



New Zealand Leave Primer

for Employers, Employees and Payroll developers

31 March 2016

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SUMMARY

Objective

We felt the need to create this document to help explain the overall simplicity of the current Holidays Act, some of the quirks and areas that could well do with some improvement.

SmoothPay Ltd supports the main principles of the Act to provide both for correct payment for leave taken as well as ensuring staff have time off. We would also support simplification of the Act.

Public perception and the attitudes of payroll software developers in New Zealand continue to ignore the requirements of the Act where they base annual leave accrual and consumption in hours or days, instead of weeks. This perception is at odds with the Act and cause many to believe the Act to be complex and unfriendly. The architects of the Act gave great consideration to employee's rights to have time off as well as payment at the correct value.

The Act is relatively simple (far simpler than the rules around taxation for example) and SmoothPay goes to great lengths to provide for almost every scenario concerning accrual, valuation and consumption of leave. That isn't to say that there aren't aspects of the Act that could do with a tidy up, and we've identified some of the more common issues in this guide.

Our objective is to educate by providing simple overviews, sometimes with more detailed examples and references, of each aspect of the Act in general day-to-day use and according to the principles of the Act.

This primer will provide you with the basic rules governing leave accrual, valuation and consumption under the Holidays Act 2003 and how Parental Leave affects the value of accrued leave.

MBIE also publish a handy guide *Assessing Your Payroll System* available here:
<http://employment.govt.nz/er/publications/assessing-your-payroll-system.pdf>

In addition, MBIE have also published this guide (July 2017):
<https://www.employment.govt.nz/assets/Uploads/tools-and-resources/publications/Holidays-Act-2003-Guidance-on-annual-holidays-and-related-provisions.pdf>

To learn more, read on.

SmoothPay Ltd acts in a non-representational capacity for users of its services and attempts to provide operational solutions to payroll problems as they arise. All tax and financial solutions offered are of an operational nature and are not provided to satisfy any statutory obligations nor is any solution provided as conclusive legal, financial or tax advice

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CASUAL STAFF

Definition

A casual employee is one who is:

- called in to fill in when work is available, or
- has a contract of no longer than 12 months, or
- has a work pattern so irregular that calculating permanent entitlements would be difficult

Entitlements

- **8% leave loading** calculated on gross taxable earnings is paid out every pay period, and must be identifiable (the amount of the loading must be shown on the payslip)
 - The loading is usually calculated as a separate amount to the hourly rate, however
 - The loading may be included in the hourly rate, and the loading content must be identified.
- A casual employee is entitled to standard **sick leave accruals** if they complete a six-month period of working 10+ hours per week

Quirks and Issues

The 4-hour per week employee: We have noted a small incidence of workers who do Saturday morning work each week, or who work regularly but very low hours or very few days per week. This class of employee, we think, should be included in the definition of a casual employee. It is plainly silly to make such employee's permanent, with 4 weeks annual leave, when often they work only 4 hours per week (and have 164 hours of each week not working).

Regular work patterns: We have also noted that MBIE appear to regard any regularity as grounds for a casual employee being moved to a permanent contract and leave entitlements, including staff employed on short-term contracts. This doesn't agree with the provisions of the Act and such employees should be able to remain on a casual basis. The only difference this makes is that under a casual contract the employee receives their leave loading as they go (and they may also be entitled to sick leave, as well as Public Holidays if applicable to their roster or work pattern), rather than receiving their annual leave on termination.

Piece-workers: Employees such as shearers, shed hands, harvesters, fixed-rate per milking dairy workers and so on must have their hours recorded in order to ascertain that the employee is not paid less than the minimum hourly rate. It is also a requirement that the number of days paid is recorded so that Average Daily Pay can be calculated correctly (if needed). If the employee is on a casual contract and works on a Public Holiday then they are entitled to penal rates for the piece-work on that day.

ANNUAL LEAVE

Definition

The Holidays Act 2003 determines that annual leave accrues at a rate of no less than 4 weeks on completion of each 12 months of service.

- It does NOT say 160 hours, or 20 days, or 8% as the accrual rate, nor does it say it's OK to accrue more often (e.g. per pay period) - read paragraph 1 again.
- There are circumstances that accrual may use a different method as long as it genuinely represents the worker's week AND it must be able to be compared against the minimum requirements of the Act. We have never seen a situation where any method other than weeks makes any sense, and it certainly makes it nearly impossible to gauge against the correct method.

