

# Advice on annual leave requirements

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## Purpose of this advice

From 9 August 2023 schools covered by the STCA must follow the requirements of the Holidays Act relating to annual leave for teachers.

This advice is to help clarify what is expected for the end of this year and in following years.

## Requirements for STCA

From 9 August 2023 the following STCA provisions apply to ensure compliance with legislation:

### 6.1 LEAVE UNDER THE HOLIDAYS ACT 2003

*Note: The following provisions are inclusive of and not in addition to the provisions of the Holidays Act 2003. Teachers can obtain more information about their entitlements under the Act from the NZPPTA and from the Ministry of Business, Innovation and Employment – see <https://www.employment.govt.nz/leave-and-holidays/>*

- 6.1.1 In accordance with the Holidays Act 2003, teachers, other than short-term relievers, are entitled to paid annual holidays in respect of each completed 12 months of continuous employment (*see s16 of the Holidays Act 2003 for the impact of leave without pay on continuous employment*).
- 6.1.2 When not on annual holidays teachers have discretion about whether, where and when they carry out their duties during periods when students are not in attendance or when teachers have no timetabled hours or other duties that require them to be at school, subject to clauses 5.1.2, 5.6.2 and 5.6.3 above.
- 6.1.3 **When Annual Holidays will be taken - Closedown**
  - (a) A teacher must take their annual holidays when the school customarily closes for instruction as follows:
    - i. the close down period will commence each year upon completion of the half days the school is required to be open as set out in clause 5.4.3 except where the school operates an alternative calendar
    - ii. schools that operate an alternative calendar may operate two or more closedowns during term breaks which are notified to teachers at the commencement of each school year.
  - (b) The teacher will be given at least 14 days' notice of the closedown dates.
  - (c) Where the Holidays Act 2003 entitles a teacher to take sick, bereavement and/or family violence leave during some or all of the closedown period, the teacher will take their annual holidays at another time, usually during a term break, by prior arrangement with the employer whose consent will not be unreasonably withheld. Where agreement between the employer and teacher cannot be reached, the employer may direct the teacher to take their annual holidays by giving the teacher not less than 14 days' notice.
  - (d) Where a teacher takes paid sick or family violence leave during a period of annual holidays, the leave will be deducted from their balance.

## What the requirements mean

Employers must notify teaching and management staff each year of the dates of the close down period.

Written notice of the closedown should be given to each staff member, but this may be electronically.

The close down period must be for 20 weekdays not including any intervening statutory holiday days.

The total closedown period must be free from duty.

If staff do have to work during the closedown period (e.g in response to an emergency) the employer must agree another time for an equivalent number of duty-free days to those worked during the closedown.

Staff may not be subject to the callback provisions of part 5 of the STCA during the closedown/annual, leave period.

Employers may agree different annual leave dates with individual staff, but if the teacher elects to do this must include at least one continuous two-week period.

### Ministry requirements

The requirement already exists (6.10) for teacher leave records to include a number of particular types of leave. The Ministry will directly notify schools of any recording requirements it has for payroll around annual leave.

### How teachers are paid

The essential provisions for payment during school vacation have not changed, but they have been modified to allow for the recording of annual leave as a separate component of holiday pay:

Except as provided in clause 4.8, teachers (other than short-term relievers) will be paid during term breaks that occur during the period of their employment, except where they fall in a continuous period of leave without pay.

Holiday pay is the salary payable to teachers on cessation of duty or for periods during which schools are closed for term breaks *excluding annual holidays in clause 6.1.*

In schools open for 195 or more days in a school year,  $HP = \frac{1}{4} \times \text{number of days}$ . In schools open for fewer than 195 days in a school year,  $HP = \frac{3}{10} \times \text{number of days}$ .

The resulting calculation of holiday pay will be reduced by any payment due or paid for annual holidays, in accordance with the Holidays Act 2003.

Teachers will continue to be paid fortnightly at their normal salary over the periods when the school is closed for instruction. The payment should be the same for the annual leave period and for the rest of the school breaks, but for those weeks/days it will (eventually) be recorded by EPL as payment for annual leave.

If someone starts partway through the year they will be paid through the term breaks as before. If they haven't accrued enough annual leave for the term 4 break they will continue to be paid through the holiday, but it will all be ordinary holiday pay. This will resolve itself as they generate an annual leave balance.

### Continuous employment

A new teacher becomes eligible for 4 weeks annual leave after their first 12 months of continuous employment, and then again after each subsequent 12 months.

Continuous employment includes:

- paid holidays and leave under the Holidays Act;
- paid and unpaid leave under the STCA;
- parental leave under the [Parental Leave and Employment Protection Act 1987](#);
- volunteers leave under the [Volunteers Employment Protection Act 1973](#);
- paid leave under the [Accident Compensation Act 2001](#);

- unpaid sick leave or unpaid bereavement leave or unpaid family violence leave;
- unpaid leave for any other reason for a period of no more than 1 week;
- any other unpaid leave agreed to be included.

### Alternative annual leave

The Holiday's Act requires that if a teacher to take sick leave, bereavement leave and/or family violence leave (SBFVL) during some or all of the closedown period, the teacher will be able to take their annual holidays at another time, usually during a term break.

We recommend a high trust model and that you stay close to your normal practice.

If a teacher advises you that for part of their annual leave they were sick, or had a bereavement or needed to take family violence leave during the designated closedown period, then you agree replacement dates for the annual leave days not taken and record the adjusted annual leave days.

*In essence, you just are agreeing to alternative days when the teacher will be free from duties and cannot be called back under clause 5.4.*

For example, if your close down period is 18 December to 18 January and a teacher reports that they were on sick leave from 12 to 18 January, you could agree with the teacher that:

- a. 19 to 25 January are their transferred annual leave days or
- b. the first week of the term 1 break (or a similar period) will be their transferred annual leave.

You could let staff know that any teacher who unexpectedly has to take SBFV leave during the closedown is pre-approved to transfer their annual leave to the week following the closedown period and just has to give you notice of the change in their annual leave dates. This could be included in your notice of closedown.

If you cannot reach agreement with a teacher on alternative dates you can direct the teacher to take their annual leave at a specific time.

## Recommended Timeline

Term 3-4 2023	<p>Notify all teaching staff of the closedown period for 2023. A minimum of 14 days' notice is required.</p> <p>Identify close down dates for 2024 and build into 2024 school calendar.</p> <p>Amend new appointment letters to include notification of the closedown period.</p>
Start of school year 2024	<p>Notify teaching staff of the 2024 close down dates.</p>
End of school year 2024	<p>Identify close down dates for 2025 and build into 2025 school calendar.</p>
Subsequent school years	<p>Notify teaching staff of that year's close down dates at the start of the year and include in following year's school calendar close down dates for that year.</p>

## Sample notice of closedown

### ***Annual Leave closedown period for 2023***

All staff must take annual leave during the school's closedown period.

The closedown period for 2023 will be 18 December to 18 January inclusive. This period includes 20 days annual leave and the intervening statutory holidays.

This period is to be work-free, and staff should not be on site during the closedown without prior approval.

Staff who are unexpectedly required to work during the closedown period should notify the principal immediately after the closedown period. For those staff, alternative annual leave days can be taken from 22 to 26 January.

You will continue to be paid your fortnightly salary during the closedown period, but it will be recorded as annual leave pay.