

## Technical FAQ: What's changing with employment leave?

Version 1 13 October 2025

*This document was first uploaded on 13 October 2025 and reflects frequently asked technical questions received up to this date. It will be updated on a regular basis as additional questions are received. Future versions of this document will indicate the changes made.*

The information provided in this document relates to the policy proposals for new employment leave legislation agreed by Cabinet in August 2025.

It is important to note that none of the proposed changes outlined in this document are final until the Bill is passed, and the proposals are subject to change during the Parliamentary process. Once legislation has been drafted and introduced it will be considered by a Select Committee. The public and interested parties will have the opportunity to provide input at that stage.

Until any changes to the Holidays Act go through the Parliamentary process and come into force, all of the existing rules still apply. This means that employers still need to comply with the current Holidays Act, and ensure they are providing the correct entitlements and payments to employees.

This document is only to explain policy proposals. It should not be used as a substitute for legislation or legal advice. The Ministry of Business, Innovation and Employment is not responsible for the results of any actions taken on the basis of information in this document, or for any errors or omissions.

## Overview of this document – version 1.0 (13 October 2025)

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## **1. Earning annual leave and sick leave**

### **1.1. How will hours based accrual interact with the current weeks and days -based entitlements?**

Under the proposed new system annual leave and sick leave entitlement will be described purely in hours with no reference to weeks or days. Annual leave and sick leave will be earned, taken and held in hours.

Leave balances will reflect contracted hours worked in the past, without any scaling for increases or decreases in contracted hours. An hour of leave will retain its value regardless of changes in working hours.

Leave will continuously accrue rather than arising as a lump sum.

### **1.2. How will contracted and additional hours be defined and distinguished?**

A key feature of the proposed employment leave system is the concept of different ‘types’ of hours. These will be used for the purposes of determining when annual and sick leave entitlement must accrue or when the leave compensation payment applies. These concepts are also central to the rules for taking leave.

It is proposed that the new legislation will include definitions of each type of hour which will be specific to the Employment Leave Bill. The detail of these definitions will be a focus during drafting.

The terms ‘contracted’, ‘additional’ and ‘casual’ hours are currently being used as working terms to describe the concepts. These terms are intended to refer to:

- **‘Contracted’ hours:** hours specified in (or derivable from) an employee’s employment agreement<sup>1</sup> that they are required to work, do not have an ability to refuse to work, and must be paid for (even if the employer is not able to offer work).

The exception is hours worked under an Availability Provision in accordance with section 67D of the Employment Relations Act, which would not be considered contracted hours.

- **‘Additional’ hours:** extra hours of work that an employee with ‘contracted’ hours works and receives additional wages for. They are hours for which there is no requirement for an

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<sup>1</sup> ‘Employment agreement’ is intended to refer to the most up to date documentation of an employee’s agreed hours of work including anything specified in an employment agreement itself, a letter of offer, additional terms and conditions or any other agreements or variations entered into during the course of employment.

employer to make available, and an employee has the right to refuse to work. This includes hours worked in addition to contracted hours on a day (whether or not they are paid at an 'overtime' rate) and hours worked during extra shifts.

Hours an employee is required to work under an Availability Provision and is paid additional wages for will also be considered 'additional' hours. Hours worked under an Availability Provision that are compensated by salary will not be considered 'additional' hours (so leave does not accrue and LCP is not paid in relation to those hours).

- **'Casual' hours:** all hours worked by employees who have employment arrangements where the employer is not required to make any work available, and the employee does not have to accept any work offered under their employment agreement.

### **1.3. At what point do additional hours become contracted hours? What if it's not clear?**

The intent is that contracted hours are those specified, or derivable from, an employee's employment agreement. We are aware that the boundary may not always be clear and work arrangements may change over time.

To ensure compliance with the new legislation and other legal obligations, employers will need to engage with their employees on a regular basis to ensure any changes to contracted hours of work are recorded in writing (forming part of the employment agreement).

Employers will also need to engage with payroll staff and/or providers on an ongoing basis to ensure they have the information needed (such as the employee's current number of contracted hours) to provide and pay leave entitlements correctly. Taking a 'set and forget' or a 'one size fits all' approach to payroll will continue to carry a high risk of non-compliance.

Changes to the leave system may mean changes to both business and payroll systems, including how hours of work are recorded and tracked during the course of employment. There will be a 24-month implementation period to allow for the end-to-end implementation process to be completed.

