interpretation of holiday pay where hours vary. Naturally this issue affects the DHBs so they have been vigilant about making sure their particular payroll systems are compliant. DHBs use a variety of payroll systems including AMS Leader however they have all been checked and deemed to be compliant.

Regards
Yvonne

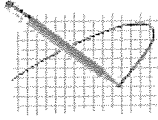


DHB payroll compliance table.docx

The attached table is withheld in full under section 9(2)(ba)(i) of the Official Information Act. The release of this information would be likely to prejudice the future supply of similar information. The greater public interest is ensuring that similar information continues to be provided in the future.

Yvonne Bruorton
Chief Advisor Employment Relations
People and Transformation
DDI: 04 496 2236
Mobile: § 9(2)(a)

www.moh.govt.nz
Mail to: Yvonne_Bruorton@moh.govt.nz



Sent by: Yvonne
Bruorton/MOH

03/05/2016 05:44 p.m.

To: Mick.prior@dhbsharingservices.health.nz,

cc:

bcc:

Subject: DHB Payroll compliance with Holidays Act

Here's the letter the Ministry sent out plus the checklist from MBIE.

Yvonne Bruorton
Chief Advisor Employment Relations
People and Transformation
Ministry of Health
DDI: 04 496 2236
Mobile: s 9(2)(a)

www.moh.govt.nz

Mail to: Yvonne_Bruorton@moh.govt.nz

----- Document: DHB Payroll compliance with Holidays Act , forwarded by Yvonne Bruorton on 03/05/2016 05:43 pm -----

Sent By: Chris Picard/MOH on 8/04/2015 4:22:46 p.m.
To: ailsac@adhb.govt.nz, carole.heatly@southernadhb.govt.nz,
chris.fleming@nmdhb.govt.nz, dale.bramley@waitematadhb.govt.nz, david.meates@cdhb.govt.nz,
debbie.chin@ccdhb.org.nz, Geraint.Martin@cmdhb.org.nz, graham.dyer@huttvalleydhd.org.nz,
Jim.Green@tdh.org.nz, julie.patterson@wdhb.org.nz, kevin.snee@hawkesbaydhd.govt.nz,
ceo@midcentraldhd.govt.nz, nick.chamberlain@northlanddhd.org.nz,
nigel.murray@waikatodhd.health.nz, ntrainor@scdhd.health.nz, phil.cammish@bopdhd.govt.nz,
ron.dunham@lakesdhd.govt.nz, tony.foulkes@tdhb.org.nz
Copy To: george.thomas@tdhb.org.nz, RAPearson@cmdhb.org.nz,
Letham.White@bopdhd.govt.nz, Alan.mountfort@lakesdhd.govt.nz,
Maureen.Chryshall@waikatodhd.health.nz, Brian.Walden@wdhb.org.nz, cfo@adhb.govt.nz,
peter.beirne@southernadhb.govt.nz, Eric.Sinclair@nmdhb.govt.nz, Robert.Paine@waitematadhb.govt.nz,
judith.parkinson@huttvalleydhd.org.nz, meng.cheong@northlanddhd.org.nz, fgellatly@scdhd.health.nz,
Mike.Grant@midcentraldhd.govt.nz, Tim.Evans@hawkesbaydhd.govt.nz, Justine.White@cdhb.health.nz,
Tony.Hickmott@ccdhb.org.nz, mary-ellen. Kearney@ccdhb.org.nz, mike.costello@tdh.org.nz,
john.mckee@hawkesbaydhd.govt.nz, hannes.schoeman@lakesdhd.govt.nz,
anne.amoore@midcentraldhd.govt.nz, pat.hartung@northlanddhd.org.nz, rneuhoff@timhosp.co.nz,
Charles.Hunt@tdhb.org.nz, kim.okeefe@westcoastdhd.org.nz, Gail.Hickey@wdhb.org.nz,
hentie.cilliers@midcentraldhd.govt.nz, john.pine@southernadhb.govt.nz, stu.potter@tdh.org.nz,
Gretchen.dean@wairarapa.dhd.org.nz, donna.hickey@huttvalleydhd.org.nz,
Beth.Bundy@middlemore.co.nz, Michael.McFadden@middlemore.co.nz, heather.smith@nmdhb.govt.nz,
jenny.roy@bopdhd.govt.nz, Michael.Frampton@CDHB.govt.nz, Fiona.McCarthy@waitematadhb.govt.nz,
CEtheringt@adhb.govt.nz, Peploeg@waikatodhd.govt.nz
Subject: DHB Payroll compliance with Holidays Act

Please see the attached letter regarding DHB payroll compliance with the Holidays Act for your action.



