

Technical FAQ: What's changing with employment leave?

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This document provides detailed technical information about the changes proposed in the Employment Leave Bill. Summary information can be found in the Employment Leave Factsheet and Explainer available on the MBIE webpage: [Holidays Act reform: Employment Leave Bill](#)

Updates in Version 3

The document was first uploaded on 13 October 2025 following Cabinet policy decisions for the Employment Leave Bill. Updates in version 3 reflect terminology used in the Bill and further policy and technical details that were developed during drafting.

Key areas that have been updated and added since Version 2 (published on 3 November 2025) include:

- **Hours of work** (New section 1) – updates to the questions that were included in Version 2 reflect the terms used and defined in the Bill and further information about how notional rosters will work.
- **Earning leave** (Section 2) - new FAQs include leave accrual on paid additional leave and access to bereavement leave and family violence leave for employees with casual hours. Questions about hours of work definitions shifted into Section 1.
- **Taking and using leave** (Section 3) – new FAQs include rights and obligations around taking annual leave, determining proportions of bereavement family violence leave days taken, and using leave to top up accident compensation.
- **Leave payments** (Section 4) – updates reflect the technical details included in the Bill. New FAQs include leave payments for salaried employees and the timing of leave payments.
- **Leave Compensation Payments** (Section 5) – updates reflect technical details included in the Bill and new FAQs about employer liability when LCP has not been provided correctly.
- **Public holidays** (Section 6) – updates clarify the details of the Otherwise Working Day test, payments for working public holidays, and alternative leave accrual when an employee is on-call. New FAQs include when a day is not considered an OWD, determining the number of hours to be paid on a non-worked public holiday, entitlements when an employee is affected by sickness, bereavement or family violence on a public holiday, and how the rules for transferring whole public holidays will work.
- **Leave records, enforcement and other matters (New Section 7)** – new FAQs include reference periods; how the proposed system will work for employees who receive averaged salaries, part-year workers, and employees who have multiple roles with one employer; providing entitlements above the minimum requirements; leave records; and penalties.

- **Related changes to other Acts (New Section 8)** – new FAQs covering payments for employment relations, education and health and safety training leave, treatment of leave entitlements following restructuring processes, and changes to the parental leave payment methodology.
- **Transitioning to the new system** (Section 9) - further details and new FAQs about the process for converting existing leave entitlements, updating employment agreements, and remediation.

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 set out in the Bill and explained in this document are final until the Bill is passed. The proposals are subject to change during the Parliamentary process.

The Bill proposes a **24-month implementation period** between when the Bill is passed and when it comes into force. This will provide time for payroll providers and employers to make changes to business and payroll systems.

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

Until the Bill goes through the Parliamentary process and comes 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.

Disclaimer

The purpose of this document is only to explain the proposals set out in the Employment Leave Bill as introduced on 9 March 2026. Information included in it, according to MBIE's best efforts, is accurate at the time of publication.

It does not constitute legal advice or official guidance on the requirements set out in the Bill (which are subject to change before it is passed into legislation). MBIE will provide guidance, tools and resources to employers, employees and payroll providers as soon as practical after the Bill is passed.

MBIE is not responsible or liable for the results of any actions taken based on information in this document, or for any errors or omissions.

Overview of this document – version 3.0 (19 March 2026)

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1. Hours of work definitions and notional rosters

A key feature of the proposed employment leave system is the concept of different types of hours – standard, additional and casual hours. These are used for the purposes of determining when annual and sick leave entitlement must accrue, or when the leave compensation payment (LCP) applies. These concepts are also central to the rules for taking annual leave, sick leave, bereavement leave and family violence leave.

1.1. How will the types of hours be distinguished?

The Bill includes definitions of each type of hour. These definitions are specific to the Employment Leave Bill.

- **Standard hours:** hours an employee is required to work under their employment agreement and that an employer must pay them for. Paid breaks are also considered standard hours.

Standard hours do not include hours that fall under an availability provision in an employee's employment agreement.

- **Additional hours:** hours that an employee who has standard hours works in addition to those hours which:
 - an employer is not required to make available; and
 - an employee has the right to refuse; and
 - for which the employer must pay the employee an additional payment (this may be at the same or a different rate than what is payable for a standard hour).

Hours an employee is required to work under an availability provision and they receive an additional payment for are also considered additional hours.

However, hours a salaried employee works 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). These extra hours are also not required to be recorded separately in an employee's Leave Record, and Wages and Time Record.

- **Casual hours:** all hours worked by an employee whose employment agreement does not require their employer to offer them any work and does not require them to accept any work they are offered.

1.2. At what point do additional or casual hours become standard hours? What if an employee's work pattern changes?

Standard hours are those for which an employee is required to work and an employer must pay the employee for under the employment agreement. If, over time, a mutual commitment to offering and accepting work develops in addition to what is written in the employment agreement, the boundary between standard, additional, and casual hours may not be clear.

The best way for employers to ensure compliance with the new employment leave legislation (and other legal obligations) will continue to be regular engagement with employees to assess whether

what is written in the employment agreement is an accurate reflection of an employee's work arrangements.

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 standard 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 captured in employment agreements and 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.

1.3. Some salaried employees are required to work fewer hours than they are paid for. Which hours are considered their standard hours?

An example of this situation is an where a salaried employee's employment agreement provides that they are required to work 37.5 hours per week (which includes two paid 10-minute rest breaks each day), 7.5 hours a day over 5 days. They are also entitled to a 30-minute unpaid break each day. The employee's salary compensates them for 40 hours, however. If they work up to 40 hours per week, they do not receive any additional payment. If they work over 40 hours they receive overtime wages.

The intent is that 37.5 hours are considered this employee's standard hours, being the hours they are required to work and the employer must pay them for. The extra 2.5 hours compensated by salary are provided under an availability provision and are therefore not standard hours or additional hours. The employee's leave accrual, taking of leave and hourly leave pay rate (which will be the salary amount (including the compensation for the additional 2.5 hours) attributable to one standard hour of work) will all be based on 37.5 hours.

1.4. If an employee works extra hours but is provided time off in lieu (TOIL) to take in the future will they be considered additional hours?

If an employee is provided TOIL for extra hours worked, it means they are unpaid at the time and the employee does not receive any additional payment. Those hours will therefore not meet the definition of additional hours. The leave compensation payment will not be payable on extra hours worked in exchange for TOIL.

The intent is that TOIL hours would be considered standard hours at the time they are taken, as that is when the employer is required to pay them. Annual and sick leave will accrue on the hours at that time.

1.5. What if an employee has standard hours but not a fixed number or days or times they work them?

Where an employee has standard hours under their employment agreement but it doesn't specify one or all of:

- the number of an employee's standard hours (e.g., for a salaried employee);
- the days of the week standard hours are worked;

- the hours in each day they are worked

the employee and their employer must agree in writing to a **notional roster** at the time an employment agreement is entered into. The notional roster must include the information above that cannot be determined from the employee's employment agreement.

1.6. What will a notional roster be used for?

Notional rosters will be used, as relevant, for determining annual and sick leave accrual and when annual leave, sick leave, bereavement leave and family violence leave can be taken. If a work roster setting out when standard hours would be worked is in place at the time of a leave request or notification, that actual roster would be used rather than the notional roster (refer Q 3.2 - 3.4 for further detail about when leave can be taken).

1.7. Why doesn't the Bill also provide for notional rosters to be used to determine public holiday entitlements instead of the Otherwise Working Day test?

Notional rosters will not be used to determine entitlements to public holidays or alternative leave. This is because the days of public holidays are always known in advance, which may cause challenges to parties in reaching agreement on the days of work to be specified in a notional roster and/or leave it open to manipulation.

1.8. What if employees and employers can't reach agreement?

If parties are unable to agree to a notional roster at the start of employment, or whether or how a notional roster should be updated during employment, a Labour Inspector may determine it for them.

The Bill includes a guideline for how a Labour Inspector will determine a notional roster, based on an employee's employment agreement and work patterns over a 13-week period.

1.9. How often will a notional roster need to be updated? What if an employee's number of standard hours are different at different times of year?

Employers and employees must ensure that a notional roster is kept up to date.

A notional roster will need to be updated if the number of standard hours in an employment agreement changes, and the days and times in the notional roster no longer align.

A notional roster should also be updated if the days and times an employee works as specified in the notional roster are no longer an accurate reflection of when the employee actually works. The 13-week period specified for Labour Inspector determinations is also intended as a guideline for employers and employees to follow in assessing whether a notional roster should be updated.

