

The Employment Leave Act: Employers' readiness guide

WHAT CHANGES, WHEN IT CHANGES AND HOW TO PREPARE

The new **Employment Leave Act 2026** (ELA) has been enacted. Organisations should begin planning now to ensure compliance by the commencement date. The roadmap below outlines what employers need to know, the steps they should take, and the key deadlines.

Key dates

6 August 2028	The Act commences
6 August 2029	Existing employment agreements must comply with the ELA

Actions

PLAN	CONVERSIONS	COLLECTIVE AGREEMENTS	EMPLOYEE NOTIFICATION	EMPLOYMENT AGREEMENT AND POLICIES
• Schedule a planning session with key stakeholders. • Identify the different categories of impacted employees. • Diarise relevant dates.	• Ensure payroll and HR systems are ready for **6 August 2028**. This includes converting current leave entitlements to the new ELA entitlements using the **formulas** set out in the ELA.	• Include provisions for both the Holidays Act 2003 and the ELA when bargaining for collective agreements that span 6 August 2028.	• Prepare an information pack so that employees understand how the changes will impact them. • This is especially important for waged, commission-based, or variable-pay based employees.	• Update employment agreements and/or any applicable policies to ensure they are ready for **6 August 2029**.

New key terms

STANDARD HOURS	ADDITIONAL HOURS	LEAVE COMPENSATION PAYMENT
Hours that the employer may require the employee to work under the employment agreement, and that the employer must pay the employee for, regardless of whether the employee actually works those hours.	Hours worked beyond Standard Hours where work is not guaranteed and can be refused. Typically includes overtime or other hours outside agreed Standard Hours. Annual and sick leave do not accrue on Additional Hours. Instead, employees receive the LCP.	The LCP applies: • To casual employees (12.5% instead of the current 8% payment); and • To Additional Hours worked over Standard Hours.

Annual leave: Accrual and payment

The key shift is from a four week entitlement and variable calculations to an hours based entitlement and worker-category rates.

Accrual and access

HOLIDAYS ACT 2003		EMPLOYMENT LEAVE ACT 2026
Four weeks after each 12 months of continuous employment.	→	Annual leave accrues from the commencement of employment at 0.0769 hours for each Standard Hour worked.
A working week may need to be identified and agreed, including all overtime hours and variable hours worked.	→	Annual leave is taken as accrued against Standard Hours. Additional Hours do not accrue any leave.



How annual leave is paid

HOLIDAYS ACT 2003		EMPLOYMENT LEAVE ACT 2026
A calculation and comparison between average weekly earnings and ordinary weekly pay. Determinations need to be made on whether bonuses are "truly discretionary".	→	**SALARIED** Salary attributable to one Standard Hour, including applicable availability compensation. This does not include LCP, allowances, or productivity – or incentive-based payments, including commissions.
PRO TIP: Ensure availability provisions in IEAs are included and lawful to avoid LCP payments if an employee works in excess of Standard Hours.		
Variable pay and work patterns can make calculations complex – same payment for all types of workers.	→	**WAGED AND SHIFT WORKERS** The lowest hourly rate payable for the relevant shift. Piece-rate rules use an averaging method and minimum safeguards.
Allowances need to be included in the calculation of holiday pay.	→	Fixed allowances are paid in full during leave but are not included in the calculation of the hourly rate. All other components, such as bonuses, commissions, and variable allowances, are not included in the hourly leave-pay rate.
8% of gross earnings on a "pay as you go" basis for casual employees and fixed-term employees who work for less than 12 months.	→	LCP applies to Additional Hours and casual hours. It is set at 12.5% of the ordinary hourly rate. Fixed-term workers with Standard Hours accrue leave from commencement of employment.
No statutory notional roster framework.	→	A notional roster is required where Standard Hours exist, but the employment agreement does not clearly identify when they are worked.
PRO TIP: Identify each category of employee and ensure this is captured in any payroll and HR system.		

HOW THE RATE WORKS IN PRACTICE	
WAGED AND SHIFT WORKERS Use the lowest hourly rate payable under the employment agreement for the shift during which leave is taken. A shift runs continuously from the employee's start time to finish time.	**PIECE-RATE EMPLOYEES** Use the greatest of the employee's leave hourly rate, their average piece-work hourly rate over the previous 93 days, or the minimum wage.
SHIFT EXAMPLE For a 3.00 pm to midnight shift, a night rate applying from 7.00 pm will not apply to the entire leave period if the ordinary daytime rate is the shift's lowest rate. For a 9.00 pm to 6.00 am shift, the night rate applies because it covers the whole shift.	
PRO TIP: Expect an increase in negotiations over hourly rate or shift types.	

