

SICK AND BEREAVEMENT LEAVE

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**TABLE OF CONTENTS**

|  |  |
| --- | --- |
| SICK LEAVE | 3 |
| COVERS | 3 |
| RECORDS | 3 |
| QUALIFICATIONS | 3 |
| CAN BE GIVEN IN ADVANCE | 3 |
| DURING ANNUAL HOLIDAYS | 3 |
| ANNUAL HOLIDAYS AS SICK LEAVE | 3 |
| SICK ON PUBLIC HOLIDAY | 3 |
| NO SICK LEAVE WHILE ON ACC | 3 |
| MEDICAL CERTIFICATES | 4 |
| SICK LEAVE ACCUMULATES | 4 |
| SICK PAY | 4 |
| UNPAID LEAVE | 5 |
| VARIATIONS | 5 |
| BEREAVEMENT LEAVE | 6 |
| COVERS THE DEATH OF | 6 |
| RELEVANT FACTORS – OTHER PERSONS | 6 |
| RECORDS | 6 |
| QUALIFICATIONS | 6 |
| DURING ANNUAL HOLIDAYS | 7 |
| ANNUAL HOLIDAYS AS BEREAVEMENT LEAVE | 7 |
| NO BEREAVEMENT LEAVE WHILE ON ACC | 7 |
| NOTICE OF BEREAVEMENT  | 7 |
| BEREAVEMENT PAY | 7 |

**SICK LEAVE**

**covers**

All employees get 5 days paid sick leave to cover absences caused by sickness or injury of the employee or their spouse; or of a person who depends on the employee for care.

**RECORDS**

The Employment Standards Amendment Act 2016 requires detailed sick leave records to be kept for every employee, for at least 6 years. Because sick leave is paid at the higher of relevant daily pay or average daily pay, you should record enough information to calculate the correct pay.

**Qualifications**

To qualify, employees must have worked for you either –

* continuously for 6 months; or
* over the last 6 months have worked –
* at least an average of 10 hours per week; **and**
* at least 1 hour **every** week or 40 hours **every** month

The complicated hourly bit covers part time and casual employees. It means that a casual could qualify for sick leave at any stage of their employment after 6 months, at which point they become entitled to 5 days sick leave.

As long as they continue to work the minimum hours, they qualify for a further 5 days 12 months later. If their hours drop below the minimum (over a six month period), they no longer qualify.

**can be given in advance**

You can agree that an employee takes sick leave in advance. If you allow this, your employment agreements should include a clause allowing you to deduct such payments, if the employee leaves.

**during annual holidays**

It is up to you to decide whether to recognise (and pay for) sick days falling during annual holidays.

**But** if the employee becomes sick ***before*** his approved annual holidays start, the sick days are counted as sick days and not as annual holidays.

**annual holidays as sick leave**

You may agree to a request from an employee to take annual holidays ***due to them***, as sick leave, if they have used up their sick leave.

**sick on a public holiday**

If an employee is sick on a public holiday on which they were required or agreed to work, they are not paid time and a half and do not get an alternate day off.

However, you may not force an employee to take annual holidays as sick leave.

**No sick leave while on acc**

The principle is that an employee is not entitled to sick leave while receiving ACC payments, but there is an exception. The following table summarises the position -

|  |  |  |
| --- | --- | --- |
| ***First week*** | *Not work related* | *May use sick leave as no ACC or employer payment* |
| *Work related* | *Employer pays 80% of what they would have earned that week* *Cannot require employee to take sick leave* |
| ***Thereafter*** | *All claims* | *ACC pays* *Cannot require employee to take sick leave**NOTE: An employer may on request, choose to top up ACC payments to 100% (then sick leave is reduced by 1 day for every 5 days on ACC).* |

Notice of sickness

Employees must advise you of their intention as early as possible before they are due to start work or, if that is not practicable, as early as possible after that time.

**medical certificates**

You may only ask for a medical certificate after 3 consecutive calendar days unless –

* you have reasonable grounds to suspect that the reason is not genuine; and
* you inform the employee accordingly without delay and ask for proof; and
* you pay the reasonable costs of obtaining the medical certificate. The employee may choose the doctor.

“3 consecutive days” covers days that the employee does NOT normally work, such as weekends. You are allowed to require an employee, before they return to work, to prove that there are no relevant health and safety or hygiene reasons that would prevent them from working.

**sick leave accumulates**

Unused sick leave automatically accumulates to a maximum of 20 days, including the current year’s leave. In other words, an employee can never be entitled to ***more than*** 20 days at any stage.

Unused sick leave is forfeited when an employee leaves your service, and they are not entitled to any payment for it.

**sick pay**

**Relevant Daily Pay -**

Public and alternative holidays and sick and bereavement leave are paid at the relevant daily pay, which means what the employee would have been paid if they had worked on the day in question.

