

## priorThe Holidays Act and pay remediation

Fire and Emergency is conducting a project to meet our obligations with regard to the Holidays Act 2003 (the Act).

The Act outlines minimum entitlements for employees' annual holidays, sick leave, bereavement leave and working on public holidays.

Early in 2016 the Ministry of Business, Innovation and Employment (MBIE) told us that there was a widespread issue with some payroll systems not paying leave correctly. Following this, the project was set up to ensure that the payroll system and processes align with the Holidays Act.

Once the system changes have been made we will be able to determine if any employees were underpaid for leave taken, dating back to 1 January 2010.

### Does this affect you? [Accordion heading]

#### Non-firefighter employees

If you are a salaried employee who generally works 40 hours per week with no additional payments in the prior 12 months or are not regularly paid overtime, then annual holidays will be paid at your normal daily rate. It is unlikely that you will have been underpaid in the past.

If you are a non-firefighter and were paid additional payments in the prior 12 months or are regularly paid overtime, then annual holidays may be paid at a higher daily rate than your ordinary daily rate. It is possible that there are amounts owed for annual holidays previously taken dating back to 1 January 2010. Historical payments for annual holidays will be checked to determine if anything is owed.

#### Employees in Black Watch roles

The historical practice of paying annual holiday pay supplements in December for employees in a Black Watch role will be discontinued, as this is not compliant with the Holidays Act. The payroll system has been modified to correctly pay for annual holidays at the time the leave is taken. Because of the December supplementary payments, it is unlikely that you will have been underpaid for annual holidays taken while in the Black Watch role. However, the historical holiday supplementary payments will be checked to determine if anything is owed.

#### Uniformed and Communication Centre employees

Uniformed and Communication Centre employees may notice a slight increase in annual holiday pay if regularly paid overtime, when the system changes have been made early in 2018. If you've been regularly paid for overtime in the past, it is possible you are owed an amount for annual holidays previously taken dating back to 1 January 2010. The historical payments for annual holidays will be checked to determine if anything is owed once the system changes have been completed.

#### Changes to payslip

Due to the required system changes, non-firefighters will now see a separate payment on the payslip when annual holidays are taken. For more information, see [Change to holiday pay details on payslips](#) guideline.

### The project's next steps [Accordion heading]

## Holidays Act project

- [Holidays Act project background](#)
- [Holidays Act information](#)

## Related information

- [Change to holiday pay details on payslips](#) guideline
- [Holidays Act 2003](#)

## Notices and news

- [Payroll Changes relating to the Holidays Act \(2003\)](#)

## Contact

[Payroll team](#)

## System changes

Due to the complexity of the system changes the required work has been divided into the following stages:

1. The system changes for correcting non-firefighter employees' annual holidays - this work has been completed.
2. The system changes for correcting firefighters' annual holidays taken every 160 days - this work is underway and is planned to be completed early 2018.
3. The system changes for correcting firefighters' annual holidays taken outside of the 160-day leave cycle.
4. A review of the way sick leave, bereavement leave and public holidays is paid.

## Remediation payments

The project team has started to develop the programmes to work out if any amount is owed to individual employees for annual holidays taken dating back to 1 January 2010. The calculations we need to do to address the various scenarios and historical data issues is going to take a lot of work. It is important that we get this right, so it may take us some time before the remediation payments will be ready.

## Who to contact for more information [Accordion heading]

Please contact the Payroll team at [NHQPayroll@fireandemergency.nz](mailto:NHQPayroll@fireandemergency.nz) if you have any questions.

## Holidays Act information

The Holidays Act (the Act), which applies to all employees in NZ, outlines minimum entitlements for employees:

- annual holidays to provide the opportunity for rest and recreation;
- public holidays for the observance of days of national, religious, or cultural significance;
- 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; and
- bereavement leave to assist employees who are unable to attend work due to the bereavement of a person close to them.

The Act states that:

- Annual holiday leave is paid at whichever rate is the higher of:
  - the employee's ordinary weekly pay at the beginning of the annual holiday, or
  - the employee's average weekly earnings for the 12 months just before the annual holiday.
- Sick leave, bereavement leave, and leave taken on public holidays are paid at the rate of either their relevant daily pay or average daily pay.
- Payments for overtime and allowances should be included when calculating:
  - ordinary weekly pay if those payments are a regular part of the employees pay (however, the Holidays Act does not define what is meant by 'regular'); and
  - relevant daily pay if those payments would have otherwise been received had the employee worked on the day concerned.
- If it is not possible to determine an employee's ordinary weekly pay (as in the case when overtime can differ from pay to pay), then the average of the gross earnings from the previous four calendar weeks prior to the leave being taken, is to be used to calculate the payment for leave. Gross earnings include any overtime and/or allowances, less any exclusions specified by the Act.

[Related info list is repeated on each Portal page]

## Holidays Act project background

When the Act came into play in 2014, the holiday leave taken by firefighters every 160 days was changed to pay the higher of their ordinary weekly pay or average weekly pay (which includes overtime payments) to align with the Act.

### Calculating leave pay [Accordion heading]

Early in 2016 we were made aware by MBIE that there was a potential wide spread issue within NZ organisations with payroll systems not paying leave correctly. Following this, NZFS commissioned PwC NZ to review the way that we paid annual holidays to non-firefighters. PwC identified that annual holidays were potentially being underpaid where overtime was regularly paid to employees, as the Act states:

- ordinary weekly pay includes allowances and overtime if these are regularly paid; and
- if it is not possible to determine an employee's ordinary weekly pay (as in the case when overtime can differ from pay to pay), then the average of the previous four weeks' gross earnings should be used.

As the Act does not define what constitutes regular overtime, we sought legal advice to clarify this. Based on the legal advice, the intent of the Act, and previous court cases, regular overtime for Fire and Emergency New Zealand employees is defined as "overtime occurring more often than not, i.e. payment for overtime is included in more than 50% of an employee's pays".

This means that payment for annual holidays needs to be based on the higher of either:

- Ordinary weekly pay; or
- Average weekly pay based over the prior 12 months; or
- Average weekly pay based over the prior four weeks, when overtime is regularly paid (more than 50% of pays).

In addition to this, the NZPFU Collective Agreement for Uniformed and Communication Centre employees, states that annual holidays taken every 160 days need to be paid on the higher of the ordinary weekly pay or average weekly pay over the prior 160 days, rather than 12 months' average, or over six months if annual holidays are taken outside of the 160-day leave cycle.

This means that payment for Uniformed and Communication Centre needs to be based on the higher of either:

- ordinary weekly pay; or
- average weekly pay based over the prior 12 months; or
- average weekly pay based over the prior four weeks, when overtime is regularly paid (more than 50% of pays); or
- average weekly pay based over the prior 160 days, when taking annual holidays every 160-day leave cycle; or
- average weekly pay based over the prior six months when taking annual holidays outside of the 160-day leave cycle.

## **Modify payroll system** [Accordion heading]

The project is working with the payroll system vendor to modify the system to correctly calculate leave when overtime is regularly paid. Due to the complexity of the system changes, this work has been split into two parts to cover the annual holiday payment for:

- non-firefighters; and
- firefighters'.

Once the system changes have been made we will then be able to determine if any employees were underpaid for annual holidays taken dating back to 1 January 2010, six years from when MBIE and PwC advised of the payroll problems.