### **1.4. How will leave accrue during parental leave?**

It is proposed that leave will continue to accrue continuously during parental leave, based on an employee's contracted hours as at the point parental leave commences (if an employee has different contracted hours at different times of year, accrual would reflect contracted hours for that part of the year). The exception is where an employer and employee have agreed to a temporary change in contractual hours for a period of three months or less before parental leave commenced (for example where an employee had temporarily reduced their hours two months before commencing parental leave), in which case leave accrual would be based on the employee's contracted hours before the temporary change.

### **1.5. What if an employee does not return to work or resigns just after the end of parental leave?**

If an employee informs their employer before the end of their period of parental leave that they have decided not to return to work, their last day of employment is deemed to have been the day on which the period of parental leave began (section 46 of the Parental Leave Employment Protection

Act 1987). This means the employee will not be entitled to payment for any annual leave accrued between the start of parental leave and the date employment ends.

If an employer does not keep the employee's job open (either because it is a 'key position' or the employee is made redundant while on parental leave) the end of employment is the date of termination. The employee will be entitled to payment for the annual leave they have accrued since the start of parental leave.

If the employee returns to work for any period of time following parental leave (including 'keeping-in-touch days) and their employment ends, they will be entitled to payment for all annual leave they have accrued and not taken before, during and after the period of parental leave.

## 2. Taking leave

### 2.1. What hours will leave be able to be taken against?

The Bill will include parameters for when leave can be taken, and the maximum amount that can be taken on a given day.

**Annual leave:** Employees and employers will be able to agree that annual leave will be taken on contracted days of the week only, up to the number of contracted hours they would have worked on that day. If, at the time annual leave is requested, an employment agreement<sup>1</sup> or roster does not specify when contracted hours would have been worked, a notional roster would be used to identify contracted hours (see below). In a given seven-day period, the maximum number of hours of annual leave an employee could take is the number of contracted hours they would have worked in that seven-day period according to their employment agreement.

**Family violence, bereavement sick leave:** employees will be able to take these leave types against contracted days of the week and hours of work and against any days of the week and hours of work that an employee had accepted at the time they notify their employer of their intent to take the leave (this includes both additional hours and casual hours – refer to question 1.2 above). Similar to annual leave, if an employee notified their employer of their intent to take these leave types leave in advance (for a known medical procedure for example) and the employment agreement or a roster did not specify the days/hours an employee would have worked, a notional roster will be used to identify contracted hours (see below).

**Alternative holidays:** any day an employee could have worked under their employment agreement.

### 2.2. Can casual employees access bereavement and family violence leave?

Yes. All employees (including those with no contracted hours of work) will be entitled to ten days family violence leave (which they may take if they are affected by family violence) and to bereavement leave (which they may take if they are impacted by the death of a specified person) from the first day of employment. Casual employees will be able to take these entitlements on days of work they have been offered and accepted.

### **2.3. How will the notional roster work? Will there be any flexibility for employers to have another process for identifying when leave can be taken?**

Where an employment agreement includes a contractual obligation to work but doesn't specify all of the information needed to determine someone's leave entitlements (such as days of the week and times contracted hours are worked or the number of hours of work for a salaried employee) the employment agreement must include a notional leave roster that includes those details which will be used for leave purposes.

We are continuing to consider the details of the notional rosters and how they apply in different situations.

### **2.4. What amount of leave will an employer have to allow an employee to take?**

Under the proposed system, an employer will not be able to unreasonably withhold consent to an employee taking any annual leave they have accrued (including in the first 12 months of employment). An employer may (but does not have to) also allow an employee to take leave in advance of it accruing.

Following the completion of the first 12 months of employment, within each subsequent 12-month period, an employer will have to allow an employee (if requested) to take their annual leave entitlement balance as at their 12-month employment anniversary.

For example, if an employee had a balance of 70 hours after 6 months employment and requested to take 40 hours, the employer could not refuse the request unless they had reasonable grounds to do so. If the employee had a balance of 120 hours at their 12-month employment anniversary, they would have to allow them to take 120 hours within the next 12 months.

### **2.5. Will employers still be able to require employees to take annual leave entitlement if they have a large leave balance?**

Yes. It is proposed that rights and obligations for taking annual leave will be aligned with the general intent of the status quo but adapted for an accrual system.

If they have made reasonable attempts to reach agreement with an employee about when annual leave is to be taken and have been unable to do so, an employer will be able to require the employee to take their balance of annual leave entitlement as at their last 12-month employment anniversary in the next 12 month period. This will not apply in the first 12 months of employment. Like under the current Act, an employer will need to provide 14 days' notice in writing of a requirement to take annual leave.

