

# Holidays Act

## Compendium of Refined FAQs

Hawkes Bay  
June 2024

### Document History

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## 2 How to use this compendium

### **Important note:**

This is a collection of questions and answers by topic related to the Holidays Act Remediation work. It builds on the experience of the AMHA programme office and refines and condenses down the 'Frequently asked questions' (FAQs) that are likely to be asked of the Regions as they embark on their Rectification and Remediation Payment programmes. Edits have been made by the Hawkes Bay team.

Many of the questions and answers are the same for all staff across Te Whatu Ora. However, some answers may need to be adapted for your Region.

- This document will be updated regularly or as and when information changes.
- FAQs contained here can be used across our broad range of communications and education assets.

Please reference this document when citing these questions and the associated answers:

e.g. HARP (2024) Holidays Act National FAQ Compendium – June 2024 - V1.1 – Te Whatu Ora.

## 3 Background to the Remediation and Rectification Programmes

### 3.1 What is the Holidays Act?

- The Holidays Act 2003 sets out how payment for leave and final pay is to be calculated and paid. The Act came into effect in April 2004.
- The Holidays Act is straight forward when applied to standard 40-hour Monday-to-Friday working week. However, it becomes a complex piece of legislation, with varying calculations and entitlements for different leave types that can be interpreted in several different ways when applied to 24/7 operations with numerous rosters.
- For more information, you can contact your Union, look on your local Intranet page or talk to your manager. You can also access the Holidays Act, at Holidays Act 2003 No 129 (as of 12 April 2022), Public Act Contents – New Zealand Legislation.

### 3.2 What does the Holidays Act mean for me?

- While the Act is generally easy to follow for those working traditional hours (9 am -5 pm), it's proved complex for some employers to interpret for shift work, variable days, and hours or those with flexible work patterns, that apply to many in the health workforce.
- There was widespread non-compliance with the Act in a range of public and private sector organisations in New Zealand.
- This resulted in some entitlements for annual leave, bereavement and sick leave, public holidays, and alternative holidays (in lieu days) not being correctly calculated and means some of our people may not have been paid correctly.

### 3.3 How is Te Whatu Ora responding to The Act?

- In response to the legislation, a National Programme Office was set up to address areas of non-compliance, by calculating and making remediation payments to anyone who has been incorrectly paid and rectifying payroll, systems and processes.
- The estimated number of current and historic employees covered by the work is 270,000 across more than 19 payroll and rostering systems.
- The complexity of the health workforce -its size and mobility- and the different employment arrangements mean that work patterns vary from traditional hours to shift work on a 24/7 basis.
- Calculation of remediation payments requires aligning with 26 National Collective Agreements and 33 single collective agreements that require some form of interpretation. This makes for a complex employment, payroll and leave management environment.

### 3.4 Te Whatu Ora's Holidays Act work being undertaken in 2024

Present day, the National programme office is working alongside our regional offices and payrolls to become Holidays Act compliant. This includes:

- Calculating any pay for leave owing to staff and making a remediation payment
- Reviewing the payroll configurations for breaches
- Configuring our payroll system correctly
- Aligning and policies and procedures to promote compliance.

### 3.5 How are Te Whatu Ora non-compliant with The Act?

As part of our response to non-compliance, payrolls across the country are looking at how they are in breach. This will indicate where employee records need to be reviewed to ensure their employees receive any remediation payment owed.

### 3.6 Have the Unions helped Te Whatu Ora address the areas of non-compliance?

Yes. The Unions have been consulted to ensure compliance with the Holidays Act and correct pay for all employees. There are two key documents relating to this:

- Memorandum of Understanding: Signed by the then 20 DHB Chief Executives (October 2019) and by the President of the Combined Trade Unions and the Labour Inspector (March 2020).
- Framework agreed with former District Health Boards (dated April 2019).

### 3.7 How does the Holidays Act impact our Payroll system?

- At the time that Te Whatu Ora was formed, each Region had their own rostering and payroll systems. Nationally, there are seven payroll vendors, 19 payroll systems (with software provided by seven different vendors) and 20 rostering systems.
- We are now in the process of configuring these systems to be compliance with the Holidays Act legislation.