If, under an employment agreement, standard hours vary according to seasonal patterns, then different notional rosters for different times could also be agreed upfront to reduce the need for updates during the course of employment.

2. Earning leave

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

The Bill describes statutory annual leave and sick leave purely in hours with no reference to weeks or days. Annual leave and sick leave are earned, taken and paid in hours.

The concept of 'entitled' and 'non-entitled' leave is removed. Annual leave and sick leave will continuously accrue from the first day of employment rather than arising as a lump sum after specified periods of time. Balances of statutory leave will reflect standard hours worked in the past, without any adjustments for increases or decreases in standard hours. An hour of leave will retain its value regardless of changes in working hours.

The Bill includes rules and formulas for converting current entitlements from weeks and days to hours when the new legislation comes into force (refer Q 9.1 - 9.3). From that point leave balances will be treated as leave under the new framework.

2.2. How will leave accrue during parental leave?

Leave will continue to accrue continuously during parental leave, based on an employee's standard hours as at the point parental leave commences. The exception is where, in the three months before the start of parental leave, an employer and employee have agreed to a temporary increase or decrease in standard hours. In this case leave accrual will be based on the employee's standard hours before the temporary change. A temporary change is defined as a change that is in place for no more than three months.

2.3. 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). Any 'keeping-in-touch days' the employee may have worked do not change the last day of employment. 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 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.

2.4. Does annual leave accrue if an employee is on paid leave that is additional to minimum entitlements?

If an employee is on paid leave that is not provided for under any legislation (for example additional annual leave, long service leave or a paid sabbatical) the default is that leave will accrue. The Bill provides that for this type of leave an employee and their employer may agree that the employee does not accrue annual leave for that leave or absence from work.

2.5. Currently fixed-term (or 'temporary') employees can be paid annual leave on a pay-as-you-go basis if their contract is for 12 months or less. Will fixed term employees accrue leave or receive the leave compensation payment?

If a fixed-term employee has standard hours in their employment agreement (refer Q 1.1) they will accrue and be able to take annual leave and sick leave on those hours from the first day of employment (unless, in the case of annual leave, an employee has reasonable business grounds to refuse a request). If they do not take annual leave they have accrued during their fixed term it will be paid out at the end of employment (including if the employment is for a single pay period).

If a fixed-term employee does not have any standard hours or works additional hours, they will receive the leave compensation payment in relation to all of those casual or additional hours of work.

2.6. Can employees with only casual hours access bereavement and family violence leave?

Yes. The Bill provides that all employees (including those with no standard hours) will be entitled to ten days of 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 person¹) from the first day of employment.

¹ The Bill carries over the list of specified persons on whose death an employee is entitled to one or three days bereavement leave from the Holidays Act 2003.

3. Taking and using leave

3.1. How much annual leave does an employer have to allow an employee to take? Do employers still have to allow employees to take a period of two weeks annual leave? Can annual leave be taken in advance of accrual?

The rights and obligations for taking annual leave proposed in the Bill are intended to align with the status quo but have been adapted for the accrual system.

- Like the current system, in the first instance employees and employers must make all **reasonable efforts to agree** when annual leave will be taken.
- The Bill provides that **an employer cannot unreasonably withhold agreement to an employee's request** to take any annual leave they have accrued **from the start of employment**
- An employer **may also allow an employee to take annual leave in advance** of it being accrued. *Unlike the current Act, annual leave accrued since the start of employment or since the employee's last start date anniversary will no longer be considered leave in advance.*
- Following an employee's first employment start date anniversary, in each 12-month period, an employer:
 - **must not withhold consent** to an employee taking the amount of annual leave that was in their annual leave balance at their most recent start date anniversary.
 - **must allow** an employee to use their accrued annual leave **to take a continuous period of at least 14 consecutive days away from work** (including rostered days off). *This aligns with the provision in the current Act requiring employers to allow an employee an employee to take at least 2 weeks of their annual holiday entitlement in a continuous period.*

Example: Carry has 35 standard hours per week. She has an annual leave balance of 70 hours after 6 months of employment and requests to take 40 hours. Carry's employer could not refuse the request unless they had reasonable grounds to do so.

At her first start date anniversary Carry has a balance of 100 hours. Her employer must allow her to take 100 hours within the next 12 months. If Carry requests, her employer must allow her to take that annual leave on dates that enable her to take a continuous period of 14 days without working (this would be 70 hours of annual leave for Carry).

Carry's employer also cannot unreasonably withhold agreement to her taking annual leave she accrues after her start date anniversary.

3.2. Will employers still be able to require employees to take leave?

Yes, the Bill provides that an employer may require an employee to take annual leave up to the amount of their annual leave balance at their most recent start date anniversary if, after reasonable efforts, they have not been able reach agreement with an employee about when that leave will be taken. The employer must provide the employee 14 days' notice in writing of a requirement to take annual leave.

In the example of Carry in Q3.1, Carry's employer may require her to take a total of 100 hours of leave between her first and second start date anniversaries if they have not been able to agree with her when that leave will be taken.

3.3. What hours can annual leave be taken against?

The Bill provides that annual leave may be taken on standard hours only.

- If an **employment agreement** specifies the days (or a pattern of days) on which the employee works standard hours and the number of standard hours the employee works on them those are the hours annual leave may be taken against.
- If, at the time an employee requests to take annual leave, a **work roster**² for the period in which the leave falls is in place and sets out the days and hours in them that the employee will work standard hours, those are the hours annual leave may be taken against (if an employment agreement and work roster specify different days and times standard hours will be worked then the work roster would apply).
- If, at the time annual leave is requested, an employment agreement does not specify when standard hours will otherwise be worked, and there is no work roster yet in place for the period, the standard hours set out in the employee's **notional roster** (refer Q 1.6 -1.9) are the hours the employee may take leave against.

The Bill provides **that the maximum number of hours of annual leave an employee can take** is the number of standard hours in their employment agreement they otherwise would have worked.

It also provides that the number of standard hours that the employee may be required to work is reduced by the number of hours taken as annual leave.

3.4. What hours can sick leave be taken against?

The Bill provides that sick leave may be taken against standard hours *and* additional hours.

Taking sick leave against standard hours: the same rules as annual leave apply (refer Q3.2).

Taking sick leave against additional hours: If, at the time an employee who has standard hours notifies their employer of their intent to take sick, bereavement or family violence leave, a work roster³ is in place and includes additional hours that the employee would otherwise have worked, the employee may also take these leave types against those additional hours.

The intent is that this includes additional hours (refer Q 1.1) that an employee had been required to work under an availability provision at the time of the notification.

² The Bill defines a Work Roster as a roster agreed by an employer and employee (in writing or oral or any other form) that specifies the days of the week and hours in each day that the employee works.

Periods during which sick leave cannot be taken:

The Bill provides that, despite the rules described above, these leave types may not be taken if the employer and employee expect the employee would not have worked on the day because the employee is on parental leave, volunteers leave, receiving accident compensation or on any other unpaid leave.

This aligns with (and clarifies) the status quo. Under the current Act, sick leave can only be used on a day that is an otherwise working day. A day is an otherwise working day under the current Act if the employer and employee had reasonable expectations an employee would have worked on the day, so days that fall during these *unworked* periods (e.g., parental leave) are excluded.

3.5. What hours can family violence and bereavement leave be taken against?

The Bill provides that family violence and bereavement leave may be taken against standard hours, additional hours *and* casual hours.

Taking bereavement and family violence leave against standard hours: the same rules as annual leave and sick leave apply (refer Q 3.2)

Taking bereavement and family violence leave against additional hours: the same rules as sick leave apply (refer Q 3.3).

Taking bereavement and family violence leave against casual hours: an employee who works casual hours will be able to take family violence and bereavement leave against days of work specified in a work roster at the time they notify their employer of their intent to take these leave types.

Periods during which bereavement and family violence leave cannot be taken: the same rules as sick leave apply (refer Q 3.3).

3.6. Cashing up annual leave – how will it work?

Under the Bill, in each 12-month period, starting on an employee's start date anniversary, an employee will be able to request to cash up a maximum of 25% of their annual leave balance (as calculated at the date of that anniversary). 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 a maximum of 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; an employer cannot require an employee to cash up. The employer does not have to agree to a request, but if they do, they must agree in writing and they must advise the employee of their decision within 14 days of receiving the request.