Relevant Daily Pay is calculated by adding up –

* basic pay
* payments for overtime
* cash value of board and lodgings provided.

It excludes employer contributions to superannuation schemes on behalf of the employee.

**Average Daily Pay -**

If it is not possible or practical to calculate the employee’s relevant daily pay as set out above, or if the employee’s daily pay varies during the pay period when the holiday or leave falls, then the employee’s average daily pay can be used. It is calculated as follows –

**Gross earnings** for the 52 calendar weeks before the end of the pay period immediately before the calculation is made

**Divided by**

**Number of whole or part days** during which the employee earned those gross earnings -

including paid holidays or paid leave

excluding other days not worked.

**When Paid -**

Sick pay is paid in the pay period when the sickness occurred.

**unpaid leave**

You may also grant an employee unpaid leave if they have no sick leave due.

**VARIATIONS**

The employer and employee can agree to vary the above minimum requirements but the variation cannot be any less than the requirements of the Holidays Act 2003.

**bereavement LEAVE**

**covers the death of**

All employees get **paid** bereavement leave on the death of certain persons, and after they have worked for some time or for a certain number of hours, as follows –

3 days on the death of -

* spouse
* parent
* child
* brother or sister
* grandchildren
* grandparents
* spouse’s parent

1 day on the death of any other person if the employer accepts, having regard to relevant factors, that the employee has suffered a bereavement as a result of the death.

There is no maximum bereavement leave per annum. In the case of a multiple fatality, the leave is multiplied by the number of deaths.

**RELEVANT FACTORS – OTHER PERSONS**

* The closeness of the association between the employee and the deceased person
* Whether the employee has to take significant responsibility for all or any of the arrangements for the ceremonies relating to the death
* Any cultural responsibilities of the employee regarding the death.

**RECORDS**

The Employment Standards Amendment Act 2016 requires detailed bereavement leave records to be kept for every employee, for at least 6 years. Because sick leave is paid at the higher of relevant daily pay or average daily pay, you should record enough information to calculate the correct pay.

**Qualifications**

To qualify, employees must have worked for you either –

* continuously for 6 months ; or
* over the last 6 months have worked –
* at least an average of 10 hours per week; ***and***
* at least 1 hour ***every*** week or 40 hours ***every*** month

The complicated hourly bit covers part time and casual employees. It means that a casual could qualify for bereavement leave.

As long as they continue to work the minimum hours, they qualify. If their hours drop below the minimum, they no longer qualify.

The leave does not have to be taken when the bereavement occurs, and may be broken up into three absences, up to a year apart, such as for the unveiling of the memorial.

**during annual holidays**

If the employee has been given annual holidays and suffers bereavement before the annual holidays start, designated days off are counted as bereavement days and not as annual holidays.

**annual holidays as bereavement leave**

You may agree to a request from an employee to take annual holidays ***due to them***, as bereavement leave, if they have used up their bereavement leave. However, you may not force an employee to take annual holidays as bereavement leave. You may grant an employee unpaid leave if they have no bereavement leave due.

**no bereavement leave while on acc**

The principle is that an employee is not entitled to bereavement leave while receiving ACC payments, but there is an exception. The following table summarises the position –

|  |  |  |
| --- | --- | --- |
| ***First week*** | *Not work related* | *May use bereavement leave as no ACC or employer payment* |
| *Work related* | *Employer pays* *Cannot require employee to take bereavement leave* |
| ***Thereafter*** | *All claims* | *ACC pays* *Cannot require employee to take sick leave,* ***EXCEPT*** *if employer tops up ACC payment, when sick leave is reduced by 1 day for every 5 days on ACC* |

**notice of bereavement**

Employees must advise you of their intention as early as possible before they are due to start work or, if that is not practicable, as early as possible after that time.

**Bereavement pay**

**Relevant Daily Pay**

Public and alternative holidays and sick and bereavement leave are paid at the relevant daily pay, which means what the employee would have been paid if they had worked on the day in question.

Relevant Daily Pay is calculated by adding up –

* basic pay
* payments for overtime
* cash value of board and lodgings provided.

It excludes employer contributions to superannuation schemes on behalf of the employee.

**Average Daily Pay**

If it is not possible or practical to calculate the employee’s relevant daily pay as set out above, or if the employee’s daily pay varies during the pay period when the holiday or leave falls, then the employee’s average daily pay can be used. It is calculated as follows –

**Gross earnings** for the 52 calendar weeks before the end of the pay period immediately before the calculation is made

**Divided by**

**Number of whole or part days** during which the employee earned those gross earnings -

including paid holidays or paid leave

excluding other days not worked.

**When Paid**

Bereavement pay is paid in the pay period when the bereavement occurred.