



Navigating Holidays Act issues

Snapshot

There are numerous stories in the media about employers making holiday pay calculation errors. It appears tens of thousands of employees may be affected.

The calculation of holiday pay is based on a formula in the Holidays Act 2003, which employers (and their payroll providers) may not be applying correctly. This can particularly be the case for employers with employees who have irregular work patterns (e.g. part time, casual or shift workers). It is also necessary to consider whether discretionary payments to employees, public holidays and sick and bereavement leave have been appropriately accounted for in the holiday pay calculation.

To give comfort to management and the Board, as well as employees, that holiday pay is being calculated correctly, independent consideration of these calculations is recommended.

The holiday pay calculation is only one of a number of components of a payroll system. The accuracy of PAYE, ACC and KiwiSaver deductions and correct classification of benefits (e.g. commissions, bonuses and non-cash amounts) are also important. Therefore, employers should consider obtaining advice on their payroll processes and practices to ensure they are working efficiently. KPMG can help you with independent assurance.

The media attention around incorrect holiday pay calculations makes this a heightened risk for employers

To give comfort to management and the Board, and also to employees, it is recommended that independent advice be obtained

This opportunity should also be used to take a holistic look at your payroll system

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What's the issue?

Holidays Act 2003

There are a number of different aspects of the Holidays Act which are causing employers issues.

The Holidays Act requires employees' holiday pay entitlements (i.e. the rate at which holiday leave is paid out) to be calculated based on the higher of their salary or wage rate when they take the leave or their average weekly earnings in the previous 12 months. It appears that some employers' payroll systems may not be doing the "higher of" calculation, but rather simply calculating leave pay at the employee's current hourly rate.

Issues can also arise where payroll systems are set up to calculate leave based on hourly entitlements, rather than daily or weekly as required under the Holidays Act.

Further, the holiday pay calculation requires consideration of non-discretionary payments made, overtime, work during public holidays and sick and bereavement leave in the previous 12 months. There are also indications that these items may not have been correctly classified by some employers and, therefore, have been missed in the calculations.

Who's impacted?

Potentially any employer with the above deficiencies in their payroll system will be at risk. Using a payroll provider is no guarantee these issues are not present.

The risk will be heightened for those with large numbers of part-time, casual or shift-work employees, whose work patterns may be irregular. This is because those workers' holiday pay calculations will not generally be based on a standard working week. Employers in the retail, convenience, manufacturing, hospitality and food sectors should pay particular attention.

There will also be situations where the New Zealand payroll is managed from offshore (e.g. Australia). The New Zealand rules may not align with foreign practice. In those cases, the foreign payroll team may not be across the detail and nuances of the New Zealand calculations and errors may arise as a result.

The Ministry of Business, Innovation and Employment has found, based on 20 completed investigations of employers, that around 24,000 employees have been underpaid holiday pay. We expect more cases to come to light as the labour inspectorate steps up its review of employers' payroll processes and practices.

What should employers be doing?

In the current environment, to give management and the Board comfort that payroll systems are working appropriately, and employees the security that their holiday pay and other entitlements are correct, independent advice should be sought.

While this should obviously encompass the holiday pay calculations, in our experience, payroll systems can have other errors as well. These include: the incorrect application of PAYE rates and/or calculation of ACC, non-deduction of tax on employer KiwiSaver contributions, and incorrect classification of benefits (e.g. bonuses, commissions and certain non-cash payments). These may attract the attention of Inland Revenue, which is increasing its focus on PAYE audits.

How can KPMG help?

KPMG has a multi-disciplinary team of tax, payroll and assurance experts that can work with your payroll team to assist with these issues based on your specific requirements.

For further information

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