Letter to DHB requesting info on payroll compliance with Holidays Act with attachment assessing-your-payroll-system.pdf

Michael Hundleby
Acting National Director
National Health Board
Ministry of Health
Mobile: s 9(2)(a)

<http://www.moh.govt.nz>
mailto:Michael_Hundleby@moh.govt.nz

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8 April 2015

DHB Chief Executives

Dear Colleagues

In late March 2015 the State Services Commission (SSC) alerted Chief Executives of State Sector organisations to an issue that had been identified regarding potential miscalculation of leave payments under the Holidays Act 2003 (the Act). Some initial data was collected.

It seems the problem mainly affects people who work variable hours from day to day, and/or from week to week. Employees who have additional payments on top of their salaries or wages may also be affected (such as overtime, allowances, incentive-based payments and board or lodgings). The issue appears to apply to the calculation of payments for all forms of holidays and leave.

The Ministry of Business Innovation and Employment (MBIE) has developed guidance to help employers assess whether their payroll systems are likely to be compliant and whether an audit of compliance with the Act is required. This guidance can be found at www.dol.govt.nz/er/publications/assessing-your-payroll-system.pdf. We have also attached a copy to this memo.

The Director-General of Health has been asked to request that all DHBs check for compliance. While it is the responsibility of employers to identify and resolve any breaches of the Act, the SSC and Treasury have a responsibility for assessing and reporting to Ministers on any cross system implications. An immediate priority is to determine the financial impact of any potential breaches.

As a first step we ask that by 15 April you provide the Ministry with an initial assessment of whether there are potential breaches in your DHB, the potential scale of these and an indication of whether these costs can be met from within baselines.

If possible, please provide this assessment of scale in dollar terms (if possible back-pay owed and separately the estimate of ongoing future cost to comply). We realise this may be a sizeable task and there is a short response time. If a full response is not possible by 15 April 2015 please send an indication of whether your DHB is compliant or not and an indication of the number of employees potentially affected.

Please forward your responses by close of business on 15 April 2015 to [Yvonne Bruorton@moh.govt.nz](mailto:Yvonne.Bruorton@moh.govt.nz)

Thank you for your assistance. Please note we have copied this letter to your Chief Financial Officer and General Manager Human Resources.

Yours sincerely

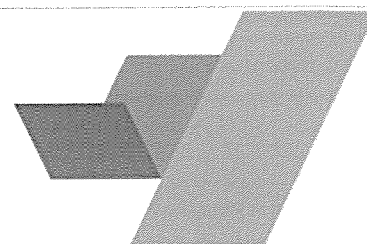


Michael Hundleby
Acting National Director
National Health Board
Ministry of health

Cc Chief Financial Officer
GMHR

Att: Checklist for assessing your payroll system

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Paying Employees for Holidays and Leave

Checklist for assessing your payroll system

How this document may assist you

1. This document is designed to assist employers and payroll practitioners to check their payroll system complies with the [Holidays Act 2003](#). The Holidays Act provides specific minimum leave entitlements and payments that must be met by New Zealand employers. Some of the relevant sections of the Holidays Act to consider are referenced throughout this document.
2. An employer's payroll system must have these legislative provisions incorporated in its software. This means that all systems must be able to make all the calculations in the Holidays Act and it must consider these every time leave or holidays are taken. Some examples of how the Holidays Act should be applied can be found [here](#).
3. A payroll system must:
 - be able to respond to how the business operates
 - record all relevant time worked and remuneration paid
 - be input with accurate information.

If there is complexity or any change in employee work patterns, this needs to be reflected in the system. In many cases, certain employee's working patterns and remuneration is unique to their colleagues.

4. Each of the sections below details general guidance for checking if your system is in line with legislation and providing employees with at least the minimum entitlement to leave and paying employees at least the minimum for this leave.
 - **Holidays Act entitlements**
 - *Check that your system is providing the correct entitlements:*
 - *Entitlements to annual holidays*
 - *Alternative holidays and other entitlements for on-call employees*
 - *Sick and bereavement leave entitlements*
 - *Entitlements for casual employees*



- **Formulas and definitions**

- *Check the payroll system is using correct formulas and definitions:*
 - *Ordinary weekly pay*
 - *Otherwise working days*
 - *Relevant payments for gross earnings*
 - *All regular additional contractual payments*
 - *Using relevant daily pay or average daily pay*
 - *Annual gross earnings*
 - *The greater of average weekly earnings and ordinary weekly pay*