Availability during annual leave

HOLIDAYS ACT 2003		EMPLOYMENT LEAVE ACT 2026
No specification of when an annual leave period begins.	→	**ANNUAL LEAVE COVERS THE WHOLE PERIOD** Annual leave starts when the employee finishes their last shift before leave and ends immediately before their first shift after leave. **EXAMPLE:** *If an employee ordinarily works Monday to Thursday, 9.00 am to 5.00 pm, and their employment agreement includes availability to work on Fridays and Saturdays, and the employee takes annual leave on Thursday, the employer cannot require the employee to be available from 5.00 pm on Wednesday until 9.00 am on Monday.*
	→	**NO WORK DURING ANNUAL LEAVE** Employers cannot require employees to work or be available under an availability provision while on annual leave.
	→	**EMPLOYEES CAN CHOOSE, BUT CANNOT BE REQUIRED** Employees may agree to work Additional Hours during annual leave, but employers cannot require them to do so.
PRO TIP: Take note of any requirements on salaried workers to "finish up" work before going on leave.		

Other leave entitlements

Sick, bereavement and family violence leave become available earlier and can be used more flexibly.

Sick leave

HOLIDAYS ACT 2003		EMPLOYMENT LEAVE ACT 2026
Ten days after six months of continuous employment.	→	Accrues from the commencement of employment at not less than 0.0385 hours per Standard Hour worked, capped at 160 hours.
The statutory framework is expressed in whole days.	→	May be taken in hours, including part of a day, against relevant Standard Hours and rostered Additional Hours.
Payment uses relevant daily pay or average daily pay.	→	The applicable hourly leave-pay rate is used, based on the worker category.

PRO TIP: Identify each category of employee and ensure this is captured in any payroll and HR system.

Bereavement and family violence leave

HOLIDAYS ACT 2003		EMPLOYMENT LEAVE ACT 2026
Generally available after six months and taken as full days. Three days per bereavement, ten days for family violence leave.	→	Available from commencement of employment, including for workers on casual hours. Overall entitlement remains the same.
Part of a day may be treated as a whole day.	→	Entitlements remain days-based, but part-days may be taken.
Paid under the current daily-pay framework.	→	Paid using the worker-category hourly leave-pay framework used for other leave types.

PRO TIP: Remember that these leave types continue to be in days and ensure systems reflect this accurately.

Public holidays and implementation

Working on a public holiday

HOLIDAYS ACT 2003		EMPLOYMENT LEAVE ACT 2026
At least time and a half is payable for hours worked on a public holiday.	→	At least time and a half remains payable for hours worked on a public holiday.
If the day is otherwise a working day, the employee generally receives an alternative holiday for the whole day.	→	Alternative leave accrues hour for hour where the employee works, or is on call, on a public holiday that would otherwise have been a working day. Accrual is capped at the hours the employee would otherwise have worked.

The two tests explained

OTHERWISE WORKING DAY TEST

OWD Test 1: A day will be an otherwise working day if the employee would have worked that day based on the days or pattern of days specified in their employment agreement.

OWD Test 2: If the agreement does not specify the relevant days, or the employee consistently works additional days outside the agreement, a 13-week test applies. The day is an otherwise working day if the employee worked, or was on paid or unpaid leave, on 50% or more of the corresponding weekdays in the previous 13 weeks. For employees with shorter service, use their employment period.