### 3.8 Are all regional payrolls now compliant with the Act?

- This work is in progress and is a considerable undertaking set for completion in 2024.
- Payroll teams nationally are working hard to ensure that they continue to operate a working payroll system (Business As Usual) while contributing their expertise to ensure that any changes in configuration are both Holidays Act compliant and promote efficient working processes.

### 3.9 What process is Te Whatu Ora using for calculating remediation payments?

- We are reviewing our employee records and assessing each leave type. As part of this, we review what was paid to you from 1 May 2010 and then calculate the difference of what you should have been paid
- Where any under-payment on a line of pay for a leave type is identified, we will pay you the difference as a remediation payment
- This is being done for approximately 270,000 people across 19 payroll and rostering systems.

### 3.10 Why was the Auckland Metro paid first?

Auckland Metro represented the largest segment of New Zealand's health workforce and included Te Toka Tumai, Waitemata and Counties Districts and the four shared services in the region – Northern Region Alliance, HealthSource, Health Alliance and Health Partnership.

Two payrolls underwent remediation: Staff of Te Toka Tumai received payment in July 2023 and the staff from Waitemata, Counties Manukau and four shared services in the region (HealthSource under SSC payroll) were paid in September:

- Staff were remediated for their current role they were in at that time i.e. the role they were in on the day of payment.
- They can now register for any 'Former Role' they were in, across the districts, via the 'Former employee portal'.

### 3.11 When will the rest of the country be paid?

- Present day, the programme office is now assisting Te Whatu Ora's regional offices and payrolls to make the necessary remediation payment and rectify their processes as a matter of priority.

## 4 Payments explained

### 4.1 What is the remediation payment?

The remediation payment is a sum of money owed to you because the payment for a leave type covered by the Holidays Act was not correctly calculated from 01 May 2010 to a date just before you received your remediation payment.

The payment will mean that you have been paid correctly. Your future pay will also be correct, as the payroll system would have been reconfigured to be Holidays Act compliant at the time you receive your payment.

### 4.2 Who is entitled to a remediation payment?

All roles were within scope for assessing the need to make a remediation payment:

- Any employee whom we determined to be owed money will be paid, regardless of the amount. Not every current or former employee will be owed money as some types of holiday pay were correctly calculated.
- Conversely, having reviewed our employee records, if we determine that someone has received historic over-payments that have exceeded the entitlements under the Holidays Act, we will not be seeking recovery of those overpayments.
- Importantly, in both cases any future pay will also be correct, as the payroll system would have been reconfigured to be Holidays Act compliant.
- Your remediation payment was made and at the same time the payroll processes changed to ensure that we process your leave entitlements in a compliant way in the future.
- In the event a further retrospective amend to payment is needed, we will calculate the difference and process an additional payment if required, although this unlikely with the new rectified system.

### 4.3 Will everyone receive a payment?

- No. Not every current or former employee is impacted by the non-compliance issues. Some types of holiday pay were correctly calculated, which means not everyone will receive a payment.
- If you used to work for Te Whatu Ora, you will be contacted if a payment is owed to you.

### 4.4 How far back will remediation payments go?

- We were required to go back six years from the date non-compliance was identified which is the timeframe in the Statute of Limitations.
- The Council of Trade Unions (CTU) raised the issue of non-compliance with the DHBs in May 2016, so remediation payments will go back to 1 May 2010.



#### 4.5 If I am entitled to a payment, how much am I likely to receive?

Payment entitlements are based off earnings history and leave patterns are unique to each person.

- Each employee's payment will be calculated individually for a remediation period from 01 May 2010, to the last working day or the end of the last pay period.
- Not every current or former employee will be owed money as some types of holiday pay were correctly calculated.
- Payments are unique to the individual and not easily comparable.
- It is an unhelpful temptation to compare your remediation payment to that of one of your colleagues, even if you feel you work similar roles or hours. Factors that influence an individual's remediation payment include:
  - Salary or rate of pay
  - The length of service
  - Work pattern (days and hours worked)
  - Fixed or variable hours or working overtime on a public holiday or if there are allowances
  - Annual leave entitlements and when they took their holiday
  - What type of leave was taken and how much leave was used.
- Every employee can obtain a 'remediation calculation statement' from the 'Employee Portal' to see their personal calculation, regardless of if they received a remediation payment or not.
- The Unions are involved and have been monitoring the Holidays Act remediation payment work. If you are entitled to a payment, you can have confidence that you will be paid correctly.