Entitlements

Permanent staff are entitled to (minimum):

- 4 weeks annual leave **accruing** on completion of each year of service
- 1 week per year may be **cashed-up**. The payment is taxed using Extra Pay tax rules and does not contribute to Average Weekly Earnings (AWE) or Average Daily Pay (ADP).
- Each week, or part thereof, is **valued** at the time it is taken using the BEST of the following factors:
 - Ordinary Weekly Earnings (OWE)
 - ▶ For an employee who works irregular hours, the Average Weekly Earnings over the last 4 weeks worked, otherwise
 - ▶ The ordinary weekly earnings based on the employee's written agreement or normal work pattern
 - Average Weekly Earnings for the last 52 weeks (excluding approved weeks of absence)
 - An agreed weekly value (e.g. as per the employee's written agreement)
- ➡ If the leave being consumed accrued whilst on Parental Leave or the 12 months following the employee's return to work from Parental Leave, then the value may be significantly reduced (gross earnings for 12 months / 52)

Issues (*with the Act*)

Common anniversary dates for annual closedown period. This adds complexity and can overpay the employee for the time they actually take off, leading to overstated AWE and ADP values, as well as the administrative task of moving the employee's anniversary date and paying out 8% of earnings since start date.

Using computer payroll systems there is no need to move anniversary dates (other than in cases of long term absence in order to defer the next accrual). Do people move their birth or wedding anniversary dates? This provision of the Act adds unnecessary complexity, and it can only be utilised in the first year of employment.

The main issue though is paying out 8% at closedown for an employee in their first year of employment. If the employee has worked 11 months prior to the common anniversary date, and the company closes for 2 weeks, then they would expect to receive approximately 3.67 weeks worth of value. Of the 2 weeks closedown there are 4 public holidays, so in many cases the employee is being paid 3.67 weeks of annual leave in equivalent value for 1.2 weeks of actual annual leave time.

One of the tenets of the Act is to provide correct payment for correct time off, and MBIE commonly call employers to account if they pay out all leave at closedown each year, rather than the correct amount for the leave actually being taken (we agree, you shouldn't do that, so why would you pay out a full 8% if it exceeds the value of the period of leave being taken?).

Some consistency and simplification here would be very desirable and could be achieved by simply removing this option from the Act.

It is not reasonable to deny an employee a payment of leave in advance of their entitlement if your company has an annual closedown and the employee's estimated balance is sufficient to pay some or all of the leave that may be consumed during that closedown period. Sure, the employee's annual leave balance will become negative, however as long as advances are given judiciously then neither party will lose out.

Changing work patterns: One of the biggest anomalies evident with the Act is when an employee's work pattern and hours change significantly (it affects all staff whose pay varies and it illustrates why hours/days do not work correctly):

- An employee working more hours (say an increase from 3 days per week to a 40-hour, 5-day per week contract) immediately increases any unused annual leave to the new weekly earnings value.
- An employee reducing hours, say from 40 to 24, gradually loses value for any unused annual leave, as the average weekly earnings will be more than the current weekly earnings for up to 12 months

This often causes confusion for employers - though the valuation rules are quite straight forward.

Regular payments: The issue here is that "regular" is not defined - it's just assumed everyone knows what it means. Employers often consider a productivity payment made monthly for an employee paid weekly or fortnightly is not regular because it doesn't get paid with each ordinary pay period and therefore exclude it from AWE and ADP. It could be argued that a bonus paid annually is regular, especially if noted in the employee's contract or in respect of work performed (a productivity or incentive payment), as distinct from a true Xmas gift bonus. These payments are often included as an item in their contract, or are paid regularly

(even though not on the employee's usual pay cycle) and therefore are meant to be included in AWE. Clarifying the Act in this regard is well overdue.

Salaries and Packaging: The Act effectively outlawed salaries and salary packaging from 1 April 2004 (2005 for existing agreements). S50-54 prohibit a package that includes penal rates payable for work on Public Holidays. Note that this applies equally to members of parliament who work on a Public Holiday as it does to Police, Teachers on school trips or catching up on paperwork, in fact every salaried employee in NZ (except Armed Forces).

Using leave methods other than weeks: Payroll providers and practitioners may hide behind S17 which provides options for how an employee's annual holidays may be met so as not to meet their actual obligations under the Act by using alternative accrual methods (such as hours).

In all cases it must be by agreement - I've never seen a contract that stipulates an agreement other than "per the provisions of the Holidays Act" - but I could be wrong. I would suggest that most employer's are completely oblivious of the Act and that most payroll providers duck the issue.