The transitional provisions provide clarity about how much annual leave can be cashed up in the period between the new Act coming into force and an employee's next start date anniversary (refer Q 9.8).

3.7. How will the portion of a day of bereavement leave or family violence leave an employee has taken be determined?

The Bill provides that bereavement and family violence leave may be taken in whole or part days.

The Bill provides a formula for determining what proportion of a day of leave the employee has taken. This is based on determining the total number of hours the employee would have worked on the day (according to the most recent agreement between the parties), less the hours the employee does work, and dividing the result by the hours the employee would have worked on the day.

The hours the employee would have worked are the number of hours described in Q3.4 that the employee could take as bereavement or family violence leave.

3.8. How will taking and cashing up alternative leave work?

Taking alternative leave

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.

The Bill provides for alternative leave to be taken on any day an employee may work under their employment agreement. The number of standard hours that the employee may be required to work is reduced by the number of hours taken as alternative leave.

Example:

An employee's employment agreement provides that they could be rostered to work any of Wednesday – Sunday. The employer and employee may agree that an employee can take the alternative leave on any of Wednesday – Sunday, but the employee may not take alternative leave on Monday or Tuesday (as those are not days they may work).

Cashing up alternative leave

Under the Bill, alternative leave will be able to be cashed up by agreement at any time (removing the current 12 month waiting period before that can happen). The framework for cashing up alternative holidays will align with the framework for cashing up annual leave – employee requests and employer decisions must be in writing, and employers must not require cash-ups but may decline requests.

Cashed-up alternative holidays might provide an employee with a leave payment in a period without work (for a casual or part year worker for example), or it might be paid out in addition to paid hours of work and leave taken.

3.9. Will employees still be able to use leave entitlements to top up first week and weekly accident compensation payments? How will this work?

The Bill provides that, if an employee does not work at all during a week in which they receive first week or weekly accident compensation they may agree with their employer to take:

- up to 20% of their standard hours for a week as annual leave;
- up to 20% of their standard hours for a week as sick leave;
- up to 20% of their average weekly hours, which is then converted to a portion of a day and deducted from their family violence leave balance. The Bill provides formulas for both these calculations.

The leave will be paid as if it were leave taken under any other circumstances. The intent is that an employee could use leave to top up their accident compensation to approximately 100% of their usual earnings (it will not be exact due to the differences between the accident compensation payment calculation and the leave payment calculation). This could only happen in a week an employee does not work at all, as accident compensation would be abated by any amount the employee earns above 20% of the regular earnings.

3.10. Will there be any changes to the provisions for having closedowns?

Annual closedowns: Employers will be able to have one closedown period starting in each calendar year where they close all or part of their operations, discontinue the work of an employee and require them to take annual leave or unpaid leave.

The Bill extends the minimum period for an employer to give notice to an employee before an annual closedown 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, long service leave or additional paid leave). The intent is to improve transparency and certainty for employees about annual closedown periods.

Agreed closures: The Bill clarifies the process for agreeing that an employee will discontinue their work at times that are not an annual closedown ('agreed closures'). It provides that employers and employees must 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 during a closedown, and it will all be paid according to the normal leave payment rules. If they do not have sufficient annual leave accrued, the employee will either need to take unpaid leave or the employer and employee could agree either to annual leave being taken in advance or to the provision of additional paid leave.

4. Leave payments

4.1. How will the leave hourly rate work for an employee who is paid by salary?

The Bill provides that, **for an employee paid wages**, the leave hourly rate will be the lowest hourly rate payable under the employment agreement for the day on which leave is taken (unless the employee is a part year worker and leave is taken in a non-worked period (refer Q 7.3)).

For a salaried employee, the leave hourly rate will be the amount of their salary attributable to one standard hour of work (an employer might calculate this by dividing the annual salary by the annual number of standard hours). The salary amount includes any compensation the employee is paid as part of their normal salary for hours they must be available to work under an availability provision (because those hours are not considered standard hours, they are not included in the divisor, however).

Specific rules apply to the calculation of the leave hourly rate for employees paid an averaged salary (refer Q 7.2).

4.2. Will overtime, night and other penal wage rates be reflected in employees' leave hourly rate?

The Bill provides that the leave hourly rate is the lowest hourly rate specified in an employee's employment agreement for the **day** on which leave is taken. A continuous work period that begins on one calendar day and finishes on the next is considered one day.

If any penal rate applies to a whole day (for example, a Saturday or night shift rate) the penal rate will be the leave hourly rate for all hours taken as leave on that day.

If a penal rate would have applied to only some hours on a day it will not be reflected in the leave hourly rate for any hours taken as leave on that day. For example, if a shift is 3pm – 12pm and a night rate applies for hours worked from 7pm – 7am, the night rate would not apply to any hours taken as leave. If the shift was 9pm – 6am it would apply to all hours.

This means business and pay systems do not need to identify specific hours that may have been worked and taken as leave on a specific day. Systems will need functionality to apply different pay rates across days.

Examples:

- Ben works Wednesday to Sunday. He is paid \$26 an hour Wednesday to Friday, so this is his hourly leave rate if he takes leave on those days. He is paid \$32 an hour on Saturday and Sunday, which is his leave hourly rate if he takes leave at the weekend.
- Christine works shifts according to a four-days-on, four-days-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. Christine 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. The intent is that her leave hourly rate is \$32 for the first work period taken as leave and T1.25 or \$40 for the second work period.

- Carla works 8-hour shifts under her employment agreement and is paid \$30 for each of those hours. 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 of overtime on a particular shift (a total of 10 hours on that shift). Carla's leave hourly rate is \$30 for any hour she takes as leave (including if she takes sick leave, bereavement leave or family violence leave against her rostered overtime hours).

4.3. 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. An employee paid piece rates may or may not also be paid a base amount per hour worked (but in either case the total wages paid to an employee paid by piecework 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.

The Bill provides that for employees paid wholly or partly by piece rates, the hourly leave pay rate will be their leave hourly rate (the employee's lowest hourly wage rate that would otherwise apply on the day of leave (or salary attributable to one standard hour of work), and **it will also include an hourly average of piecework wages**. If this is less than the minimum wage, the employee will be paid the minimum wage for each hour of leave taken.

The hourly average of piecework wages will be calculated based on all piecework wages paid in the pay periods starting in the 93 days (refer Q 7.1) before the start of the pay period in which leave is taken (if a period of leave crosses pay periods, the calculation will be pay period specific).

The divisor will be the number of hours the employee has worked (excluding hours an employee has been on paid leave, as piece rates would not have been paid in relation to those hours) in those pay periods. This means that, if an employee has been working for fewer than 93 days or has not been working for the full reference period, the average hourly rate will not be distorted.

4.4. How will leave pay work for employees who are paid commission?

Commission is when an employee is paid based on sales they have made or other targets met. An employee paid commission may or may not also be paid a base hourly wage rate (but in either case must be paid at least the minimum wage).

The Bill provides that the leave hourly rate does not include any productivity-based or incentive-based payments (including commission). Employees paid wholly or partly by commission will be paid the lowest hourly wage rate that would otherwise apply on the day of leave (or salary attributable to one standard hour of work). If this is less than the minimum wage, the employee will be paid the minimum wage for each hour of leave taken.

4.5. Will allowances be included in employees' leave payments?

The Bill provides that, when an employee takes any period of leave (or does not work on a public holiday that is an Otherwise Working Day (refer Q 6.1)), 'fixed allowances' (refer Q 4.6) must continue to be paid in full, like they would be if the employee was working for that period. This is in addition to the leave hourly rate, which does not include any allowances.

Parties could also agree that an employee's leave payments will include other allowances that an employee may receive when they are working.

4.6. How will a fixed allowance be defined?

The Bill defines fixed allowances as those that, under an employment agreement, an employer must pay an employee and that do not vary in value. This includes allowances payable each pay period or on any other basis (e.g., once a quarter or year).

There is 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 that would otherwise be payable for the period of leave taken.
- A night shift allowance for working a night shift that an employee is required to work under their employment agreement.
- A qualifications 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.

Examples of payments that are not intended to be considered fixed allowances:

- A travel allowance of a non-variable amount for a night shift, whether or not the shift is one the employee is required to work under their employment agreement (as while on leave the expense is not incurred).
- A mileage allowance that an employee receives to compensate for work-related travel in a personal vehicle (as it varies in value and the expense is not incurred while on leave).
- A meal allowance that is payable each week for any hours worked after 6pm (as while on leave the expense is not incurred).
- A delivery allowance for each delivery made (as it varies in value).
- An allowance payable to a teacher for attending a school camp per 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 (the employee is unable to be on standby as on leave, thus a non-fixed allowance).

