

KIELY | THOMPSON | CAISLEY

BARRISTERS AND SOLICITORS

	Issue/Topic	Taskforce Recommendation	Government Response
1.	Annual holidays payments, FBAPS leave payments	<p>The greater of the following should be paid for the relevant period of annual leave:</p> <ul style="list-style-type: none"> a. Ordinary Leave Pay (base rate plus any scheduled overtime, allowance, commission, and incentive payments) b. Average weekly pay for the last four or 13 weeks c. Average weekly pay for the last 52 weeks. <p>Each day (or part-day) of FBAPS leave should be paid based on the greater of:</p> <ul style="list-style-type: none"> a. Ordinary Leave Pay a. Average Daily Pay 	<p>Accept recommendation.</p> <p>Adopting 13 weeks as the reference period for the 'short-run' average weekly earnings calculation.</p> <p>The Minister for Workplace Relations and Safety also recommends that commission or incentive payments, where it is unclear what period of time the payments were 'earned' over, should only be included in the 52-week average payment calculation.</p>
2.	Period of annual holidays	Annual holidays entitlements should be calculated, taken, paid and held in weeks or portions of weeks	Accept recommendation.
3.	Taking annual holidays in advance	Employees should become entitled to four weeks' leave after 12 months continuous employment, but have the ability to take leave in advance on a pro-rata basis.	Accept recommendation.
4.	Period of annual holidays	A clear process should be followed to determine how much of an employee's leave entitlement should be used for a period of time away from work. Where an employee's days and hours of work are set out in an employment agreement, shift roster or other document and these are an accurate reflection of the employee's actual working pattern, these agreed days and hours should be used as the basis for determining leave entitlements and deductions.	Accept recommendation.
5.	Annual holidays payments	The 'parental leave override' in the <i>Parental Leave and Employment Protection Act 1987</i> should be removed, to address discrimination against parents who take time off to care for their young children.	Accept recommendation. (Same response to recommendation 1).
6.	Pay-as-you-go (PAYG)	The ability for employers to use pay-as-you-go (PAYG) for employees on fixed-term contracts of less than 12 months should be removed and a more detailed definition should be provided for when PAYG can be used because a work pattern is 'intermittent or irregular'.	Accept recommendation

7.	Availability provisions	An employer's ability to require employees to attend work under an availability provision should be suspended from the end of the last shift the employee works before their leave period until the start of the first shift they work on their return from leave.	Accept recommendation.
8.	'Gross earnings' definition	The following definition of 'gross earnings' should be used for leave payment calculations: <i>an employee's leave payment should reflect all cash payments received, except direct reimbursements for costs incurred</i> .	Accept recommendation.
9.	Day of FBAPS leave	FBAPS leave should continue to be held in days.	Accept recommendation.
10.	FBAPS eligibility	Eligible employees should be entitled to bereavement leave and family violence leave from the first day of employment. Eligible employees should be entitled to one day of sick leave from their first day of employment, with an additional day per month of employment until the full entitlement of five days is reached after four months.	Accept recommendation.
11.	Day of FBAPS leave	Employees should have the ability to take sick leave and family violence leave in units of less than a day on a proportionate basis for time and pay with a minimum amount of a quarter of a day.	Accept recommendation.
12.	FBAPS eligibility	There should be a new test for which employees are eligible for sick, bereavement and family violence leave.	Accept recommendation.
13.	Day of FBAPS leave	A new prescriptive methodology should be used to determine whether a day is an Otherwise Working Day for an employee for FBAPS purposes.	Accept recommendation.
14.	FBAPS eligibility	The list of people for whom bereavement leave applies should be extended to include a more modern understanding of family members.	Accept recommendation.
15.	Transferring public holidays	Provisions relating to transferring public holidays should be amended to reduce the chance of employees being disadvantaged by the transfer.	Accept recommendation.
16.	New public holidays	The Taskforce was unable to reach a consensus view in relation to establishing an additional public holiday (e.g. for Matariki).	[Government already announced an intention to establish an additional public holiday for Matariki. The first to be 24 July 2022]
17.	Closedowns	Closedown provisions should be amended to provide greater transparency and certainty for employees. In addition, the requirement that holidays are paid out at 8 per cent and an employee's anniversary date is reset should be	Accept recommendation.

		removed (although it should still be possible for anniversary dates to be reset by agreement).	
18.	Sale and transfer of a business	On the sale and transfer of a business, employees should have a choice about whether to transfer all of their leave entitlements to the new employer or have them paid out and reset.	Accept recommendation.
19.	Record keeping and payslips	Record keeping requirements should be updated to reflect changes to how leave entitlements are held, calculated and paid.	Accept recommendation.
20.	Record keeping and payslips	Employers should be required to provide payslips to employees in every pay period.	Accept recommendation.
21.	Compliance and enforcement	Issues that cause non-compliance with the current Act should be considered in the design of the compliance and enforcement mechanisms to support any revised Act.	Accept recommendation. Noting an initial view that any changes required to these mechanisms are likely to be minor and consistent with the general framework of current employment legislation.
22.	Going above the minimum standards	Employers and employees should have the ability to agree to arrangements that are different to those in the Act, providing that it can be demonstrated that these arrangements provide the employee with leave entitlements that, at a minimum, meet the standards set out in the Act.	Accept recommendation.

* FBAPS = a collective term for Family Violence Leave, Bereavement Leave, Alternate Holidays, Public Holidays, Sick Leave

*Further information is available in the Government Response to the Report of the Holidays Act Taskforce: <https://www.mbie.govt.nz/dmsdocument/13424-government-response-to-the-report-of-the-holidays-act-taskforce-proactiverelase-pdf>