It does not mean the employee's entitlements can be less than they would have been had the method prescribed in S16 been adhered to. This effectively means that S17 has no meaning, because unless you can show that the payments being given for leave accrued under S17 are equal to or greater than the provisions of S16 and S21-28 then the variation being used is not compliant. We would expect all payroll providers to be aware of this and by ignoring the issue are being actively non-compliant, and users of such systems are paying their staff incorrectly.

The whole 52 week divisor with provision to reduce the divisor shambles: S5(1) says use 1/52, S16(3) and S22(3) say reduce the divisor in some situations. Our view is that regular staff should have the divisor reduced for weeks absent (and there's an option to shift the anniversary date for extended periods of absence if needed), and for irregular staff use the 52 week divisor (or weeks since start date if they started less than 12 months ago). This provides FAIR results.

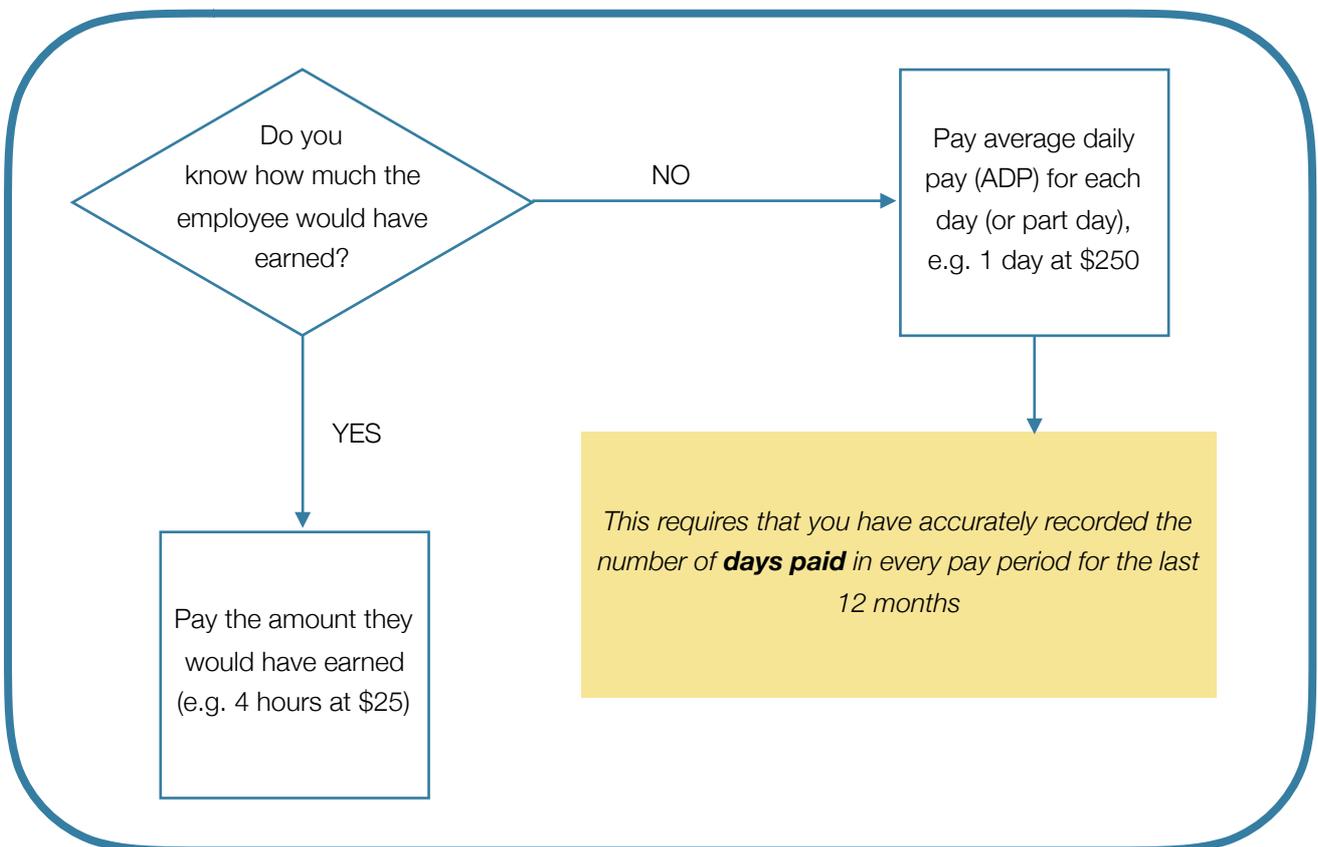
It would be easier for everybody to understand if the Act was aligned more with Australian rules which provide for accrual per hour (4 weeks, pro-rated, or 7.692308% on every ordinary hour or equivalent paid leave time) and an additional loading when consumed.