4.7. How will annual leave and alternative leave be paid when it is cashed up and when employment ends?

The Bill provides that the minimum pay rate for each hour of annual leave or alternative leave an employee cashes up or has not taken or cashed up when employment ends will be the **lowest wage rate payable under the employee's employment agreement** as at the date the request to cash up leave is made or on which employment ends. For a salaried employee, it will be the amount of salary attributable to one standard hour of work as at the relevant date.

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

For employees who receive piece rates, an **hourly average of piece rates will apply** like if leave was taken (refer Q 4.3). The reference period for the calculation will be the pay periods starting in the 93 days before the start of the pay period in which the request to cash up leave is made or the employee's last day of employment falls.

Fixed allowances will not be payable as part of the leave payment for cashed-up leave or at the end of employment, as the employee will have received these in full while working.

Employees paid by piece rates or commission, whose leave payment rate is lower, must be paid no less than the minimum wage for each hour of leave cashed up or paid out.

The current rule that public holidays that fall after employment ends but within a period of annual leave paid out at the end of employment must also be paid is removed.

Like under the current Act, untaken sick leave will not be paid out at the end of employment.

4.8. Bereavement leave and family violence leave will still be held in days. Will Relevant Daily Pay (RDP) and Average Daily Pay (ADP) still be used for them?

The same leave hourly rate will be used for all types of leave, including bereavement and family violence leave. ADP and RDP are not included in the Bill.

Unlike under the current Act, it is proposed that these leave types could be taken in whole or part days in direct proportion to the number of hours an employee would have worked under their employment agreement or that they were rostered to work. Those hours will also be used as the basis of the leave payment.

4.9. When do leave payments have to be made? How do leave calculations work when a period of leave falls in more than one pay period?

All leave payments must be calculated and paid to an employee in the pay period the leave is taken. The rate of leave payment must be calculated in relation to leave taken in that pay period and may differ between pay periods (including for a continuous period of leave that crosses pay periods). The leave hourly rate is specific to the day/s leave is taken and the reference period for the hourly average of piece rates is based on pay periods before the specific one in which leave is taken.

The exception is annual leave payments, for which the Bill provides for employers and employees to agree that payments will be made before the leave is taken rather than in the pay that relates to the period it is taken. This flips the default rule under the current Act.

4.10. Will there be a change to how lump sum leave payments are taxed? Currently they may be taxed at a higher rate.

There are no changes to the rules for working out tax as part of the Employment Leave Bill. Tax payable on any lump sum leave payment is calculated and paid by employers to Inland Revenue. The rate of tax payable on the amount will depend on an employee's total income for the year in which they receive the lump sum leave payment ([Lump sum payments](#)).

Note: Under the proposed system there are three instances where leave will be a lump sum payment:

- *cashied-up annual leave and alternative leave;*
- *annual leave and alternative leave paid out at the end of employment;*
- *annual leave payments when an employer and employee agree annual leave will be paid as a lump sum before the period of leave (this must be by agreement – the default is for all leave to be calculated in the pay period in which it is taken, refer Q 4.9).*

Lump sum annual leave payments will no longer be made before annual closedown periods – all employees will receive leave pay in each relevant pay period during a closedown, as part of regular pay (refer Q 3.9).

Remedial payments for historical underpayments under the Holidays Act 2003 will also continue to be treated as lump sum payments.

5. Leave Compensation Payment (LCP)

5.1. What is the LCP payment calculated on?

The Bill provides that, for each additional or casual hour of work, LCP will be calculated as 12.5% of an employee's **ordinary hourly rate**.

The Bill defines the **ordinary hourly rate** as the lowest wage rate specified in their employment agreement for an hour of work (for an employee paid wages), or salary attributable to one standard hour of work (for an employee paid a salary) (refer Q 7.2 for how this works for an employee who receives an averaged salary).

- For an employee paid partly or wholly by piece rates, the ordinary hourly rate also includes an **hourly average of piecework wages**. This is calculated in the same way as for leave payments (refer Q 4.3).
- The **12.5% will not be applied** to any other components of pay such as commission, fixed or variable allowances or penal rates.
- **For employees paid by commission or piece rates**, whose ordinary hourly wage is lower than the minimum wage, LCP must be calculated on no less than the minimum wage.
- The Bill provides that, for the purpose of determining whether an employee has received the minimum wage under the Minimum Wage Act 1983, LCP payments must not be included.
- LCP payments must be identified as a **distinct component of pay** in employees' leave records and pay statements.

5.2. If an employee already receives overtime, night, weekend or other penal wages for additional or casual hours, will LCP still be payable on those hours?

Yes. Under the proposals, LCP will still be paid on the employee's **ordinary hourly rate** if an employee already receives overtime, night, weekend or other penal wages in relation to an additional or casual hour. Those contractual payments will also continue to apply separately. These types of wage premiums 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.

For example, an employee's ordinary hourly wage is \$30 for their 40 standard 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 hourly wage of \$30).

5.3. Will LCP be paid to a salaried employee if they work more than their standard hours?

LCP will not be paid to a salaried employee for hours they work over and above their standard hours that are compensated by their salary. Those hours will not be considered additional hours as the employee does not receive any additional payment for them.

Leave will also not accrue on extra hours of work that are compensated by salary. When a salaried employee takes leave, their leave hourly rate will reflect that compensation.

If a salaried employee works extra hours that they receive additional wages for, they will be considered additional hours and LCP will be payable on those hours.

5.4. If an employee has a variation to their hours of work which temporarily increases their hours, does LCP need to be paid on those extra hours?

The term 'employment agreement' in the definition of standard hours is intended to refer to the most up to date documentation of an employee's hours of work, including anything specified in the employment agreement itself, a letter of offer, additional terms and conditions or any other variations entered into during the course of employment.

If an employer and employee enter into a variation agreement under which the number of hours an employee is required to work and the employer must pay them for will increase temporarily for a period of time (e.g., to cover a busy period or project), those hours will be considered standard hours for the period the variation agreement covers. The employee will accrue leave on those hours and LCP will not be payable.

The employee's leave balances will not adjust when the variation agreement ends. An accrued hour of leave will retain its value regardless of changes in working hours (refer Q2.1).

5.5. What will employer liability be if they have not correctly provided LCP on additional or casual hours?

The Bill provides clear liability rules that will provide certainty to employers and Labour Inspectors:

- **If an employer has not provided LCP or leave accrual on additional or casual hours**, they are liable for the LCP that should have been provided. The employer must pay the unpaid amount of LCP within eight weeks³.
- **If an employer has provided accrual instead of LCP on additional or casual hours**, the employee retains the incorrectly accrued annual and sick leave and there is no liability for the LCP.
 - An employee can choose to keep incorrectly accrued annual leave as part of their annual leave balance (a casual employee could agree take it on any day since the general framework for taking annual leave (refer Q 3.2) would not apply).
 - The employee could also request to cash up any or all of the portion of incorrectly accrued annual leave that has not already been taken or cashed up (refer Q 5.6).
 - Incorrectly accrued sick leave will be retained as part of their sick leave balance. Casual employees will be able to take it against any hours of work in a work roster.

The employer must stop accruing leave and start paying LCP within eight weeks⁴ (or earlier if agreed). They must continue to accrue leave until LCP payments start.

- **If an employer has provided LCP instead of accruing leave**, the employee retains the LCP and there is no liability for the leave accrual. The employer must stop paying LCP and start providing for the accrual of annual and sick leave within eight weeks⁴ (or earlier if agreed). The employer must continue paying LCP until accrual starts. This is a shift from the status

³ The eight-week timeframe is the date that is eight weeks after the earlier of: the date on which an employee notifies their employer in writing of the incorrect provision of LCP/leave accrual *and* the date on which a Labour Inspector notifies the employer of the incorrect provision of LCP/leave accrual.

quo where, if pay-as-you-go has been used incorrectly, the employee keeps the payment and the employer is liable for providing the annual leave entitlement.

5.6. If annual leave has been incorrectly accrued, what is the process for an employee to choose to cash it up?

Under the Bill, if an employer has provided an employee annual leave accrual when they should have been paid LCP, they must provide the employee the option of cashing up any or all of the amount of the incorrectly accrued annual leave.