- **Recording Employee's work patterns and remuneration**

- *Check that your payroll system is accurately recording each employee's work pattern:*
 - *The record of actual hours worked each day*
 - *The record of actual days worked and/or paid*
 - *Inclusion of additional payments*
 - *Inclusion of overtime hours and payments*
- *Check the payroll system is calculating remuneration correctly:*
 - *Interpretation of employment agreements*
 - *Paid leave post parental leave*
- *Check your payroll system can carry out the necessary functions:*
 - *Appropriate formulas*
 - *Paying entitlements on termination*
 - *Closedown periods*
 - *Record of cashed up payments*

Holidays Act entitlements

Check that your system is providing the correct entitlements:

Entitlements to annual holidays

- All employees who work 'continuously' for one year are entitled to four weeks' annual holidays. The entitlement of four weeks must be representative of what genuinely constitutes four working weeks for that employee. This entitlement must take into account work patterns, rostering systems and other factors relevant to determining what constitutes four working weeks.
- If the payroll system accrues annual holidays, it is imperative that on the employee's anniversary date they become entitled to at least four weeks' annual holidays each year.

Relevant sections in the Act include:

s.16 Entitlement to annual holidays

s.17 How employee's entitlement to annual holidays may be met

Alternative holidays and other entitlements for on-call employees

- If an employee is on-call on a public holiday that would otherwise be a working day for that employee they must be provided the relevant entitlements for being available to work on that day (often even if they are not called into work). This can affect entitlements and payments for alternative holidays, Public Holidays, and other leave. For example, an employee may be entitled to an Alternative Holiday for working on a public holiday, or be entitled to time and a half payments for being on-call.

Relevant sections in the Act include:

s.12 Determination of what would otherwise be working day

s.59 Entitlement to alternative holiday if employee on call on public holiday

Sick and bereavement leave entitlements

- The Holidays Act provides employees with at least five days' sick leave and also access to bereavement leave after 6 months continuous employment (or if the employee has worked for the employer for an average of at least 10 hours per week over a period of 6 months). It specifically outlines the criteria that, if met, entitle an employee to this leave.
- It is important that regardless of the employee's conditions of work, if they meet these criteria, they are provided these entitlements and are remunerated accordingly.

Relevant sections in the Act include:

s.63 Entitlement to sick leave and bereavement leave

Entitlements for casual employees

- Casual employees may also meet the eligibility criteria for holidays and leave. It is important to consider whether their work patterns entitle them to paid public holidays, alternative holidays, sick and bereavement leave, and annual holidays.
- Annual Holidays may be paid as 8% of an employee's gross earnings, but only in certain circumstances which are detailed in the Act.

Relevant sections in the Act include:

s.28 When annual holiday pay may be paid with employee's pay

Formulas and definitions

Check the payroll system is using correct formulas and definitions:

Ordinary weekly pay

- Check the payroll system is appropriately using the formula for determining ordinary weekly pay. The formula is used when it is not possible to work out an employee's ordinary weekly pay.
- Estimating an employee's ordinary weekly pay, particularly for employees with irregular hours, can lead to incorrect payments.

Relevant sections in the Act include:

s.8 Meaning of ordinary weekly pay

Otherwise working days

- Check the payroll system identifies what an otherwise working day is for each individual employee is.
- If the payroll system fails to apply the criteria in the Holidays Act, employees may not get the entitlement and/or payment for public holidays and alternative holidays they are entitled to.

Relevant sections in the Act include:

s.12 Determination of what would otherwise be working day

Relevant payments for gross earnings

- Check the payroll system is correctly including and excluding what payments constitute gross earnings. This is important for a number of calculations, such as annual holidays and average daily pay, where you must consider what the employee's gross earnings are.
- Gross earnings refers to most payments that the employer is required to pay to the employee under the employees employment agreement, including for example – salary or wages, certain allowances, commissions and overtime payments.

Relevant sections in the Act include:

s.14 Meaning of gross earnings

All regular additional contractual 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 example for annual holidays or sick leave.
- Any amount of pay the employee receives under their employment agreement for an ordinary working week which includes – productivity and incentive based payments (such as commission and payments for overtime).

Relevant sections in the Act include:

s.8 Meaning of ordinary weekly pay

Using relevant daily pay or average daily pay

- Check that your payroll system has the functionality to calculate Average Daily pay. Average daily pay may be used for certain leave payments if an employee's hours and days fluctuate in a week. The calculation may also be used where the employee has:
 - no agreed hours, or
 - the agreed hours change due to other factors, for example - staff sickness and heavier workloads.
- Only use the employee's relevant daily pay if it is already known how many hours the employee would work for the day. Estimating may lead to incorrect payments.