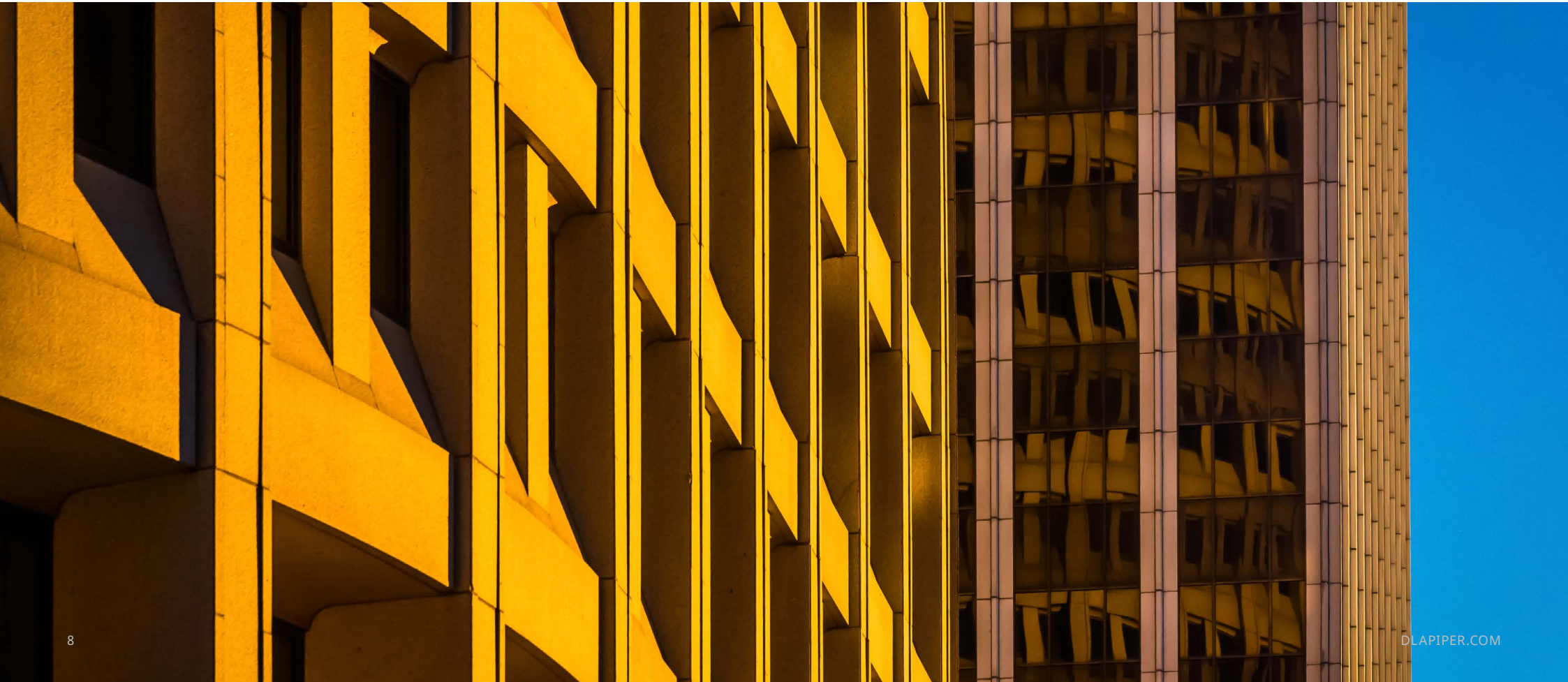
HOURS-WORKED TEST

Identifying the number of hours the employee would have worked on that day. If the hours are specified in the employment agreement, those hours are used. If the hours are not specified, the calculation is based on the employee's average hours worked on that day of the week during the previous 93 days. If the employee has less than 13 weeks' service, the period from the start of employment to the relevant public holiday is used instead.

PRO TIP: Use the new tests to determine entitlement, hours and payment, then build them into employment agreements, rosters and payroll.

Working on a public holiday payment decision and notification path

1A CHECK THE AGREEMENT	1B CHECK THE WORK PATTERN	2 CALCULATE THE HOURS	3 NOTIFY
Check the Employment Agreement to determine the OWD Test 1.	If relevant days are not specified, or the employee consistently works additional days outside the agreement, determine the OWD Test 2.	Undertake the Hours Worked Test.	Notify the employee as soon as possible whether the day is an otherwise working day and the hours they would have worked. The information may be included in the relevant pay statement. Then apply the worker-category payment rules and hourly alternative-leave entitlement.



Employment agreement – compliance with the ELA

REQUIREMENTS FOLLOWING 6 AUGUST 2029
Identifying entitlements: Identification of all leave entitlements and where further information may be sought.

Hours worked: Other than casual employees, employment agreements will require:
• **Standard Hours:** Set out the employee's Standard Hours being the hours and days of work required (and include a lawful availability provision if relevant)
• **Notional Roster:** If Standard Hours cannot be clearly identified, a notional roster is required and must specify:
  • the employee's Standard Hours by reference to a number;
  • the days of the week on which the employee has Standard Hours;
  • the hours in each day that are the employee's Standard Hours: or
  • a methodology for determining the above.

Multiple roles: If an employee has multiple roles but is employed under one employment agreement, the employee and the employer may agree how leave entitlements and payments under the ELA will be treated for each of those roles. Otherwise, the ELA minimum requirements apply.
Part Year Employee: The employment agreement must include a roster for the employee that specifies the days of the week, and the hours in each day, when the employee may take the annual leave.
Public Holidays: If an employee may be required to work on a public holiday this must be included in the employment agreement

Employee Protection Provision: The new employee protection provision section requires employment agreements to include:
• a **process** it will follow negotiating with the new employer to the extent it relates to affected employees;
• the matters that must be negotiated are:
  • whether the employee will transfer and if so, whether it will be on the same terms and conditions;
  • whether the new employee's employment will be treated as continuous for the purposes of annual, sick or family violence leave;
  • whether the new employer will recognise accrued but unused annual, sick or alternative leave (or any other service related entitlements);
  • if the new employer agrees to recognise service entitlements, whether the transferring employee will be given the choice to have those transferred or paid out.
• the process to be followed at the time of restructuring to determine what entitlements are available for those employees who do not transfer.

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