#### 4.6 If I am entitled to a payment, how will I be paid?

We currently hold all the details we currently need in our payroll system to make a payment to current staff who are eligible. For former staff, register in the former employee portal and we will verify your data before arranging payment.

#### 4.7 Will payments include interest?

No.

#### 4.8 How will superannuation contributions be managed?

All superannuation contributions (employee and employer) will be calculated and deducted as part of any remediation payment.

#### 4.9 How will student loan repayments be managed?

Student loan repayments will be calculated as part of any remediation payment.

#### 4.10 What about voluntary KiwiSaver deductions?

Voluntary KiwiSaver deductions won't be deducted from any remediation payment. It's the responsibility of the individual for their voluntary KiwiSaver deductions to be paid directly to Inland Revenue.

## 5 Tax and Benefit Obligations

The following section has been drafted in conjunction with Inland Revenue (IR) and the Ministry of Social Development (MSD). Please refrain from printing contact phone numbers and instead refer people to the respective websites.

### 5.1 How will any remediation payment affect my income tax?

- All of our employees are 'taxed at source' which means that any remediation payment you receive into your bank account has already been taxed for that financial year (01 April to 31 March).
- Please bear in mind that tax rates are banded, and a payment may push earnings into a higher tax bracket for your subsequent earnings until the end of the financial year. You can find out more [here](#).
- The Inland Revenue website contains useful information on the tax treatment of lump sum payments such as an arrears payment.
- Inland Revenue are aware that remediation payments are being made, so contact them if you have any questions about how this might impact any benefit payments you receive. Visit [myir.govt.nz](http://myir.govt.nz) for more information.

#### **Inland Revenue:** [ird.govt.nz](http://ird.govt.nz)

The following sections on IR's website can help you to understand your tax obligations:

- Working for families
- Child support

#### **Income tax:**

See IR Guide - [IR1046](#)

Calculating PAYE from lump sum payments - These [tables](#) provide details of how IR tax any lump sum payments made to you. These are for guidance only. The IRD can provide you with further information on your individual circumstances and tax obligations.

#### **Setting yourself up in the customer support portal**

IR have a very useful support tool you can set up through their website:

- Register for 'MyIR': [myir.ird.govt.nz](http://myir.ird.govt.nz)
- You can also use your 'RealMe' to verify your identity and log into the Inland Revenue 'MyIR' portal: [realme.govt.nz](http://realme.govt.nz)

## 5.2 How will any remediation payment affect any benefits I receive?

If you have received a payment from the MSD or Inland Revenue (IR) since May 2010, before spending any of the Holidays Act remediation payment, please contact them to confirm that you do not have to refund anything you have received.

- For those staff who have received a Holidays Act remediation payment, please consider how this money might impact your tax obligations and entitlements and payments you receive from the Ministry of Social Development (MSD).
- MSD are aware that remediation payments are being made. You should contact them if you have any questions about how this might impact any benefit payments you receive. Visit: [msd.govt.nz](https://msd.govt.nz)
- If you receive benefit payments from Inland Revenue, you should contact them to inform them you have received a remediation payment.

## 5.3 Personal circumstances and family law matters

If you are currently divorcing your spouse, or have a divorce settlement in place, we suggest that you speak to your family lawyer or solicitor about your payment.

## 6 Rectifying our processes

### 6.1 Changes in annual leave recording: From hours to weeks

- Previously, annual leave was recorded in hours. From now on, annual leave will be maintained in weeks as this is the metric used in the Holidays Act.
- All employees will receive correct minimal leave entitlement which will be based on what constitutes a week for each employee.
- If you are a new starter who has not yet worked for 14 weeks, your working week will be determined based on your contracted hours or average hours up to this point.

### 6.2 How will my existing annual leave balance in hours be converted to weeks?

The conversion is based on contracted hours at the point your district went live with the new rectified processes.

For example, if the employee has an annual leave balance of 165 hours and weekly contracted hours are 32, the calculation is 165 hours divided by 32 which equals 5.1 weeks annual leave ( $165/32 = 5.1$ ).