For example, if an employee had a balance of 190 hours at their 12 month employment anniversary that would be the maximum amount the employer could require them to take in the next 12 months (with 14 days notice).

### **2.6. How will the system work when an employee works extra hours and is provided time off in lieu (TOIL) to be taken in the future rather than being paid for the extra hours worked)?**

Under the proposed system, since the extra hours are unpaid at the time and will instead be compensated by paid time off at a later date, there would be no accrual and no leave compensation

would be payable on those hours. When the TOIL is taken, leave entitlements would accrue against each paid hour of TOIL (as it would have if the employee worked those contracted hours rather than taking TOIL).

## **2.7. Will there be any changes to the provisions for having closedowns?**

**Annual closedowns:** Employers will continue to be able to have one closedown period when they discontinue the work of an employee and require them to take annual leave.

It is proposed the minimum period for an employer to give notice to an employee before an annual closedown period is extended from 14 days to 21 days. Notice will be required in writing and will need to include information about the dates of the closedown, any requirements to take paid or unpaid leave, and any other leave arrangements that are available (such as leave in advance or additional paid leave). The intent is to improve transparency and certainty for employees about annual closedown periods.

**Agreed closures:** The Bill will also clarify the process for agreeing that an employee will discontinue their work at times that are not an annual closedown ('agreed closures'). It is proposed that employees will need to agree in writing to the closure and the leave arrangements at least 14 days before it starts.

**Payments for leave taken during annual closedowns:** Under the proposed accrual system, the rule that an employer must pay an employee who is not yet entitled to annual leave at the start of an annual closedown 8% of their gross earnings since the start of employment (or the last annual leave entitlement date) will not be necessary.

Employees will be able to take all their accrued annual leave entitlement during a closedown and it will all be paid according to the normal leave payment rules. If they do not have sufficient entitlement, the employee will either need to take unpaid leave or the employer and employee could agree to annual leave being taken in advance or to the provision of additional paid leave.

## **3. Leave Payments**

### **3.1. Will penalty/premium wages be reflected in employees' hourly leave pay?**

The proposed hourly leave pay rate is the lowest wage rate specified in an employee's employment agreement that would otherwise apply on the day (being a continuous period of work from the time the employee starts work to when they finish work) leave is taken.

For example:

- Ben works Wednesday to Sunday. He is paid \$26 an hour Wednesday – Friday, so this is his hourly leave pay rate if he takes leave on those days. He is paid \$32 an hour on Saturday and Sunday, which is his hourly leave pay rate if he takes leave at the weekend.
- Christine works shifts according to a 4 on - 4 off roster. Under her employment agreement half of the shifts are always night shifts and half are day shifts. She receives \$32 an hour for day shifts and time and a quarter (T1.25 so \$40 an hour) for night shifts. Hayley takes two shifts as leave, the first would have been a day shift and the second a night shift according to her agreed work

pattern. Her hourly leave pay rate for the first day of leave is \$32, and for the second day leave is paid at T1.25 or \$40.

- Carla works 8 hour shifts under her employment agreement and her ordinary hourly rate for those hours is \$30. She also receives a T1.5 overtime rate of \$45 for hours worked in excess of 8 hours per shift. Carla is rostered to work 2 hours overtime on a particular shift (a total of 10 hours on that shift) but is sick so takes the full shift as sick leave. Her hourly leave pay rate for all 10 hours is \$30. Carla could also notify her employer that she only wants to use 8 hours of her paid sick leave entitlement, and she would then receive sick leave pay just for her contracted hours.

### **3.2. Will allowances be paid during leave?**

Allowances are not proposed to be included in the statutory definition of hourly leave pay rate.

It is proposed, however, that 'fixed allowances' must continue to be paid in full during any period of leave, like they would be if the employee was working. Parties could also agree that an employee's leave pay will include other allowances that an employee may receive when they are working.

### **3.3. How will a fixed allowance be defined?**

Fixed allowances will be defined as any allowances that do not vary in value and, at the time leave is taken, an employer is contractually required to pay an employee each pay period or on any other basis.

There will be an exception to this rule for any allowances that compensate an employee for expenses that they incur while they are working but that they do not incur while on leave.

