

Holidays Act Remediation Programme

Information for Employees



IMPORTANT: As this document will be periodically updated electronically so please visit the Nurse Maude Intranet for latest version.

Version control and update date is stated in page footer.

How to use this booklet

The Holidays Act (2003) sets out leave entitlements and pay for leave for employees. Since the legislation was changed in April 2004, many employers across New Zealand have found they were not compliant.

The Holidays Act is about leave entitlements and leave payments. It does not cover your time worked payments, the Collective Employment Agreements (CEA) or Individual Employment Agreements (IEA).

This booklet will explain:

The background to the Holidays Act (2003) (the Act).

How Nurse Maude was not compliant with the Act.

What Nurse Maude are doing to correct this through making remediation payments and adjusting our processes.

The Act is complicated. This booklet will explain some of the key terms that you might hear as Nurse Maude makes the transition to becoming compliant with the Act.

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Remediation payments

Nurse Maude is making remediation payments to current and former employees who were incorrectly paid. The remediation payments are recalculated back to 1 January 2017.

Our rectification programme is designed to accurately calculate future leave entitlements for all employees.

Not all employees have been underpaid. Any employee that is owed money, however small, will receive a payment.

Purpose of the Holidays Act (2003)

The Act legislation governs New Zealand's workplaces and aims to promote a healthy work-life balance by providing minimum entitlements for:

- a) **Annual leave** for rest and recreation. *
- b) **Bereavement leave** to assist employees who are unable to attend work because they have suffered a bereavement.
- c) **Public holidays** to observe days of national, religious, or cultural significance.
- d) **Alternative holidays**, a paid day off as compensation for working on a Public Holiday.
- e) **Sick leave** to assist employees who are unable to attend work because they are sick or injured, or because someone who depends on them for care is sick or injured.
- f) **Family violence leave** to assist employees affected by family violence.
- g) **Parental leave** to assist employees who are the primary carer of a newborn or with the adoption of a child.

*After 12 months of continuous employment all employees are entitled to a minimum of four weeks' annual leave, or more if provided for by their employment contract. This can be taken earlier by agreement.

Background to changes

As a responsible employer, Nurse Maude, with help from independent experts, have assessed and identified areas of non-compliance. To rectify, employees affected will be due a remediation payment.

Rectification and fixing non-compliance

The following table offers a list of the main areas of non-compliance that Nurse Maude needed to fix.

Area	How we were in breach
Annual leave	• Annual leave was not consistently calculated. • When employees took leave without pay, the way leave was accrued, (or not accrued), was inconsistent. • Annual leave is currently managed in hours; it needs to be managed in weeks to be compliant with the Holidays Act.
Bereavement, Alternative, Public Holiday, Sick and Family Violence Leave (BAPSF)	• BAPSF leave should be paid at what an employee would have earnt on the day. This is known as Relevant Daily Pay (RDP). If RDP cannot be determined, we need to pay BAPSF leave at Average Daily Pay (ADP) so no one is disadvantaged. • We identified instances where allowances were not included in the gross earnings and were not applied to the calculation of the ADP or RDP rates.
Terminations	• Termination pay needs to be recalculated because of the above breaches.
Casual employees	• Casual employees should receive RDP or ADP for BAPSF leave as they have no fixed roster and BAPSF leave had not consistently been paid.

Remediation payments, Tax and Benefits

Nurse Maude will pay any remediation payment owed to you as a lump sum. Any employer contributions will be based on current percentages – for example, three percent in KiwiSaver.

From a tax perspective, your payment will be taxed as extra pay, with Pay as you Earn (PAYE) income tax and any other deductions; including Student Loan and KiwiSaver obligations being deducted at the time of payment.

Tax obligations and the Inland Revenue.

Employees of Nurse Maude are 'taxed at source' which means that payroll deducts a percentage of your taxable earnings and pay these directly to Inland Revenue (IRD).

The deduction is based on guidance tables published by IRD. If there are questions about tax, employees are advised to speak to Inland Revenue about their remediation payment.

The more you earn the more tax you will pay. As tax rates are banded, earning additional income can sometimes push you into a higher tax bracket. This means your tax obligations might change.

The best thing you can do if you're unsure of your tax after receiving your payment is to visit <https://ird.govt.nz> or send a message to Inland Revenue via 'myIR'.

