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Annual Leave Q1. How many days of annual leave should be given in a year? Q2. Who determines the timing of annual leave? Q3. Can annual leave be granted separately to an employee? Q4. Can an employer make payment to an employee in lieu of annual leave? Q5. How is annual leave pay calculated? When should it be paid? Q6. If an employee resigns before completing one year's service, should the employer grant pro-rata annual leave pay to him? Q1. How many days of annual leave should be given in a year? A1. An employee is entitled to 7 days' annual leave with pay after serving every period of 12 months under a continuous contract. An employee's entitlement to paid annual leave will increase progressively to a maximum of 14 days according to his length of service as follows: Years of Service Annual Leave Entitlement 1 7 2 3 8 4 9 5 10 6 11 7 12 8 13 9 or above 14 Back to questions Q5. How is annual leave pay calculated? When should it be paid? A5. The daily rate of annual leave pay is a sum equivalent to the average daily wages earned by an employee in the 12-month period preceding the day of the annual leave or the first day of the annual leave (if more than 1 consecutive day of annual leave). If an employee is employed for less than 12 months, the calculation shall be based on the shorter period. In calculating the average daily wages, an employer has to exclude (i) the periods for which an employee is not paid his wages or full wages, including rest day, statutory holiday, annual leave, sickness day, maternity leave, paternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods. Annual leave pay should be paid to the employee not later than the normal pay day after the period of annual leave taken. Back to questions Q6. If an employee resigns before completing one year's service, should the employer grant pro-rata annual leave pay to him? A6. An employee is entitled to pro-rata annual leave pay on completion of 3 months but less than 12 months' service in a leave year if his employment contract is terminated unless the employee is dismissed by summary dismissal. Back to questions Published December 15, 2020 (last updated on April 18, 2024) | Adam Wyatt - Content WriterAll employers in Australia know how hard it is to keep up-to-date with the latest legislation changes. The recent rush of workplace legislation changes may seem like a modern phenomenon, as theFair Work Actwas only introduced in 2010. To recap, in addition to the COVID-related changes like JobKeeper, JobMaker and pandemic leave, this year so far has seen annualised salary changes, four-yearly updates to Awards, and casual overtime changes just to name a few.A cornerstone of theFair Work Actis theNational Employment Standards (NES), the set of 10 minimum entitlements which must be provided to all employees in Australia. One of the minimum entitlements provided by the NESis annual leave: a permanent employee is entitled to four weeks of paid annual leave, per year, but what has changed since then and when did employees receive the standard four weeks of annual leave?1906: The First Annual Leave EntitlementThe federal maritime award introduced 10 days of paid annual leave in the early 20thcentury. This was the first official instance of annual leave in Australia.The introduction of the federal maritime award also came in 1906, after a series of strikes in the 1890s brought employee rights to the fore. The federal maritime award was, along with the shearers award, the first award in Australia.These awards were introduced by the Commonwealth Court of Conciliation and Arbitration, an early forerunner of the Fair Work Commission.1935 to 1974: Annual Leave Becomes WidespreadPaid annual leave along with sick leave was gradually introduced into federal awards. The Printers Union won one week of paid annual leave in 1935, and soon this entitlement slowly became widespread in Australia.In 1945, in the year that the Second World War ended, workers won the right to two weeks annual leave, and between then and 1974 two weeks of paid leave was generally adopted as the standard entitlement through Australia.Contact us to find out how BrightHR people management software can help you manage and store your essential employee records and documents.Contact us1974: Four Weeks for Public Service Workers in NSWFollowing a decision by the NSW Industrial Relations Commission, four weeks annual leave was introduced for each year of service.While this decision only covered public sector employees in NSW, this was the first time that Australian employees in any sector were entitled to four weeks paid leave.1988-2009: A New Act Every 4.25 YearsBetween 1988 and 2005, there were four major employment relations Acts passed.TheIndustrial Relations Act 1988, which replaced the 84-year-oldCommonwealth Conciliation and Arbitration Act 1904, came into effect in 1989. This Act was then amended byIndustrial Relations Reform Act 1993.These Acts were brought in by the Bob Hawke-Paul Keating Labor Party Government, which lasted from 1983 until 1996, when John Howard came into power.In 1996, Howard's Liberal Government brought in theWorkplace Relations Act 1996, which replaced the Act passed eight years previously. In 2005, they passed Work Choices (formally known asWorkplace Relations Amendment (Work Choices) Act 