Relevant sections in the Act include:

s.9 Meaning of relevant daily pay

s.9A Average daily pay

Annual gross earnings

- It is important that for the purposes of average daily pay and average weekly earnings, the gross earnings to be calculated is for a 52 week period. Some systems may use a calendar year or a longer period of time, such as 53 weeks or greater. Using different time periods may lead to incorrect payments.

Relevant sections in the Act include:

s.14 Meaning of gross earnings

The greater of average weekly earnings and ordinary weekly pay

- Check that the payroll system for all annual holiday payments considers average weekly earnings and ordinary weekly pay and then pays the greater of the two. Simply assuming that one is greater than the other without doing the calculations for both options, may lead to incorrect payments.

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*

Recording Employee's work patterns and remuneration

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

The record of actual hours worked each day

- The actual hours worked by an employee forms part of an employee's work pattern. A record of this is needed to determine what an employee should be paid for leave on certain days or weeks. It is important that you use the formulas detailed in the Act if you are not certain of the hours to be worked.
- Even for salary workers it is important to understand what hours/days would be worked.
- Record of time worked may not be necessary for some employees, for example, employees who work the same hours every week. However, you must be certain that the employee only works those hours.

Relevant sections in the Act include:

- s.12 Determination of what would otherwise be a working day*
- s.81 Holidays and leave record*

The record of actual days worked and/or paid

- This also forms part of an employee's work pattern needed to determine what an employee should be paid for leave on certain days/weeks.
- A record of actual days worked and paid are important for determining daily and weekly averages for all forms of leave and holidays.

Relevant sections in the Act include:

- s.5 Interpretation (average weekly earnings)*
- s.9 Meaning of relevant daily pay*
- s.9A Average daily pay*

Inclusion of additional payments

- Most additional payments (eg allowances or bonuses) that an employee receives need to be considered for inclusion in leave payments.
- Records of these payments are needed to determine daily and weekly payments for all forms of leave and holidays.

Relevant sections in the Act include:

- s.14 Meaning of gross earnings*

Inclusion of overtime hours and payments

- It is important to note whether the employee may work overtime on a certain day or week.
- This must be factored into determining the amount of hours an employee would have worked and also the payment that an employee should receive.

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 remunerated for work and consequently leave payments.
- Specific provisions may mean that employees are paid more for certain tasks or for work in certain circumstances. This must be factored in to leave payments.

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

Paid leave post parental leave

- Annual holiday payments can be affected by periods of parental leave. Annual holidays that are accrued during or within 12 months of taking parental leave may be paid at a rate specified in the Parental Leave and Employment Protection Act 1987.
- Leave that an employee is entitled to before parental leave is not affected by this provision and must be paid at the rate stated in the Holidays Act. The employer must pay leave in the order that the employee becomes entitled to it.

Relevant sections include:

Parental Leave and Employment Protection Act 1987, s.42

Check your payroll system can carry out the necessary functions:

Appropriate formulas

- A payroll system needs to use appropriate formulas for different circumstances. There may be some judgment required when to use relevant daily pay or average daily pay, or when to use the alternative formula for determining ordinary weekly pay.
- Check that the systems and procedures 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.

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 setup to pay out all relevant entitlements on termination of employment. This includes alternative holidays, public holidays and annual holidays.
- When paying out annual holidays, the termination date is notionally extended by the number of annual holidays owed. Any public holidays that fall during that extended period would need to be paid according to the provisions in the Act.
- Any part year worked must be remunerated at 8% of gross earnings for that part of the year.
- Most other payments to employees in addition to wages and salaries (including allowances and bonuses) attract 8%. It is important to check what attracts addition holiday pay and what does not.

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 an annual closedown period during which employees must take annual holidays, this can affect entitlements and leave payments.
- It is important to consider whether the employee's anniversary date is affected. An anniversary date may be altered by a closedown period, which affects when the employee is entitled to annual holidays and what payments must be made during closedown periods.

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 cashed up payments

- The payroll system must allow for the cashing up of one week's annual holiday pay entitlement (if this is a practice you follow).
- The system must only allow a maximum of one week's annual holiday entitlement to be cashed up. 'Accrued' annual holidays are not an entitlement and cannot be cashed up.

Relevant sections in the Act include:

s.28 When annual holiday pay may be paid with employee's pay

s.28A Employee may request portion of annual holidays be paid out

s.28B Payment for annual holidays paid out