

Four Weeks Holiday Starts WHEN?

With effect from 1 April 2007, New Zealand moves from 3 weeks' minimum annual holidays to 4 weeks. Simple you may say. We accrue holidays at 6% down to 31 March 2007 and then at 8% from 1 April 2007. Wrong.

The transition provisions to 4 weeks' holiday are complicated and unclear. Most employers should be accruing holidays at 8% NOW.

1. Section 41 Holidays Act says *"On and from 1 April 2007, when an employee **next becomes entitled to annual holidays**, the employee's minimum entitlement is increased from 3 weeks to 4"*. This date is generally 12 months after the date on which the employee **last became entitled to annual holidays**. It is this latter date, which is the key date for the purposes of the change to four weeks.

When did an employee "last become entitled to annual holidays"?

2. Section 16 says that *"After the end of each completed twelve months of continuous employment, an employee is entitled to not less than three weeks' ... holidays"* (on 1 April 2007, 3 weeks becomes 4).
3. Section 35 deals with closedowns. If an employee is required to discontinue their work during a closedown period *"...the employee's twelve months of continuous employment must for the purposes of section 16 (1) be treated as commencing on the date on which the closedown began"*. A "closedown" is a period when the employer closes its operations and requires employees to take *"all or some of their annual holidays"*. The closedown doesn't have to be for three weeks.
4. So the date on which an employee last became entitled to annual holidays is either the anniversary of the date on which they commenced employment (if the employer doesn't close down); or the date of commencement of the employer's closedown period (if the employer has a close down). Our law firm shuts at Christmas each year and reopens about 4 January. That is a "closedown". Our employees last became entitled to annual holidays on 24 December 2006 – not on the anniversary dates on which they individually commenced employment with us.

Applying the new four weeks

5. Having determined the date on which your employee "last became entitled to annual holidays" the rules for dealing with holiday entitlements and holiday pay can be summarized as follows:
 - (a) The employee leaves before 31 March 2007. Holiday pay is paid at 6% on the employee's earnings since they last became entitled to a holiday and in the manner specified in sub-

clause (c) below where they have accrued and untaken leave from prior to that date.

- (b) The employee leaves on or after 1 April 2007. Holiday pay is accrued at 8% on their actual earnings between the date the employee last became entitled to annual holidays and the date they leave employment; and in the manner specified in sub-clause (c) below for untaken leave from prior to that date.
- (c) Where an employee has accrued and untaken holidays from prior to the date on which they last became entitled to holidays, then the holiday pay calculation for this earlier period is not based on the employee's actual earnings during the period. Instead, the higher of "the employee's ordinary weekly pay at the date the employment ends or the employee's average weekly earnings during the 12 months before the employment ends", is calculated. This weekly amount is then multiplied by the period of untaken leave to reach the holiday payout required for that earlier period. The accrued holidays during this earlier period will have been calculated based on 3 weeks per annum i.e the new 4 weeks doesn't apply.

Example

Schnauer and co employee earned \$50,000 per annum in calendar 2006 and \$52,000 per annum in calendar 2007 and has 5 days untaken annual leave from 2006 when they leave on 1 May 2007. That employee's last entitlement to annual holidays arose on 24 December 2006. They are paid:

- (i) 8% of their actual earnings from 24 December 2006 until they leave on 1 May 2007; plus
- (ii) One week's leave at \$1,000 per week (i.e. their ordinary weekly pay at the date their employment **ends**) for the untaken leave from 2006.

Summary

For businesses, which close over Christmas, the financial effect of 4 weeks' holidays began on 24 December 2006. For businesses which don't have an annual closedown, the financial effect occurs on an employee-by-employee basis, backdated to the anniversary of the date on which each employee commenced their employment. Untaken leave from earlier periods is calculated on current earnings. For firms accruing holiday pay as at 31 March, the calculation this year is going to be a challenge!

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