### 6.3 How do I know what my working week is?

- Determining what is a working week has been the subject of significant debate, mediation, and legal advice.
- There are three definitions of a week:
  - If you have agreed hours or FTE, a week is your contracted hours per week. This will apply to RMOs.
  - If your contract is for actual hours with no cap on accrual, your week is the higher of:
    - Your average hours per week for 14 weeks, and
    - Your contracted hours.
  - If you have a cap on your accrual, your week is the higher of:
    - Your average hours per week for 14 weeks capped at 40, and
    - Your contracted hours per week.

### 6.4 I've reduced my FTE. What happens to my annual leave entitlement?

The employees annual leave balance when measured in weeks does not change, however the 'value' of a week changes. As an example:

- An employee has a job size of 40 hours per week (1 FTE) with an annual leave balance of 4 weeks.
- They reduce their job size to 20 hours (0.5 FTE).
- Their balance remains 4 weeks, but each week is now 20 hours.
- If they take one 10 hour period of annual leave, the calculations are:
  - Prior to the change in FTE:  $10/40$  therefore 25% of a week is deducted from their balance.
  - After the change to 20 hours per week:  $10/20$  therefore 50% of a week is deducted from their balance.

## 6.5 What happens when I apply for leave?

When an employee applies for leave, the proportion of the week deducted is based on what constitutes a week for you. For example:

- Your weekly contracted hours are 24 and you normally work 4 days, but recently you have been adding an additional day and working 30-hour weeks.
- Your week is based on 24 hours. If you want to apply for one day's leave, you apply for 0.25 of a week, if you want two days, you apply for 0.5 of a week, and so forth.
- What you are paid for your week will be the higher of your Average Weekly Earnings, and your Ordinary Weekly Pay, which will have both increased based on your 30-hour weeks.
- The proportion of leave is determined at the time the leave is taken based on the 'working week' model agreed between Te Whatu Ora and the Unions.
- Where there is a pattern of change, or a permanent change, the manager will agree with the employee on what constitutes their 'working week.'
- Any change will be recorded in writing, signed by both parties, and Payroll notified to update the system.

## 6.6 Understanding your working week and why it matters

- As each employee is entitled to a minimum of four weeks' annual leave based on what genuinely constitutes a 'working week' for the employee at the point the leave is taken.
- It is therefore necessary to have a definition of a 'working week', to ensure that every employee receives the minimum entitlement and correct payment.

## 6.7 How do I calculate my working week if I work variable days and hours?

- The working week is determined by the employee's work pattern reflecting what is an 'agreed week' for the employee and by what is recorded in the payroll system.
- Accurate work patterns must be entered into your local timecard system as these will influence your Holiday pay calculations. This information will then be printed on your pay advice.

## 6.8 Have the unions been involved in establishing a 'working week'?

Yes, determining what is a 'working week' has been the subject of consultation and feedback. It's an important question because it impacts both leave and pay.

## 6.9 Is my agreed 'working week' recorded in writing?

Yes. If you are a permanent employee, it will be the hours of work in employment agreement.

## 6.10 What happens if my work pattern shows regular changes?

Where there is a change to your hours of work or pattern of work, your manager will submit a form stating your hours of work. A permanent change will be agreed with the employee on what constitutes their 'working week.' Any agreed change will be recorded in writing, signed by both parties, and Payroll notified to update the system.

### 6.11 When I apply for annual leave, how is this calculation made?

When an employee applies for leave, the proportion of the week deducted is based on what constitutes a week for you. The table below provides some examples.

<p><b>For an employee who works 5 days a week, 40 hours per week</b>, so the conversion is straightforward.</p>	<p>The entitled and accrued balance is divided by 40. For example, the employee has a total balance of 232 hours, so the conversion is: <b>232 hours / 40 = 5.8 weeks.</b></p>
<p><b>For an employee who works less than 40 hours per week and the same number of days and hours every week</b> (e.g. 3 days with a standard 24 hours). The conversion will use the standard hours worked.</p>	<p>The employee has entitled and accrued 232 hours of Annual Leave. The <b>standard hours</b> worked is 24, so the conversion is: <b>232/24 = 9.6 weeks.</b></p>
<p><b>An employee who works a 9-day fortnight.</b> (e.g. 40 hours in one week and 32 hours in the other week).</p>	<p>The entitled and accrued Annual Leave balance of 232 hours is divided by their <b>average fortnightly hours</b>, so the conversion is: <math>(40+32)/2 = 36</math> hours) Annual Leave balance in hours divided by average fortnightly hours: <b>232/36 = 6.4 weeks.</b></p>