SICK LEAVE

Entitlements

Permanent staff (and casual staff who work 10+ hours per week for 6 months) are entitled to sick leave as follows:

- 5 days (regardless of the employee's normal days per week!) accrual after 6 months service
- A further 5 days each 12 months thereafter
- Total accrual may be capped at 20 days (optional)
- Payment for each day off is determined using Relevant Daily Pay (RDP) rules as follows:



OTHER DAILY LEAVE TYPES

All standard daily leave types (Sick, Public, Bereavement, Alternative, 1st Week ACC) are paid using the same RDP rules using the method shown above.

Issues (with daily leave types)

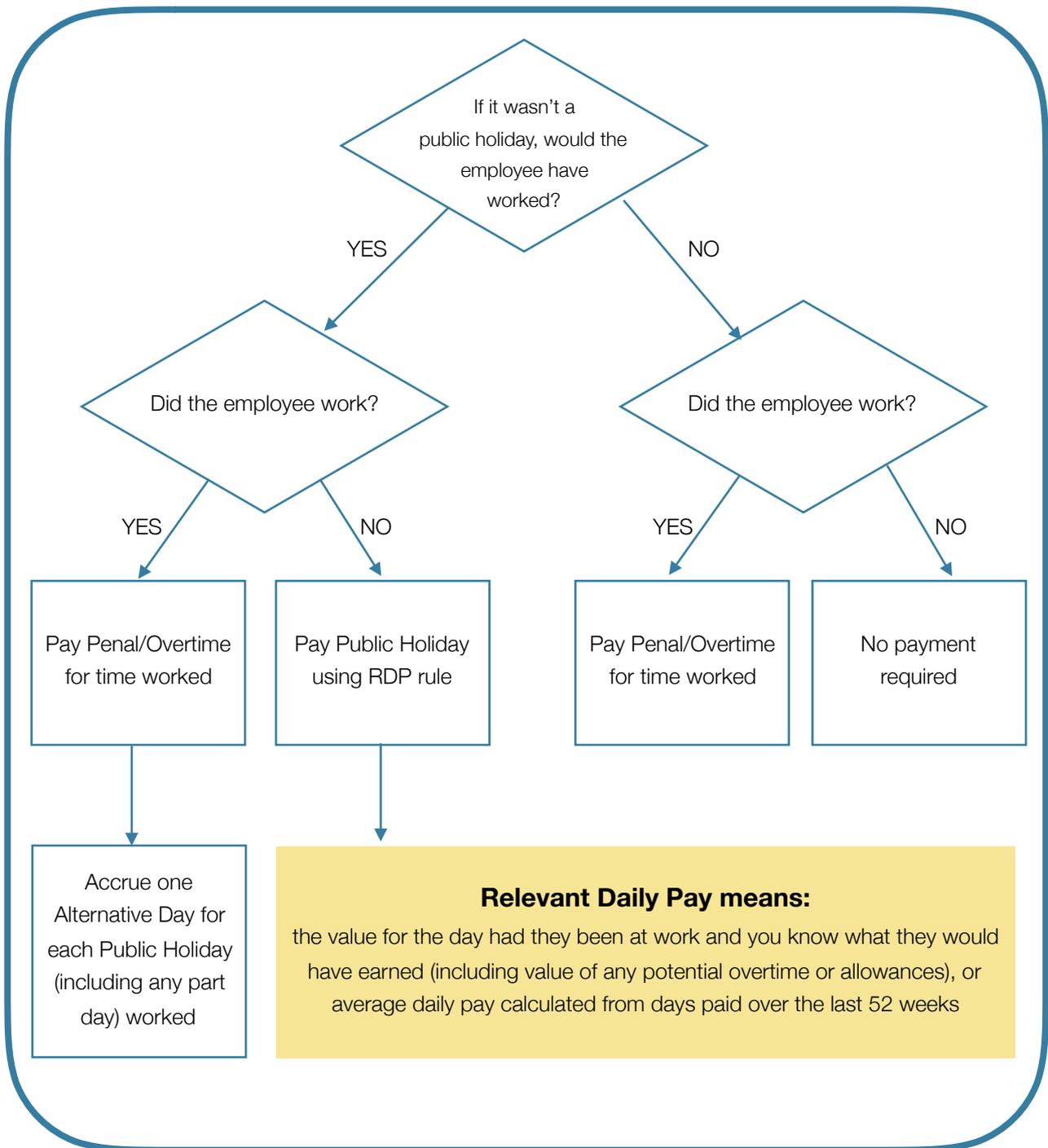
Penal rates for work on a Public Holiday for a “salaried” employee: The Act requires payment of penal rates for work on a public holiday. This can well lead to a lesser value than usual for the time worked. Typically an employee will receive their salary for the day, however it may be less than the amount they should have been paid. It might also be more than they should have been paid (unless their agreement says they'd be paid no less than a daily rate).