The Bill provides that, at least 14 days before the date that accrual is to stop and LCP is to start (refer Q 5.5), the employer must notify the employee of the option to cash up the annual leave and of the number of hours of incorrectly accrued annual leave (as at that date) they may choose to cash up.

- Determining the number of hours of incorrectly accrued annual leave an employee can cash up will require the employer to split this leave from the employee's current annual leave balance. The intent is that, if the current balance (not including the incorrectly accrued annual leave) is negative (effectively meaning the employee has already taken or cashed up some of the incorrectly accrued annual leave), the amount that can be cashed up will be any amount remaining in the current balance once the negative is offset by the incorrectly accrued annual leave.

If the employee wishes to cash up the annual leave, they must provide their decision in writing no later than the date LCP is to start. This decision is one-off and final.

If the employee does not request to cash up the annual leave (or the employer does not agree), then the incorrectly accrued annual leave is added back to the employee's current annual leave balance (the definition of annual leave balance in the Bill includes this leave) It will then be treated as any other leave under the Bill (and from the employee's next anniversary, if it is not taken, the employee will be able to request to cash up 25%).

6. Public holiday entitlements

6.1. Will there be any change to the rules for determining whether a day is an Otherwise Working Day (OWD) when it is not clear?

Yes. The Bill provides that, for the purpose of determining public holiday entitlements, a day will be considered an OWD for an employee (including those who work only casual hours) if they would have worked on it according to days of work or a pattern of days of work specified in the employee's employment agreement.

If an employee's employment agreement does not specify days of work, or a pattern of days of work, a new test will apply (both for employees with standard hours but not standard days they work them and employees with only casual hours). If the employment agreement specifies any days of work the test does not apply in relation to any additional days an employee works. **The test will be satisfied** if the employee has worked (or been on paid or unpaid leave) on 50% or more of the day of the week that corresponds to the public holiday in:

- the preceding 13 weeks (this will be seven days or more); or
- if an employee has been employed for less than 13 weeks before a public holiday, 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 50%' will be five of the nine preceding Fridays); or
- if an employee has taken parental leave, volunteers leave or been away from work while receiving accident compensation, the period starting from the last day of that leave.

6.2. What if a public holiday falls while an employee is on leave?

Annual leave

The Bill carries over the provision in the current Act that provides that if a public holiday falls during a period of annual leave (including when annual leave is taken during an annual closedown or agreed closure), and the day is an OWD for an employee, it must be treated as a public holiday and not as annual leave.

Sickness, injury, bereavement and family violence on a public holiday

The Bill provides that, if a day is an OWD for an employee and they have been required or have agreed to work on a public holiday, but they do not work or work a part day due to sickness, bereavement or family violence, public holiday entitlements continue to apply if the day is an OWD. The hours not worked must not be treated as sick, bereavement or family violence leave.

- *If an employee does not work at all*, the full day is treated as a non-worked public holiday. In this case they must be paid a leave payment (refer Q 6.3 and Q 6.6) and are not entitled to any alternative leave.
- *If an employee works part of a day and not the other part*, worked public holiday entitlements (payment for working on a public holiday (refer Q 6.4) and alternative leave accrual) apply to the number of hours worked. The employee will also be entitled to receive

a leave payment for the hours not worked (in total up to the hours they would have been paid if they had not worked at all (refer Q 6.6).

Other leave types

The Bill provides that a day will not be considered an OWD if it is reasonable to expect the employee would not have worked on it due to being on parental leave, volunteers' leave, accident compensation or unpaid leave (unless the unpaid leave is being taken due to an annual closedown or agreed closure, in which case the day must continue to be treated as an OWD).

This aligns with (and clarifies) the status quo. Under the current Act, a day is not an OWD if the employee would not have worked on it but for it being a public holiday, or if the employee and employer had reasonable expectations the employee would not have worked on that day.

6.3. How will payments work when an employee does not work on a public holiday that is an OWD?

If an employee does not work on a public holiday that is an OWD, the employee will be paid a leave payment (refer Section 4), calculated in the same way as any other leave taken for the hours they would have otherwise worked on the day (refer Q 6.6).

6.4. How will payments for working on a public holiday work?

The Bill provides that, for each hour an employee works on a public holiday (whether it is an OWD or not) the employer must pay them:

- All payments the employer is required to pay them for working on the day under their employment agreement (including payments such as ordinary rates, overtime rates, piece rates, commission, allowances), less any '**identifiable amount**' and;
- The greater of:
 - 50% of an employee's **ordinary hourly rate**
 - any '**identifiable amount**'.

The definition of **ordinary hourly rate** for the purpose of payments for working on a public holiday is aligned with that used for LCP (refer Q 5.1). For an employee paid partly or wholly by piece rates, the ordinary hourly rate also includes an hourly average of piecework wages. It does not include any other components of pay such as commission, fixed or variable allowances or penal rates.

For those paid by commission or piece rates, whose ordinary hourly wage is lower, the 50% must be calculated on no less than the minimum wage.

The Bill defines an '**identifiable amount**' as any additional amount payable for working on a particular day of the week (e.g., a Saturday or Sunday rate) or on a public holiday.

The proposed rules mean that an employee continues to receive all contractual rates payable under their employment agreement for working on a public holiday, but the additional 50% is not assessed on top of those rates. It applies only to the employee's lowest rate of pay.

The exception for 'identifiable amounts' reflects the provisions in the current Act and means that, if an employee already receives a higher rate under their employment agreement for working on a public holiday or the day of the week the public holiday falls, they receive only the greater of the contractual rate and 50% of their ordinary hourly rate, not both.

Examples:

- 1. An employee earns \$30 an hour, has a contractual overtime rate of \$45 an hour (payable when they work more than 8 hours per day), and a rate for working on a Saturday of \$65 per hour.**

The employee works an overtime hour on a public holiday that is not a Saturday

For that hour, the employer must pay the employee:

- All payments the employer is required to pay the employee under their employment agreement (not including any identifiable amount) = \$45 overtime rate.
 - Plus the greater of:
 - a. 50% of the employee's ordinary hourly rate: $\$30 \times 0.5 = \15
 - b. any identifiable amount that the employee and employer have agreed the employee will be paid for working on the day of the week the public holiday falls or a public holiday: not applicable.
- The employee would earn $\$45 + \$15 = \$60$.

The employee works an ordinary hour on a public holiday that falls on a Saturday

For that hour, the employer must pay the employee:

- All payments the employer is required to pay to the employee under their employment agreement (not including any identifiable amount) = \$30 (the additional \$35 for working Saturday is not included).
 - Plus the greater of:
 - a. 50% of the employee's ordinary hourly rate: $\$30 \times 0.5 = \15
 - b. any identifiable amount that the employee and employer have agreed the employee will be paid for working on the day of the week the public holiday falls or a public holiday: $\$65 - \$30 = \$35$.
- The employee would earn $\$30 + \$35 = \$65$.

- 2. An employee earns \$30 an hour and a rate for working on a Saturday of \$40 per hour.**

The employee works an ordinary hour on a public holiday that falls on a Saturday

For that hour, the employer must pay the employee:

- All payments the employer is required to pay to the employee under their employment agreement (not including any identifiable amount) = \$30.
 - Plus the greater of:
 - a. 50% of the employee's ordinary hourly rate: $\$30 \times 0.5 = \15
 - b. any identifiable amount that the employee and employer have agreed the employee will be paid for working on the day of the week the public holiday falls or a public holiday: $\$40 - \$30 = \$10$
- The employee would earn $\$30 + \$15 = \$45$.

3. An employee earns \$25 an hour, has a contractual overtime rate of \$37.50 an hour (payable when they work more than 8 hours per day), and a rate for working on a Saturday of \$50 per hour. They earn piece rates and have an average hourly piecework wage of \$10.

The employee works an overtime hour on a public holiday that falls on a Saturday

For that hour, the employer must pay the employee:

- All payments the employer is required to pay to the employee under their employment agreement (not including any identifiable amount) = \$37.50 overtime rate (the additional \$25 for working Saturday is not included, only the \$17.50 for overtime) + all piece rates actually earned during the day.
- Plus the greater of:
 - a. 50% of the employee's ordinary hourly rate: $(\$25 + \$10) \times 0.5 = \$17.50$
 - b. any identifiable amount that the employee and employer have agreed the employee will be paid for working on the day of the week the public holiday falls or a public holiday: $\$50 - \$25 = \$25$
- The employee would earn $\$37.50 + \$25 = \$62.50$ + piece rates actually earned during the day.