#### Casual staff

<p><b>Pay As You Go (PAYG) employees</b> – also known as <b>Casual Employees.</b></p>	<ul style="list-style-type: none"> <li>• Casual employees who work intermittent and irregular shift patterns are considered to be ‘casual employees’ and will be paid an additional 8% in lieu of their Holidays Act entitlements.</li> <li>• However, for an employee to be considered ‘truly casual’, they must have a gap of 42 consecutive days per calendar year to meet the criteria of being casual.</li> <li>• A working pattern report will be monitored by HR and the employee’s manager to monitor this. The employee must comply with a 42-day gap or will be offered a regular contract allowing them to access the full leave entitlement under the Holidays Act.</li> </ul>
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## 6.12 What are the leave types I am entitled to under the Holidays Act?

Employees are entitled to other leave provided for under the Holidays Act which covers bereavement; Public and Alternative holidays, Sick Leave; and Family Violence Leave.

- **Bereavement leave:** If an employee is taking annual leave, then suffers a bereavement, the employer will allow the person to take any period related to bereavement that they would otherwise take as an annual holiday, as bereavement leave.
- **Public Holidays and Alternative holidays:** There are 12 Public Holidays each year. If a Public Holiday occurs during an employee's annual leave it is treated as such, and not as part of the employee's annual leave:
  - This applies also if the employment comes to an end, and the employee has an annual leave balance to be paid. From the point of the employee's last working day, the weeks remaining in their annual leave balance are observed, and if a public holiday falls during that period, the employee is entitled to be paid for it as an Otherwise Working Day.
  - If an employee does not work on a public holiday and the day would otherwise be a working day for the employee, the employer must pay the employee not less than the employee's relevant daily pay or average daily pay for that day.
  - If the employee works on the public holiday, they receive at least time and a half for the hours worked.
  - If an employee works on a public holiday, the employee is entitled to another day's holiday i.e., an Alternative holiday. The Alternative holiday remains in a leave balance until it is taken, or the employee has been paid for the holiday.
- **Sick Leave:** All employees are entitled to a minimum of 10 days sick leave per annum. If an employee becomes sick during their annual leave or has a spouse or partner or dependent who becomes sick or injured, with agreement, the employee may take any period of sickness or injury as sick leave.
- **Family Violence Leave:** If an employee is taking annual leave and becomes entitled to family violence leave, the employer will allow the employee to take any period related to the effects of family violence that the employee would otherwise take as an annual leave, as family violence leave.

## 7 FAQs for the Hawkes Bay Region

The following FAQs provide some retrospective context to the rectified processes now in place following the remediation payments made in the Auckland Metro Region.

### 7.1 Why is there a new leave code in the Kiosk?

A new leave code has been created to reflect the accrual and balance of annual leave earned while on parental leave. You will notice that you have an additional leave code in the Kiosk:

**Annual Leave earned on Parental (ALWP):** This figure represents the annual leave you accrue while on parental leave. When you are on parental leave, you remain an employee, and therefore still earn annual leave.

When you apply to use this leave, it is calculated based on your Average Weekly Earnings (there is no comparison with other formulae), and since you have not earned while on parental leave, the payment for this leave will be zero on your first day back but will increase over the following 12 months.

### 7.2 Do I use ALWP or ALW to apply for leave?

You can apply for leave using either balance.

### 7.3 What is the difference between ALWP and ALW?

- ALWP will be calculated and paid at your average weekly earnings (AWE) for the previous 12 months.
- ALW will be calculated and paid at the higher of Ordinary Weekly Pay (OWP) or AWE.

### 7.4 What happens if I apply for leave from a code that has no balance or a negative balance?

- The payroll system will check if you have any remaining leave in your other annual leave balance and will use that.
- If you don't have any remaining balance or not enough to cover your requested leave, then it will be processed as leave without pay.

### 7.5 What happens to my ALWP if I decide not to return from parental leave?

If you choose not to return to work, legislation states that your employment ends on the day the parental leave started. Any of your annual leave that you have earned since your last anniversary date will be paid as a percentage of your gross earnings.