You can also seek advice from a financial advisor or accountant, at your own expense, if you would like an independent opinion.

Inland Revenue

The following Inland Revenue information can help you understand your tax obligations:

Go to <http://ird.govt.nz> and search for the 'IR1046' guide to lump sum payments. If you would like more information, you can search key phrases such as:

- 'Update my family income for Working for Families'
- 'Estimating your income for child support'.
- 'Calculate PAYE for a lump sum payment'.

Setting yourself up in the customer support portal

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

- Register for 'myIR': 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.

Payments from the Ministry of Social Development

If you receive payments from the Ministry of Social Development (MSD), please contact them to explain you have received a remediation payment.

They will be able to provide you with further information on how remediation payments are treated with respect to any MSD payment(s) you receive.

Ministry of Social Development:

Go to: msd.govt.nz

Rectification – working towards compliance

In conjunction with our Remediation payment work, Nurse Maude is also undertaking a programme of Rectification to improve our processes to become compliant with the Holidays Act (2003). This includes adjustments to how we calculate the following leave entitlements:

- Annual Leave
- Bereavement Leave
- Public Holidays
- Alternative Leave (compensation for working a Public Holiday)
- Sick Leave
- Family Violence Leave
- Parental Leave.

The Holidays Act uses seven key terms that are central to calculating payment:

Annual leave

- Ordinary Weekly Pay (OWP)
- Average Weekly Earnings (AWE)
- Last 4 weeks average pay (OWP2).

Sick, Bereavement, Alternative Days, Family Violence Leave & Parental Leave

This is calculated by considering:

- Relevant Daily Pay (RDP)
- Average Daily Pay (ADP)
- Otherwise Working Day (OWD)
- Gross earnings (GE).

See page 15 for the meaning and application of these terms.

Why is your 'working week' so important?

Employment contracts vary amongst Nurse Maude's employees. Some work a standard Monday to Friday, while others work a variety of day and night shift patterns and/or on-calls, and these can fall on Public Holidays.

To ensure that you are provided the correct leave entitlement, the Holidays Act (2003) requires us to understand and calculate what a standard working week looks like for any individual employee regardless of if they work standard office hours or complex shift patterns.

This section will explore what a working week might look like for you and how this impacts your entitlements under the Holidays Act (2003).

Agreeing your working week

When an employee consistently works more hours than their contracted hours and there is a pattern of change, or a permanent change, the manager will agree 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.

Leave entitlements

With a mutual understanding of what constitutes a 'working week' for you, have calculated what leave is owed to you under the Holidays Act (2003).

All employees are entitled to a minimum of four weeks' annual leave, although many of our employment agreements provide enhanced entitlements.

Casual employees receive 8% on top of their hourly rate to meet the Holidays Act (2003) requirements.

How your working week impacts your 'four weeks' leave.

When an employee applies for Annual Leave, the proportion of the week deducted is based on contracted hours. For part-time employees, deductions will be calculated at the greater of contracted hours and the average ordinary hours worked for the 14 weeks prior to the leave being taken.

For example: you are a part-time employee, and your weekly contracted hours are 24, but in the 14 weeks prior to taking Annual Leave you worked on average 30 hours per week. Your week is based on 30 hours. So, an application for one ten-hour day Annual Leave in the week, will have 0.33 of a week deducted from your balance ($10/30 \text{ hours} = 0.33$).

In all cases where a comparison is made, if the employee has taken Annual Leave in a period where they have been employed less than 14 weeks then the average will be determined by the ordinary hours worked over the number of weeks worked.

Gross earnings underpin the calculation of leave entitlements. Ensuring accurate payments relies on the employee's current work schedule being correctly recorded. If this is not correct, payments will not be correct.

Payments are calculated at whichever is greater:

- Average Weekly Earnings (AWE)
- Ordinary Weekly Pay (OWP)
- Last 4 weeks average (OWP2).

Other leave types: known as BAPSF leave.

In addition to Annual Leave, employees accrue BAPSF leave. This stands for Bereavement (B), Alternate (A), Public holidays (P), Sickness (S) and Family violence (F) leave.

Bereavement leave

After six months' continuous employment you may take three days bereavement leave for close family as defined in the Holidays Act. You can also take one day on the death of someone outside your immediate family with your manager's agreement.

