

## **HOLIDAYS ACT 2003/ HOLIDAYS AMENDMENT ACT 2004**

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The new Holidays Act came into effect on the 1<sup>st</sup> of April 2004 and just 6 months on it has been amended!

The Holidays Act amendments are long overdue and replace terrible old legislation that was hard to understand and applied to New Zealand working conditions more than 20 years ago.

The 2003 Act applies to all employees whether they are full or part time, fixed/term, permanent or casual and that Act requires that employment agreements be amended to comply.

However, there have been some unintended consequences of the Act and so it has been amended by **The Holidays Amendment Act 2004** passed in time for Labour Weekend. So then, what are the main changes brought about by these Acts?

### **SICK LEAVE**

Special leave which under the old law covered both sick and bereavement leave has been separated out. The Act provides for minima in respect of sick and bereavement leave.

All employees who have worked for the same employer for six months continuously are entitled to a minimum of five days paid sick leave each year which can be accumulated up to 20 days, 15 of which may be carried over into the next period, but is not paid out on termination of employment. (s 65(2)).

Under the transitional provisions special leave untaken at the date of the Holidays Act is to be treated as sick leave and remains in force (s90).

One of the controversial aspects of the 2003 Act was that employees who called in sick on a public holiday on which they were scheduled to work were entitled to time and a half pay. This has changed and in such a situation the day is to be treated as an unworked public holiday rather than sick or bereavement leave, this means the employee will get a paid day off but is not entitled to time and a half or an alternative holiday.

### **BEREAVEMENT LEAVE**

Employees are also entitled to a minimum of three days bereavement leave and this is payable for the death of each "immediate family member" as defined in the Act and if more than one immediate family member dies in the period of entitlement, the employee is entitled to three days for each death, s 69. An additional day is allowed as bereavement leave if the employer accepts there has been a bereavement, s69 (2) and s70.

### **ANNUAL LEAVE**

All employees get a minimum of three weeks paid annual leave after 12 months of continuous employment with the same employer and this will be increased to four weeks from the 1<sup>st</sup> of April 2007.

### **PUBLIC HOLIDAYS**

All employees receive 11 paid public holidays. Employees who work on a public holiday are entitled to be paid a minimum of time and a half, only for the time actually worked. This is one of the areas of the Act which has created a great deal of controversy and discussion among employers. If an employee works on a public holiday, in addition to receiving time and a half they are also entitled to another day off. This applies to all employees – salaried or waged. There have been some changes brought about by the 2004 Act. Under the 2003 Act it was possible for an employee to obtain the statutory penal rate of time and a half for working the public holiday on top or any contractual penal rate. The 2004 Act provides the employee gets what ever rate is higher but not both.

Public holidays fall into two categories. The first category consists of Christmas Day, Boxing Day, New Year's Day and the day after that. The second category is made up of all the other holidays including Easter, Labour Day and so forth. The holidays in the first category continue to receive special treatment.

Where Christmas and New Year fall on a weekend and the employee works on the weekend they can have that day off on pay. If they don't normally work the weekend,

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the days are transferred to Monday and Tuesday. This reflects and recognises the modern working week for employees. All other public holidays are celebrated on the day on which they fall.

For more information, contact LawWorks at the below address.