2005).Throughout this tumultuous 17-year period, where a new Act was passed on average every 4.25 years, the standard entitlement of four weeks annual leave generally stayed intact. The Work Choices Act provided employees with five entitlements, one of which was annual leave.2009-Onwards:The following election was won by Kevin in 07. The Rudd Government passed theFair Work Act 2009, which came into effect on 1 July of that year, superseding theWorkplace Relations Act 1996.The Fair Work Act outlined the minimum standards that should apply to all employees, one of which is the minimum entitlement of annual leave.Annual Leave Will Stick AroundAs time has passed, annual leave has gone from a rare entitlement to becoming a standard right for employees in the Australian workplace relations system. Even during the see-sawing of workplace relations legislation for almost two decades before the introduction of the Fair Work Act, it remained a right.Now entrenched, it is unlikely that annual leave will go away. Employers will have to keep themselves up to date on how annual leave works, what their obligations are and what the rights of their employees.Theres no better help available to assist employers get on top of their workplace relations than Employure. Call us now for free initial advice on any annual leave question you may have.Want to know more about annual leave? Call us now for free, initial advice.Call NowContentsCalculation of Notice PeriodCalculation of Payment in Lieu of NoticeWhen terminating a contract of employment, the party who requested for termination is required to give the other party due notice or payment in lieu of notice. The length of notice or the amount of payment in lieu of notice required are:EmploymentLength of noticePayment in lieu of noticeDuring Probation PeriodWithin the first month of probationNot requiredAfter the first month of probationwhere contract makes provision for the required length of noticeAs per agreement, but not less than 7 daysPlease refer to Calculation of Payment in Lieu of Noticewhere contract does not make provision for the required length of noticeNot less than 7 daysNotice for continuous contract\* with no/after probation periodwhere contract makes provision for the required length of noticeAs per agreement, but not less than 7 daysPlease refer to Calculation of Payment in Lieu of Noticewhere contract does not make provision for the required length of noticeNot less than 7 daysNotice for continuous contract\* with no/after probation period, the length of notice shall be the agreed period; please refer to 2 for the corresponding payment in lieu of notice.After confirming the number of days required for notice, please make reference to the materials below to find out when the employee will terminate his/her service, or the amount of payment in lieu of notice required - Calculation of Notice PeriodIf the notice period is calculated in terms of days, to avoid disputes, the day when notice of termination of employment contract is given may be excluded from the notice period.If the notice period is calculated in terms of months, the Employment Ordinance has stipulated that the day when notice of termination of employment contract is given should be included in the notice period. According to the Employment Ordinance, a month means a period of time commencing on the day when notice of termination of employment contract is given, and ending at the end of the day before the corresponding date in the following month (e.g. 13 th February to 12 th March);where there is no corresponding date in the following month, at the end of the last day of the following month (e.g. 30 th January to the last day of February); orwhere the commencing day is the last day of a month, at the end of the last day of the following month (e.g. the last day of February to 31 st March). Calculation of Payment in Lieu of NoticeThe formula for calculating payment in lieu of notice is as follows - Notice period expressed in days or weeksAverage daily wages earned by an employee in the 12-month period preceding the day when a notice of termination of contract is given\*Number of days in the notice period for which wages would normally be payable to the employee=Payment in lieu of noticeNotice period expressed in monthsAverage monthly wages earned by an employee in the 12-month period preceding the day when a notice of termination of contract is given\*Number of months specified in the notice period=Payment in lieu of notice\*In case a notice has not been given, one shall adopt the average daily wages of the employee in the 12-month period preceding the day when the contract is terminated. Please note that in calculating the average daily wages, an employer has to exclude (i) the periods for which an employee is not paid his/her wages or full wages, including rest day, statutory holiday, annual leave, sickness day, maternity leave, paternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods.You may refer to the "12-Month Average Wages Calculator" on Labour Department's website to calculate the 12-month average wage, or A Concise Guide to the Employment Ordinance - Appendix 1 (PDF)(for more information. This is not a legal document. The Ordinance remains the sole authority for the provisions of the law explained.Copy Link365 days a year that we all clearly know, employee