Examples of payments that are intended to be considered fixed allowances:

- a fortnightly higher duties allowance for extra responsibilities
- a night shift allowance for working a night shift that is part of an agreed shift pattern
- a qualification allowance for holding a trade certificate or first aid certificate
- a fortnightly carpentry tools allowance which covers costs of investing in personal equipment, or an annual tools allowance (if it was due to be paid in the pay period leave was taken).
- an accommodation allowance to cover the costs of an employee's accommodation (e.g. rent)
- an ongoing fortnightly on call allowance for an employee who is contractually rostered on call every second weekend, or an annual availability allowance as compensation for being on call.

Some examples of things that are not intended to be considered fixed allowances:

- a travel allowance for a contractual night shift always worked (as while on leave this is not incurred)
- a meal allowance that is payable each week for contracted hours worked after 6pm (as while on leave the expense is not incurred)



- a meal of allowance for working non-contractual overtime (as it is not required to be paid in a pay period unless the overtime is worked)
- a delivery allowance for each delivery made (as it varies in value)
- an allowance payable to a teacher for attending a school camp per each day of camp (as it is a one-off payment and not always payable)
- an on-call allowance, paid only when an employee is asked and agrees to be on standby (employee is unable to be on standby as on leave, thus non-fixed allowance).

### **3.4. How will leave pay work for employees who are paid piece rates?**

Piece rates are wages paid to an employee based on the quantity of work completed, rather than the hours worked. Piece rates may be in addition to an ordinary hourly rate of pay or they may be the only component of pay (total pay per hour must be no less than the minimum wage). Examples include a payment for every bin of kiwifruit picked, for every meter of insulation installed, or for every tree pruned.

For those paid wholly or partly by piece-rates, the hourly leave pay rate will be the employee's lowest hourly wage rate that would otherwise apply on the day of leave, and it will also include an hourly average of piecework wages (in total being no less than the minimum wage). The hourly average will be calculated based on all piece wages paid in the pay periods that started in the 52 weeks before the one in which leave was taken and the total number hours worked in those pay periods (or the period the employee has been employed if it is less than 52 weeks).

### **3.5. How will leave be paid when employment ends?**

The minimum pay rate for each hour of annual or alternative holiday leave an employee has not taken or cashed up when employment ends will be the lowest wage rate specified in an employee's employment agreement as at the date the employment ends (for any day or time of work).

The hourly rate is not the lowest rate for the day leave is taken since the payment is not related to a specific day.

For piece wages, an average will apply like if leave was taken.

Fixed allowances would not need to be paid as part of the leave pay at the end of employment, as the employee will have received these in full during their employment.

### **3.6. Cashing up – how will it work?**

An employee will be able to request to cash up 25% of their annual leave balance, as at their last 12-month employment anniversary, in each 12-month period. The amount of leave that can be cashed up will always be based on the balance at the anniversary point and not be affected by leave accrual or use following it. An employee will not be able to cash up any annual leave in their first 12 months of employment.

Examples:

- An employee has 280 hours of accrued leave at their 12-month employment anniversary. In the next 12 months they can cash up up to 70 hours of leave.

- Another employee has 60 hours of accrued leave at their 12-month anniversary, they could cash-up up to 15 hours in the next 12 months.

The framework for agreeing to cash up annual leave remains the same as under the current system, only the amount that can be cashed up is proposed to change. Cash ups must be requested by an employee in writing. The employer does not have to agree to a request but if they do, they must agree in writing.

## **4. Leave Compensation Payment (LCP)**

### **4.1. If an employee already receives a contractual penal/premium rate for additional hours will LCP still be payable?**

Yes. Under the proposals the LCP will be paid if an employee already receives a penal/premium wage rate (for example an overtime rate or weekend rate) in relation to an additional hour. LCP is intended to serve a different purpose to contractual wage premiums. Contractual overtime, night or weekend rates recognise long or unsociable hours, whereas the purpose of the LCP is to provide compensation in lieu of accruing annual and sick leave for that hour.

LCP will be a separate component of pay to contractual wages. It will be calculated as 12.5% of an employee's ordinary hourly wage (the lowest wage rate specified in their employment agreement for an hour of work). Any other contractual wage premiums would continue to be paid in addition to the leave compensation payment.

For example, an employee's ordinary hourly wage is \$30 for their 40 contracted hours per week. They are paid an overtime rate of \$60 (T2/double time) for hours they work in addition to 40. For each additional hour they work they will receive \$60 plus a separate LCP payment of \$3.75 (being 12.5% of their ordinary wage rate of \$30).