6.5. What if an employee works some but not all the hours that they would normally work on a public holiday?

If an employment agreement specifies the number of hours an employee would have worked on a public holiday, and they work some but not all of those hours, the employee will receive public holiday pay and accrue alternative leave for the hours worked, and the leave hourly rate for the unworked hours (but will not accrue alternative leave hours on the unworked hours). This only applies when the number of hours the employee works on the day of the week the public holiday falls on are specified in their employment agreement.

6.6. What number of hours must an employee be paid for if they don't work on a public holiday that is an OWD?

An employee must be paid for the number of hours they would have worked on the public holiday. The Bill provides that that number of hours the employee would have worked on the public holiday is either the number of hours the employee would have worked according to their employment agreement, or, if the employment agreement does not specify the number of hours the employee would have worked, an average of their daily hours of work.

The Bill provides a formula for calculating the average daily hours based on dividing the total hours worked (or on paid or unpaid leave) in the reference period (refer Q 7.1) by the number of days worked (or on paid or unpaid leave) in the reference period.

6.7. How will alternative leave accrual work?

For every hour an employee works on a public holiday that is an OWD for them, they will accrue one hour of alternative leave. For each part hour they work, they will accrue that part of an hour of alternative leave.

6.8. How will alternative leave accrual work if an employee is on call on a public holiday?

If an employee is on call on a public holiday that is an OWD for them and their employment agreement provides that their employer may require them to work on the public holiday:

- **If the employee does not work at all:** they will accrue one alternative leave hour for each hour they are on call but don't work, up to the number of hours they would have otherwise worked on the public holiday (refer Q 6.6).
- **If the employee is called to work:** they will accrue alternative leave for each hour (or part hour) they are on call but don't work, up to the number of hours they would have otherwise worked on the public holiday. They will also accrue alternative leave for each hour they work (accrual on hours worked is not capped).

Example:

An employee is on call on a public holiday that is an OWD and their employment agreement provides that they may be required to work on the day. Their employment agreement specifies that they would otherwise work 6 hours on the day. They are on call for 12 hours. The employee would accrue the following hours of alternative leave:

- *If they don't work at all:* 6 hours.
- *If they don't work the first 4 hours of the on call period and then work 8 hours:* 12 hours.
- *If they don't work the first 8 hours of the on call period and then work 4 hours:* 10 hours (6 for the on call period they don't work and 4 hours for the worked hours).
- *If they don't work the first hour, then work 4 hours and remain on call for the remaining 7 hours:* 10 hours (6 hours for the on call period they don't work and 4 hours for the worked hours).
- *If they don't work the first hour, then work 3 hours and do not remain on call:* 4 hours.

6.9. Under the Bill, a whole public holiday can only be transferred at an employee's request.

Can an employer still ask an employee to work and take their paid day off on another day?

Under the current Act, an employer and employee may agree in writing that an employee will transfer their entitlement to a whole public holiday to another day that is an OWD for them. This means that the employee takes a paid day off on another day and works and is paid as normal on the public holiday (they do not receive time and half or an alternative holiday). The intent of this provision is to enable employees to transfer a whole public holiday for reasons of personal or cultural significance.

To address concerns that it is not always clear when this provision can be applied, the Bill clarifies that an **agreement to transfer a whole public holiday can only be at an employee's request**. An employer can ask, or, if provided for in the employment agreement, require, an employee to work on a public holiday, but in this case they must pay the employee for working on a public holiday (refer Q6.4) and provide alternative leave for each hour worked.

This does not apply to the provisions for transferring part of a public holiday by agreement (where an employee starts work one day and finishes on another and one or both are public holidays). This may still be initiated by the employer as it enables a full shift (rather than two part shifts) to be treated as a public holiday.

7. Leave records, enforcement and other matters

7.1. Why are the calculation reference periods 93 days? How will this work in practice?

All calculations of averages (including the hours of an OWD, the hourly average of piece rates, and the transitional conversion formulas) in the Bill use the same reference period:

*Pay periods **starting** in the 93 days before the start of the pay period in which a relevant day (e.g., a day taken as leave or a public holiday) falls.*

The reference period means that **only whole pay periods will be included**, regardless of pay frequency. For a weekly pay period, 13 pay periods (13 weeks) will always be included; for a fortnightly pay period, 6 pay periods will be included (12 weeks); and for a monthly pay period, 3 pay periods will be included (the number of weeks in 3 months). The data used for the calculation will be the data for the pay periods included in the reference period.

If an employee has worked for an employer for fewer than 93 days before the start of the pay period in which a relevant day falls, the reference period will comprise the pay periods between the start of employment and the end of the pay period before the one in which the relevant day falls.

7.2. How will the leave system work for an employee on a smoothed/annualised salary?

Some salaried employees are paid the same amount of their annual salary in each pay period, but the number of standard hours they work in each pay period differs.

Examples include (1) a monthly paid employee whose salary is paid based on the average number of hours in a month and (2) employees who have work patterns different to seven days (for example, a four-day-on, four-day-off shift roster).

The Bill refers to these employees as **averaged salary employees (ASEs)**.

For ASEs:

- **Annual leave accrual** is based on the standard hours in a pay period in question (not the average number of hours worked per pay period).
- **The hourly leave pay rate for leave taken** is calculated by dividing the salary amount in a pay period by the standard hours in that period. Therefore, the hourly leave rate will vary between pay periods, but the averaged salary amount the employee receives will not.
- **The hourly leave pay rate for cashed-up leave and leave payments when employment ends** will be based on the annualised hourly rate (which could be calculated by dividing the salary amount in a pay period by the average number of standard hours worked per period). Therefore, the hourly leave rate for these purposes will not vary.
- **The ordinary hourly rate** used as the basis for calculating worked public holiday payments and LCP will also be based on the annualised hourly rate.

7.3. What hours can a part-year worker take as annual leave during a non-worked period, and how will their leave payment be calculated?

The Bill defines a part-year employee as an employee who has standard hours but has one or more periods of seven or more consecutive days during the year when they do not have standard hours and are not paid. Examples include employees who do not work during school holidays, students who only work during trimester breaks and employees who have unworked periods during off seasons.

It provides that these employees can take annual leave in one of those periods (even though the normal rules for when leave can be taken do not apply).

The Bill provides that a notional roster will be used to determine the leave that can be taken during an unworked period.

The hourly leave rate for any day taken as leave in a non-worked period will be the lowest hourly rate payable for any day of work under the employee's employment agreement.

7.4. How will the system work for employees who have multiple roles/jobs with the same employer?

Employees may have more than one job/role with the same employer, under either one or separate employment agreements. The Bill applies to each role separately. Therefore, separate leave balances must be held for each role, and the calculation of leave payments will be role-specific.

7.5. Can employers still provide entitlements above the minimum? How does this work?

Employers and employees are free to agree to any enhanced or additional leave entitlements that are above the minimums specified in the Bill. For example, employers will be able to offer employees more generous rates of pay when they take leave, such as rates including commission and variable allowances. Parties may agree to any method for doing so. Just as many employers now provide more than four weeks of annual leave and 10 days of sick leave, they may opt to allow employees to accrue leave at a higher rate. If, for example, an employer wanted to provide the equivalent of five weeks' annual leave, they could set the accrual rate at 0.0962 rather than 0.0769.

The Bill provides that, if an employer does provide additional or enhanced entitlements and wants to treat those entitlements differently to minimum entitlements provided under the Bill, the additional or enhanced entitlements must be recorded separately. If they are not, then they must be treated as entitlements provided under the Bill. This requirement will ensure that employers are able to demonstrate they have complied with the Bill requirements.

Examples of where this provision may be relevant are:

- an employer provides additional annual leave and wants to be able to require an employee to take it at a certain time of year (e.g., over Christmas) rather than having an annual closedown in accordance with the Bill.
- an employer wants to give an employee the option to cash up all of the additional annual leave entitlement they provide (rather than the maximum of 25% of the balance at the employee's last start-date anniversary, a cap that applies to employees' minimum entitlements).

7.6. Will the Bill clarify employer obligations around the six-year retention period for keeping employment records where an issue has been raised or actions have commenced?

Yes – the Bill sets out the specific circumstances in which employers must keep information in an employee’s Leave Record and Wage and Time records for longer than the six-year retention period.