If an employee suffers a bereavement while on Annual Leave, Nurse Maude will allow the person to take any period related to bereavement as bereavement leave rather than as Annual holiday.

Public Holidays and Alternative holidays

If a Public Holiday falls during an employee's Annual Leave it is treated as a Public Holiday, and not as part of the employee's Annual Leave.

Employees are entitled to be paid notional Public Holidays when they have an Annual Leave entitlement balance on termination (this excludes accrued Annual Leave). This means that any Annual Leave entitlement is added to the employees working days following their last day of employment and any Public Holidays that fall within this period are paid as part of the termination payment.

An employee is entitled to be paid for a Public Holiday if the holiday would have been 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. The employee receives at least time and a half for working on a public holiday.

If an employee works on a Public Holiday, the employee can take an Alternative holiday on a different day. This applies if the Public Holiday falls on a day that would otherwise be a working day for the employee. The alternative holiday remains in a leave balance until it is taken.

Sick Leave

All employees are currently entitled to a minimum of ten days' Sick Leave per annum. If an employee becomes sick during their Annual Leave, or has a spouse or partner or dependant, who becomes sick or injured, the employee may take any period of sickness or injury that the employee would otherwise take as Annual Leave, as Sick Leave.

Family Violence Leave

An employee may take up to 10 days' Family Violence Leave in each 12-month period. If an employee is taking Annual Leave and becomes entitled to Family Violence Leave, the Annual Leave can be changed to Family Violence Leave.

Parental leave

Annual Leave that an employee becomes entitled to while on Parental Leave, or in the 12 months following an employee's return, will be paid at Average Weekly Earnings (AWE). It will be maintained as a separate balance.

Further questions?

If you have any questions about the Holidays Act, please contact holidaysact@nursemaude.org.nz.

Useful sources

Holidays Act 2003 No 129 (as at 15 June 2023), Public Act Contents – New Zealand Legislation.

<https://legislation.govt.nz/act/public/2003/0129/latest/dlm236387.html>

Labour Inspectorate, Market Services, Ministry of Business Innovation & Employment Hikina Whakatutuki.

<https://www.employment.govt.nz/resolving-problems/addressing-holidays-act-non-compliance>

Memorandum of Understanding – steps to resolve problems.

<https://www.employment.govt.nz/resolving-problems/how-to-resolve-problems/steps-to-resolve-problems>

Parliament Counsel Office (as at 13 June 2023), Employment Relations Act 2000.

<https://www.legislation.govt.nz/act/public/2000/0024/latest/versions.aspx>

Glossary of Common Terms

Holidays Act (2003)

Term	Holidays Act	Meaning of Terms	Used for calculating:
ADP	Average Daily Pay Section 9	ADP may be used if it is not possible or practical to determine an employee's RDP under section 9(1) or the employee's daily pay varies within the pay period when the holiday or leave falls.	Compared to RDP for BAPSF leave when it is not possible to work out RDP and an ADP top-up allowance will be generated if ADP is higher. The formula is: Gross taxable earnings for 52 calendar weeks before the end of the pay period immediately before the calculation is made, divided by number of days or part days worked.
RDP	Relevant Daily Pay Section 9	The amount of pay the employee would have received had the employee worked on the day concerned.	BAPSF Leave.
AWE	Average Weekly Earnings Section 21	This is the average pay you have received over the previous 52 weeks.	Average weekly earnings over 12 months.
OWD	Otherwise Working Day Section 12	When determining what is an OWD consideration is given to the employee agreement, work patterns and other relevant factors	Bereavement leave, alternative holidays, public holidays, sick and family violence leave (BAPSF)
OWP OWP2	Ordinary Weekly Pay Section 8 Ordinary Weekly Pay Section 8	The amount of pay an employee receives under their employment agreement includes regular overtime and allowances.	Where it is not possible to determine an employee's OWP, OWP2 is used which is: Gross taxable earnings over the last 4 weeks, divided by 4.
GE	Gross Earnings Section 14	Includes all taxable payments: Salary or wages, allowances, leave, incentive-based payments, overtime, board, or lodgings, and first week ACC compensation payable by the employer.	Used for 4-week average (OWP2) and 52-weeks average (AWE). Average Daily Pay (ADP), Termination pays. Includes all payments except those excluded by the Act in Section 14(b) and (c).