### **4.2. What is the LCP payment calculated on?**

For each additional or casual hour of work, LCP will be calculated as 12.5% of an employee's ordinary hourly wage (the lowest wage rate specified in their employment agreement for an hour of work).

The 12.5% will not be applied to any other components of pay such as commission, fixed or variable allowances or penal rates. For those paid by commission, who do not have an ordinary hourly wage that is greater, LCP must be calculated on no less than the minimum wage. We are continuing to consider the details of how LCP will apply to piece rates.

The leave compensation payment will be a separate component of pay (like pay-as-you-go for annual leave is now) and must be shown separately from other parts of pay in employees' records and pay statements.

## **5. Public Holiday entitlements**

### **5.1. Will there be any change to the rules for determining whether a day is an Otherwise Working Day when it is not clear?**

Yes. For the purpose of determining public holiday entitlements, under the proposals a day will be considered an OWD for an employee (including those with only casual hours) if:

- they would have worked on it according to agreed days of work or an agreed pattern of days of work set out in the employee's employment agreement;

or, if the employee does not have agreed days of work or an agreed work pattern:

- the employee has worked (for any amount of time) on the same day of the week the public holiday falls in at least half of the preceding 13 weeks (being at least seven days). If an employee has been employed for less than 13 weeks before a public holiday, the reference period will be the period since the beginning of their employment (for example, if the public holiday falls on a Friday in the employee's tenth week of work, 'at least half' will be five of the nine preceding Fridays).

A day will not be considered an OWD if it is reasonable to expect the employee would not have worked on it due to parental leave, volunteers' leave, accident compensation or unpaid leave.

## **5.2. How will taking and cashing up alternative holidays work?**

The proposed framework for taking and cashing up alternative holiday hours is aligned with annual leave but with greater flexibility. The framework also provides for the use of alternative holiday hours by casual employees. Alternative holiday hours will be able to be taken on any day an employee could work under their employment agreement (whether or not it is a contracted day of work). They will be able to be cashed up by agreement at any time (removing the current 12 month waiting period before that can happen). For a casual employee, cashed up alternative holidays might provide paid time without work, or be paid out in addition to paid hours of work.

## **6. Transitioning to the new leave system**

### **6.1. What will happen to existing entitlements when the new Act comes into force?**

Transitional provisions will provide clarity about what employers must do to transition to the new legislation.

In respect of the transition of leave balances:

- for employees with contracted hours, their existing annual leave, sick leave and alternative holiday balances will be converted to hours.
- for casual employees, existing annual leave balances will be cashed up, alternative holidays will be converted to hours and sick leave balances will cease.

There will also be provisions about when employers must apply the new legislation from after it comes into force to ensure practicality for payroll systems. Transitional provisions will also cover issues such as how much leave can be cashed up in the period between the new Act coming into force and an employee's next 12-month anniversary. The details will be developed during drafting.

### **6.2. Will employers have flexibility to implement the changes earlier?**

All parts of new legislation are proposed to come into force at the same time, 24 months following the date of Royal Assent. There will not be flexibility to implement the changes earlier.

### **6.3. What will happen to liabilities under the Holidays Act? Will employers still have to remediate employees for historical underpayments?**

Employers will still have an obligation to remediate employees for historical underpayments that have occurred due to non-compliance with the current Holidays Act.

Cabinet has, however, agreed that there will be a statutory process for estimating and resolving liabilities under the current Act. Once an employee has received the estimated amount of arrears, they would not be able to make further claims.

The Minister for Workplace Relations and Safety has delegated authority to decide the details and will seek Cabinet agreement before the Bill is introduced. The intention is to support the timely resolution of historical issues and reduce the compliance costs of doing so, which should support more employees to receive back pay.

## **7. Preparing for the changes**

While employers and payroll providers may want to start thinking about what the changes will mean for them, it is important to note that none of the proposed changes are final until the Bill is passed.

There will be a 24-month implementation period between when a Bill is passed and when it comes into force. This provides time for payroll providers and employers to make changes to business and payroll systems.

MBIE will ensure that information about any changes to the Holidays Act is available to employers, employees and payroll providers as soon as practical after the Bill is passed.

Until any changes to the Holidays Act go through the Parliamentary process and come into force, all of the existing rules still apply. This means that employers still need to comply with the current Holidays Act, and ensure they are providing the correct entitlements and payments to employees.

Additionally, employers still have an obligation to remediate employees for historical underpayments that have occurred due to non-compliance with the current Holidays Act.