Days Paid: S9(3) requires days paid to be captured for the purpose of determining Relevant Daily Pay (Average Daily Pay vs. their normal pay). A payroll that doesn't provide for the capture that information, yet staff earn overtime, productivity allowances or who work irregular hours not governed by a published and strict roster is non-compliant. Even if the payroll provides for an agreed amount - that **MUST** be assessed using S9(3) anyway, basically making it a compulsory requirement. A number of common payroll systems do not currently provide this facility.

Days Paid (whole or part days?): This is poorly defined in the Act. If an employee normally works 8 hours per day, 5 days per week but and stops 4 hours short one day, it would be logical to regard the days paid as 4.5 - or is it 5? Given that any time worked on a public holiday may trigger a 1 day entitlement to an Alternative Day it may be that the days paid includes any part of a day as a whole day (e.g. 5 days). The issue here is that recording 4.5 days paid would result in correct ADP rather than lowering the average by using 5 days paid. This needs clarification. We advise clients to err on the side of the employee and fairness by recording 4.5 in such cases.

PUBLIC HOLIDAYS

Entitlements *(a picture speaks a thousand words)*



BEREAVEMENT LEAVE

Entitlements

There are two separate entitlements to bereavement leave after six months' employment:

- On the death of an immediate family member, the Act provides for up to three days' paid leave. This can be taken at any time and for any purpose genuinely relating to the death. "Immediate family members" are:
 - ▶ the employee's spouse or partner,
 - ▶ parent,
 - ▶ child,
 - ▶ sibling,
 - ▶ grandparent,
 - ▶ grandchild or
 - ▶ the spouse's or partner's parent.

Where there is more than one bereavement, the employee is entitled to three days' bereavement leave in respect of each death.

- In the event of a death outside the immediate family that causes a person to suffer bereavement, up to one day's paid leave may be taken if the employer accepts that the employee has suffered bereavement. In considering whether a bereavement has occurred, the employer should take into consideration:
 - ▶ how close the association was between the employee and the other person
 - ▶ whether the employee is responsible for any aspects of the ceremonies around the death
 - ▶ whether the employee has any cultural responsibilities they need to fulfil in respect of the death.

1ST WEEK ACC

Entitlements

An employee suffering an injury at work may be entitled to be paid 80% of their first week off work.

Use Relevant Daily Pay rules to determine how much is payable - 80% of that amount is due to the employee if they are off work for 1 week or more.

- If the employee works regular hours you would pay 80% of those hours for each day away (e.g. 6.4 hours for each day, or 32 hours for the week). If the hours are fixed by a roster or contract and differ from the usual 8 hour day then use 80% of the known value for each day.
- If you don't know what the employee would have earned then you're reliant on Average Daily Pay (ADP) - pay 0.8 for each day off.

Issues

If an employee works irregular hours, and typically more on one day of the week than other days then ADP in this case can easily produce more than the employee would normally earn in a normal week.

It is unclear from legislation if the hours (or ADP value) should be 80%, or the hourly rate should be adjusted to 80% - we advise clients to use the former method, as an 80% hourly rate may be less than minimum wage.

