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Lawyers and Notary Public

# We're all going on a summer holiday...

In New Zealand, Christmas signals the traditional time to take leave – a tradition that started in the 1920's. However, what does that mean for an employee's annual leave balance? We wanted to explore this and the history of holidays in New Zealand that have been hard fought.

Some industries traditionally recognised public holidays. The Bank Holidays Act 1873 enshrined the days the Banks were closed. While most people were able to have a handful of public holidays off work, those days, including Christmas Day were not legislated for until 1910.

## ***"No more working for a week or two....."***

The right to paid annual leave was finally legislated for in the Holidays Act 1944, which gave most workers in most industries a guaranteed two weeks paid holiday each year. In 1981 this moved to three weeks and, as we know, in 2007 it moved again to four weeks.

While we are closely aligned to our Australian cousins in leave entitlements, European countries are entitled to five or more weeks per year plus public holidays.

## ***"Everybody has a summer holiday doin' things they always wanted to....."***

Not so; businesses often have a traditional close down period each year and during this time can require employees to take annual leave. Of course, there are rules about this and what leave entitlements employees can have during these times but essentially employers can direct when leave can be taken (within reason).

Conversely, for some businesses, Christmas/New Year and summer signal their busiest operating periods. As a result, employers can require that employees take their leave at other times.

This year, Boxing Day and New Years Day Holiday (2 January) fall on a weekend day. It then becomes Mondayised. What this means is that for employees who normally work Monday to Friday they don't miss out on being paid for that public holiday. It is unique to the Christmas/New Year period. However, those that work on the weekend by virtue of their normal work patterns do not miss

out either. This is because employers should recognise the actual day of the holiday if it is worked but are only required to pay for it once (that is, those employees who work both the Saturday and the Monday are only paid the public holiday once).

## ***"We've all seen it on the movies now let's see if it's true....."***

If an employee becomes sick or injured during a period of annual leave, then the employer may agree that the days on which the employee was sick or injured can be taken as sick leave instead. This of course depends on whether the employee has sick leave available.

If an employee becomes sick or injured before the planned annual leave and the employee continues to be sick or injured, then the employer must allow the employee to swap those annual leave days that employee was sick or injured for sick leave to preserve the employee's annual leave entitlement.

Some 24/7 businesses have to consider their shift patterns and how they work with public holidays and whether they have an agreement to move the public holiday. There is no strict case law on how a public holiday can be moved to a different day. This is currently being reviewed by the Government. We may see more flexibility in the future employees who don't wish to observe Christmas may be able to choose a different day. If this happens, it is likely to be limited to another cultural or religious holiday special to the employee.

What we can say is that the Holidays Act is not always straight forward and seeking advice about it is recommended. You can be sure that I am going on my summer holiday and we hope you all have a safe and happy time over Christmas and New Year.



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