

Holiday closedowns

Are you paying your employees correctly?

With Christmas nearly upon us, many businesses will be gearing up (or down) for their annual closedown periods. Making sure that your payroll system is compliant and staff are paid correctly for their leave is important. However, asking employees to take 'leave in advance' may not always be the right solution.

The Holidays Act 2003 states that any employee who has no entitlement to holiday pay must, for the period of the closedown, be paid 8% of their gross earnings since either their commencement date or when they last became entitled to annual leave. For the purposes of future entitlements, the employee's anniversary date (i.e. start date) is then 'reset' to the beginning of the closedown period.

The recent case of *Metropolitan Glass v Labour Inspector*, a decision out of the Employment Court, has highlighted the risk of not strictly following the frequently overlooked closedown provisions of the Holidays Act 2003. Metropolitan Glass closes down for the Christmas break every year. Historically, the company had allowed employees who had no annual holiday entitlements to take leave in advance during this time. This is a concept that is recognised in the Act and an approach that will be familiar to many employers. Until now, it was widely assumed to be a lawful alternative to the '8% and reset' approach.

Unfortunately, the Court took a different view. It held that, while paying leave in advance was a legitimate *additional* option, it could not be treated as an alternative to paying the 8% of gross earnings. In other words, employers are not entitled to pick and choose.

While there is a question as to whether the Court correctly interpreted the closedown provisions in the Act (which the Court observed were '*not entirely clear*'), businesses who do close down over Christmas should consider whether their current payroll systems are compliant.

How PwC can help?

Our PwC employment law specialists can help with a review of your payroll system to make sure it is compliant with New Zealand law. We can also support you to automate your manual Annual Leave calculation processes to mitigate errors and be compliant with the Holiday's Act. Talk to our integrated team of specialists.

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