TERMINATION PAY CALCULATION

This form can be used to correctly calculate final pay for any permanent employee

Current pay value (if any, i.e. work, unused alternative, public holidays)	A	<input type="text"/>
Value of leave remaining from last anniversary dd / mm / yyyy	B	<input type="text"/>
C <input type="text"/>		Liabe earnings from last anniversary (excl current pay)
D <input type="text"/>		Value "A"
E <input type="text"/>		Value "B" if greater than zero, otherwise zero
F <input type="text"/>		Liabe earnings @ 8% =
	G	<input type="text"/>
Total to pay	H	<input type="text"/>

Notes

A, C: Exclude discretionary payments

B: Calculated using the BEST OF:

- ▶ average weekly earnings for up to last 52 weeks
- ▶ current contract (may be averaged over last 4 weeks)
- ▶ agreed weekly value

If B is negative, value is determined from actual payments entries

Public Holiday Shadow: If B is positive then you need to ensure the employee is also paid for any public holidays they would normally have been paid that occur between their finish date and when their unused leave would run out.

PARENTAL LEAVE

Entitlements

If your employee has applied for and been approved parental leave you'll receive a form showing the commencement and return dates. Simply enter these dates into your system so it knows when to start and stop the parental leave rules from being applied to annual leave that accrues from commencement date until 12 months after the return date (these accruals are valued differently to normal annual leave).

Issues

Annual leave that accrues whilst on Parental Leave or in the 12 months following return to work is valued using a different Act - basically the value of such leave is based on Average Weekly Earnings for the last 12 months using a divisor of 52. This can drastically reduce the value of each week consumed (it can even be worth nothing). As time goes by this value will increase until the end of the PL period is reached when everything returns to normal.

That can't be right: It can be difficult to convince employers and staff alike that this is indeed the correct method of valuation.

Terminations: If your employee is terminating and has unused Annual Leave that accrued whilst on Parental Leave we advise paying out the unused value in a separate pay before processing the Final Pay with any residual balance.

HOW DOES SMOOTHPAY HELP YOU MEET YOUR OBLIGATIONS?

Annual leave accruals

SmoothPay accrues annual leave in weeks on each anniversary of employment. SmoothPay is not permitted to be used with non-compliant leave methods.

Consuming annual leave

SmoothPay utilises the methods described by the Act to provide accurate valuation of leave at the time it is valued or consumed

- ▶ Ordinary Weekly Earnings (or 4 week average if the employee is flagged irregular)
- ▶ Average Weekly Earnings from employee's pay history
- ▶ Agreed weekly rate (available in in employee's contract settings)
- ▶ Caters for leave accrued whilst on Parental Leave

As leave is consumed in weeks the leave assistant provides the means to enter whole or part weeks, or calculate a value (e.g. hours x rate) which will determine the proportion of a week to be debited from the employee's balance.

A common cause of errors here are when the employer selects an incorrect weekly pay rate, or is using non-compliant leave methods, or has configured their system so as to enable access to pay input fields for all leave entries, or overrides the results obtained via the leave assistant.

Cashing up annual leave

The leave assistant provides a cash-up option, valued as above.

Leave liability reporting

SmoothPay automatically generates a leave liability report using the above valuation methods at the end of every pay period. These are also available on demand.

Days paid

SmoothPay provides default values in the employee's contract settings and overrides in Pay Input so that days paid can be altered on a per pay basis if needed.

Errors in collection of this data can be easily corrected in the employee's pay history.

Daily leave types

SmoothPay's default leave methods for sick, public etc are in days and are valued according to the provisions of the Act.

If the employer knows exactly what the employee would have earned they complete the input fields (hopefully with correct data) - this is a common cause of error.

Compliance checking

Smoothpay automatically generates an Issues Report every time an upgrade is applied, or on demand. This report identifies any settings that might be non-compliant as well as many other setup issues (such as warning if a casual employee should be receiving a sick leave entitlement etc).

In addition, SmoothPay displays warnings in the employee's settings and pay input advising of any issues.

Leave auditing

SmoothPay provides basic auditing tools that identify discrepancies between what was paid and the leave recorded as taken. This can occur if records were not accurate at the time the pay was processed, or certain options have been enabled that permit the user to access fields that are generally loaded automatically (unlocking records for manual editing).

SmoothPay provides more in-depth auditing tools in-house to assist with remedying non-compliant use of the system.

MBIE Auditing

SmoothPay provides a comprehensive MBIE Audit extract that fulfils much of the data requirements for an audit.

Final word

SmoothPay endeavours to provide the tools and services (including free training, data reviews and updates), however we have almost no control over how our software will be used.

We trust the employer will have sufficient knowledge to not make critical errors in processing.

We do not support or condone the use of non-compliant leave methods.

We remain committed to adhering to the requirements of the Act as far as humanly possible and willingly modify the system to accommodate legislative changes and requirements.