Under the Bill, when the six-year retention period ends, if any of the information is relevant to a proceeding before the Employment Relations Authority or the Employment Court under the Employment Leave Act or the Employment Relations Act, the employer must keep that information for the duration of the proceeding (unless the Authority or court waive this requirement).

The Bill also gives Labour Inspectors the power to require an employer to keep employment records for up to one additional year at a time after the six-year retention period ends, if they consider it necessary and give the employer notice before the end of that period.

7.7. Will leave record requirements be different in the Bill?

The Bill updates the list of record-keeping requirements, to ensure employers are required to keep the information needed to demonstrate that they have complied with the rules and calculations in the Bill. It also requires employers to keep all notices and written agreements required under the Bill, including in relation to cashing up leave, having annual closedowns and agreed closures, and transferring public holidays as part of the Leave Record.

7.8. Will penalties be different in the Bill?

The level of penalties in the Bill remains the same as in the Holidays Act – up to \$10,000 for an individual or up to \$20,000 for a company or other body corporate. This aligns with the level of penalties in the Employment Relations Act.

The Bill updates the list of provisions that result in liability for a penalty when breached, to make sure it aligns with the provisions in the Bill. The updated list captures provisions that are similar in nature to those listed in the Holidays Act – provisions containing obligations for employers where failure to comply may undermine leave entitlements, compromise enforcement or otherwise impact on the legislation's purpose.

8. Related changes to other Acts

8.1. How will Employment Relations Education and Health and Safety training leave be paid?

The Employment Relations Act (ERA) and Health and Safety at Work Act (HSWA) provide, respectively, for employees to take Employment Relations Education leave and Health and Safety Training leave to attend a course/training. For both leave types, an employer must pay an employee their Relevant Daily Pay (RDP) and Average Daily Pay (ADP) as defined in the Holidays Act. Those terms are not included in the Employment Leave Bill and need to be replaced in the ERA and HSWA.

The Bill disconnects the payment rules for leave under the ERA and HSWA from the leave legislation. It replaces RDP and ADP with a requirement to pay an employee the hourly wages or salary they would have earned under their employment agreement for:

- the number of hours the employee would have otherwise worked under their employment agreement;
- or, if those hours cannot be ascertained from the employment agreement or if they are greater, the hours the employee is on Employment Relations or Health and Safety Training leave.

If an employee receives piece wages, for each of those hours the employer must also pay them an hourly average of piecework wages (calculated using the same methodology as used for leave payments (refer Q4.3)).

8.2. Will employees be given a choice about how their leave entitlements are treated in restructuring situations?

The Bill will not require employers to give employees a choice about how their leave entitlements are treated in restructuring situations.

The Bill will require employers to include the treatment of leave entitlements as a matter in Employee Protection Provisions (provided for under the Employment Relations Act) that they will negotiate with any new employer in restructuring situations. It will enable the original employer and the new employer to negotiate to either transfer employees' untaken annual leave and alternative holidays to their new employment or pay them out, rather than the original employer always being required to pay them out (except for employees described in Q 8.3 below). As a result of their negotiations, employers may choose to give employees a choice about how their leave entitlements are treated, but doing so is not a requirement.

8.3. How would the changes relating to the treatment of leave entitlements in restructuring situations affect the specified employees protected under the Employment Relations Act?

The changes in the Bill relating to the treatment of leave entitlements in restructuring situations will not apply to the 'specified employees' protected under the Employment Relations Act.

The Employment Relations Act sets out additional protections for certain types of employees during restructuring situations. Due to the nature of their work, these 'specified employees' face restructuring situations frequently and are considered to be more vulnerable to possible adverse outcomes as a result of restructuring. During restructuring situations, if a 'specified employee'

chooses to continue their employment with the new employer, their leave entitlements must be transferred to their new employment instead of being paid out by their original employer. These additional protections will remain unchanged under the Bill.

8.4. Why does the Bill make a change to the way parental leave payments are calculated? What is the change?

The Parental Leave and Employment Protection Act (PLEPA) uses Ordinary Weekly Pay as defined in the Holidays Act as part of the methodology for determining parental leave payments. The Bill does not include OWP and so the term needs to be replaced in the PLEPA.

The parental leave payment rate for eligible employees is the greater of (1) an employee's OWP before parental leave payments commence or (2) the employee's 'average weekly income', up to a maximum amount of \$788.66. OWP is intended to reflect employee's income at the time (or close to the time, if the four-week average is used) parental leave begins.

The Bill replaces OWP with an average of an applicant's gross weekly earnings for the most recent four weekly, two fortnightly or one monthly pay period, as at the date an employee applies for parental leave (or as at the date parental leave is payable, if that date is earlier).

Inland Revenue is responsible for processing parental leave applications and making parental leave payments. Unlike OWP, the proposed calculation uses employment income information held by Inland Revenue and will be workable in IR systems, reducing administrative burden for applicants and employers. The Bill does, however, provide for applicants and employers to provide further information related to the parental leave payment entitlement after the date of application. In this case, IR would recalculate the average gross earnings for the relevant pay periods as at the date the information is provided.

9. Transitioning to the new leave system

Technical transitional provisions

9.1. How will existing entitlements to annual holidays be converted to hours?

The Bill provides that at commencement, for all employees who work standard hours, employers must convert existing annual holidays (that an employee has not taken or cashed up) from weeks to hours.

For the purposes of its transitional provisions, the Bill refers to:

‘Type A previous annual holidays’: annual holidays that have arisen as entitlements under the Holidays Act after the completion of each 12 months of continuous employment.

‘Type B previous annual holidays’: annual holidays that have not yet arisen as entitlements but that an employee will have earned in proportion to the time they have worked since their last four-week entitlement arose (or since the start of employment). If employment ends, an employee has an entitlement to be paid for these annual holidays.

Converting Type A previous annual holidays: An employer must multiply the number of whole or part weeks of annual holiday to which an employee has become entitled under the Holidays Act by the employee’s **ordinary weekly hours**.

All leave taken (including leave in advance) and cashed-up leave can be subtracted from the number of Type A weeks (and not from Type B) – so, if an employee has taken leave in advance, their Type A balance will be negative.

➤ **Ordinary weekly hours:**

The number of standard hours an employee’s employment agreement specifies they work per week (or, if standard hours are not the same each week, the number of hours they work on average per week over the employee’s work cycle).

If standard hours are not specified in the employment agreement, ordinary weekly hours are:

- The number of standard hours in the employee’s notional roster; or
- If a notional roster does not include the number of standard hours at commencement, the average number of hours the employee has worked per week (or been on paid or unpaid leave), calculated over the pay periods starting in the 93 days before the first day of the first pay period that starts after the commencement date.

Converting Type B previous annual holidays: The Bill provides a formula for calculating the proportion of the four-week annual holiday entitlement an employee has earned since their start date or the last time their entitlement arose. This proportion is then multiplied by the employee’s ordinary weekly hours (determined as above).

9.2. How will existing entitlements to sick leave be converted?

The Bill provides that at commencement, for all employees who work standard hours, employers must convert existing sick leave entitlement (that an employee has not taken) from days to hours.

For the purposes of its transitional provisions, the Bill refers to:

‘Type A previous sick leave’: entitlement to 10 days’ sick leave (that can be capped at 20 days) that has arisen after six months’ current continuous employment and is renewed following each subsequent 12-month period.

‘Type B previous sick leave’: sick leave that has not arisen but that an employee has earned in proportion to the time worked since their last 10-day entitlement arose (or since the start of employment).

Converting Type A previous sick leave: An employer must multiply the number of days of sick leave to which an employee had become entitled under the Holidays Act by the employee’s **ordinary daily hours**.

All sick leave taken (including sick leave in advance) can be subtracted from the number of Type A days.

➤ **Ordinary daily hours:**

For all employees, ordinary daily hours are calculated based on the average number of hours the employee has worked (or been on paid or unpaid leave) per day of work or paid or unpaid leave during the pay periods starting in the 93 days before the first day of the first pay period that starts after the commencement date.

The Bill provides that the average calculation applies to all employees. If, however, an employee has the same number of standard hours on each day of work and does not work additional hours, the result of the calculation will be the same as the number of daily hours stated in their employment agreement.

Converting Type B previous sick leave: The Bill provides a formula for calculating the proportion of the 10-day sick leave entitlement an employee has earned since their start date or since the last time their entitlement arose. This proportion is then multiplied by the employee’s ordinary daily hours (determined as above).

9.3. How will existing entitlements to alternative holidays be converted?

The Bill provides that at commencement, for all employees, employers must convert existing alternative holiday entitlements (that an employee has not taken or cashed up) from days to hours.

An employer must multiply the number of days of alternative holidays to which the employee had an entitlement under the Holidays Act by the employee’s **ordinary daily hours (refer Q 9.2)**.

9.4. Once existing balances are converted, what happens?

The Bill defines annual leave, sick leave, and alternative leave balances (which form part of the Leave Record) to include hours converted from existing week- or day-based entitlements. This definition includes both Type A and Type B previous annual holidays and sick leave.

The converted hours form the opening leave balances under the Employment Leave Act and represent all leave an employee has accrued, taken, or cashed up before commencement (the intent is that any negative balance of converted Type A annual leave that results from subtracting leave taken in advance will be offset (to at least some extent) by Type B converted annual holidays). From the first pay period after commencement, newly accrued and taken leave hours will be added to or deducted from these balances.

Employers must also keep a record of the number of weeks or days converted for each leave type, as well as the total number of converted hours.

9.5. After commencement, what payment rules will apply to leave that an employee earned under the current Act?

The Bill provides that converted Holidays Act entitlements will form part of employees' leave balances from the commencement of the Employment Leave Act and will be treated as leave accrued under that Act. Accordingly, the new payment methodology will apply as the minimum entitlement to all leave taken from commencement, including converted leave.

9.6. For most employees, the commencement date will fall in the middle of a pay period. From what date will employers need to apply the new provisions?

The Bill provides that an employer must apply the provisions of the new Act from the start of the first pay period that starts after the commencement date (and it is intended that calculations to convert existing entitlements be completed by that date as well). This provision is intended to prevent the Employment Leave Act applying part way through a pay period.

9.7. How much annual leave can be cashed up in the period between the new Act coming into force and an employee's next 12-month anniversary?

Under the Bill, in each 12-month period, starting on an employee's start date anniversary, an employee will be able to request to cash up a maximum of 25% of their annual leave balance, as calculated at the date of that anniversary. On commencement of the Employment Leave Act, employees will not have had a start date anniversary under it (unless their start day anniversary is the commencement date), and balances as at their previous start date anniversary will have been held in weeks.

To address this transitional issue, the Bill provides that, in the period between the commencement date and an employee's first start date anniversary following commencement, an employee may request (and an employer may agree) to **cash up a maximum of 25% of the number of hours of converted Type A previous annual holidays**. Any annual holiday weeks the employee had already cashed up since the date their last annual holiday entitlement arose under the Holidays Act will be converted to hours and subtracted from that amount.

9.8. What are an employee's rights and obligations around taking annual leave between commencement and the employee's next 12-month anniversary?

Under the Bill, within each 12-month period following an employee's first employment start date anniversary, an employer **must not withhold consent** to an employee taking their annual leave balance at their most recent start date anniversary. They may also **require the employee to take** this amount of leave, if agreement to when leave will be taken cannot be reached (refer Q 3.1). On commencement of the Employment Leave Act, employees will not have had a start date anniversary under it.

To address this transitional issue, the Bill provides (in a manner similar to its provisions for cashing up annual leave) that **an employer must allow, and can require, an employee to take** all their converted Type A previous annual holidays in the period between commencement and the employee's next start date anniversary.

The Bill also provides that, following commencement, **an employer must not unreasonably withhold consent** to an employee's request to take converted Type A *and* Type B converted annual holidays. Under the Employment Leave Act, both previous Type A and B annual holidays will be treated as leave accrued under the Act.

Updating employment agreements

9.9. What will happen with provisions in existing employment agreements that do not align with the new statutory entitlements?

The Bill includes transitional provisions to help employers and employees move from the current Holidays Act to the new system. These provisions are necessary because many existing collective and individual employment agreements contain terms that may not align with the new statutory entitlements (for example, annual leave may be expressed in weeks rather than hours).

To support an orderly transition, the Bill provides a total of three years from Royal assent for employers and employees to update their agreements. The transition has three stages:

1. **Before commencement (0–2 years after Royal assent)**

During this two-year period, parties are expected to renegotiate terms so that employment agreements will align with the new Act on commencement. For example, an agreement might state that "on commencement, five weeks' annual leave becomes an accrual rate of 0.0962 per standard hour of work".

2. **From commencement until one year after commencement (2–3 years after Royal assent)**

If updated agreement terms are not in place at commencement, employers must continue to comply with the existing employment agreement *and* the new Act. This requirement can introduce added complexity and may require employers to operate dual systems temporarily.

3. **One year after commencement (3 years after Royal assent)**

If, one year after commencement, an agreement still contains terms that conflict with the new Act, the intention is that minimum statutory entitlements will automatically override any inconsistent contractual provisions. This override will apply to all such terms, including those that may currently be more generous than the new minimums.

The purpose of this approach is not to reduce employee entitlements but to ensure that employers are not required to run two incompatible and costly systems indefinitely. It provides strong incentives for unions, employees, and employers to update agreements within the transition window and supports a consistent and orderly shift to the new framework.

MBIE will publish guidance and resources to support employers and employees to prepare for these changes. This guidance will include practical advice on how to update employment agreements and how to reconcile any differences between contractual entitlements and new statutory requirements.

Remediation

9.10. 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.

The Employment Leave Bill provides for the creation of a remediation process to enable employers to compensate employees who may not have received their correct entitlements under the current Act. This process does not *replace* existing approaches to remediation but, once in force, will be a new option for employers to consider.

The details of this statutory remediation process will be contained in secondary legislation (regulations). Before recommending such regulations, the Minister must (among other things) be satisfied that the process will provide reasonable compensation to employees and must consult representatives of employees and employers that the Minister considers appropriate.

The new remediation process will be based on an estimation methodology. 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.

9.11. When will the new statutory remediation approach become available for employers to use?

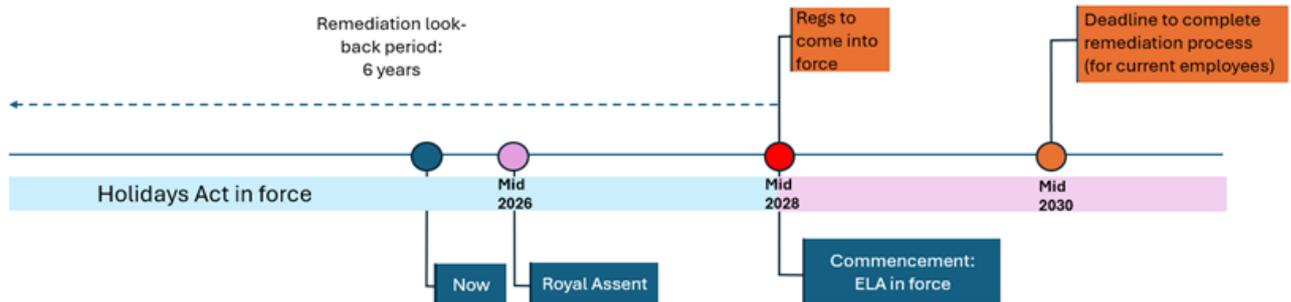
It is intended that regulations detailing the remediation process will come into force, and therefore be available to use, on the same day as the substantive parts of the Employment Leave Act (i.e., two years after the enactment of the Employment Leave Bill). It is not possible for the regulations to come into force before this date. However, the regulations can be made and published any time after the enactment of the Employment Leave Bill. The intention is for regulations to be made as soon as possible (during the two-year transition period) so that employers and employees have time to consider the details of the statutory remediation process well before it comes into force.

9.12. How long will employers have to complete the statutory remediation process?

If an employer elects to follow the remediation process they will have:

Current employees: 2 years + 2 months from the commencement of the Employment Leave Act.

Within this timeframe an employer must notify current employees they are following the remediation process, calculate remediation payable in accordance with the regulations, notify employees of the amount of the compensation and pay the compensation to employees.



Previous employees: 4 years + 2 months from the commencement of the Employment Leave Act.

The intent is that, within 2 years from commencement an employer must make all reasonable efforts to notify previous employees they are following the remediation process. Within 2 years and 2 months of the date of that notice the employer must calculate the remediation payable to previous employees, notify previous employees (who have confirmed they want to receive compensation by that time) of the compensation payable and pay the compensation to previous employees.