does need time off, but not happy with only a weekend. How we can motivate their efficiency by offering them Annual Leave and Statutory/Public Leave together, to enjoy a long vacation to recharge to back to work. Paid Annual Leave is part of the compensation, what should we be aware of? How many days of paid annual leave are there in a year? According to the Employment Ordinance, employees who have been employed under a continuous contract for 12 months are entitled to annual leave with pay. An employee's entitlement to paid annual leave increases progressively from seven days to a maximum of 14 days according to his length of service. Please refer to the table of Annual Leave Entitlements below. \*An employer who does not allow employees to take annual leave is liable to prosecution and, upon conviction, to a fine of HK\$50,000. How to approve an employees application for paid annual leave? As one of the employees benefits, applying for paid annual leave may seem like there are no other additional rules, however, it is not. More specifically, the number of days off is determined by the total number of paid annual leave. \*An employee's entitlement to annual leave to which is entitled within 12 months' service, which also depends on the company's usual practice. Annual leave pay should be paid to the employee not later than the normal payday after the period of annual leave taken. How is the remaining paid annual leave calculated when an employee leaves the company? In any case, if an employee resigns after passing the probationary period, even if he/she has not worked for one year, the employee will save some paid annual leave that has been not taken yet, and the number of annual leave days is calculated as follows: Calculation of Annual Leave Pay on Termination of Employment Contract: \* This refers to any untaken annual accrued in the previous leave year. Example: Calculate 7-day annual leave pay Assumption Wage: HK\$9,000 per month, paid on rest daysWages earned during the 12-month period preceding the first day of annual leave: HK\$108,000, including wages earned at work and holiday paymentsLeave taken during the 12 months: 71 days leave with full pay, including 52 rest days; 12 statutory holidays; 7 annual leave days Periods and wages to be disregarded Since the employee was not paid less than full wages for taking leave during the 12-month period, the period and amount to be excluded are both HK\$0. Calculating holiday pay on the basis of the 12-month average Calculating the average daily wages earned in 12 months: HK\$108,000 0 (HK\$)/ 365 0 (days)= HK\$296 Calculate 7-day annual leave pay: HK\$296 x 7 = HK\$2,072 NOTE\*Restriction on payment of annual leave: Annual leave pay should be paid to the employee not later than the normal payday after the period of annual leave taken. If an employer who fails to pay annual leave pay to an employee is liable to prosecution and, upon conviction, to a fine of HK\$50,000. How to calculate the annual leave left by resignation into the payment? Confirm the last day The employer must know which day is the last working day and clearly stated in the resignation letter, and then the employer will negotiate with the employee according to the employment contract. In the most common case, the notice period in the contract is one month. Assuming that employee A resigns on June 10, he can retire as soon as July 9. If A wants to leave early, he must obtain the employers consent or pay the employee a payment in lieu of notice. How to calculate payment in lieu of notice? The amount of payment in lieu of notice is equal to the average daily wage in the past year X the number of early leave days. Assuming that the monthly wage of employees is HK\$20,000, the average daily salary is HK\$20,000 X 12 / 365 days = HK\$657.5 Paid annual leave is paid on a daily basis According to the Employment Ordinance, employees are entitled to holiday pay as long as they have been employed under a continuous contract for 3 months. When the employment contract is terminated, if there is still untaken annual leave, wages can be obtained in lieu of the annual leave. The value of each day of paid annual leave is equal to the average daily wage of employees in the past year. How many days of annual leave are counted? If the employee has been employed for more than 3 months but less than 12 months, the number of annual leave must be calculated proportionally. The formula is Number of annual leave days X number of employment days / 365 days. Assuming that an employee enjoys 12 days of annual leave every year, the last working day is the 200th day after taking office, and no major leave was taken during the tenure period. The remaining annual leave when resigning is 6.5 days, multiplied by the average daily wage, which is the amount that annual leave pay can be retrieved when resigning. It is not difficult to see from the above that it is easy to make mistakes if you are not careful about the issue of paid annual leave, approval, employees buy-out of a holiday, and the remaining annual leave after leaving the company. Not only will you have disputes with your employees, but you will also risk fines and imprisonment. So HR always complains. How do Workstem users use the system to handle issues such as annual leave pay? Employers can set annual leave rules built into the system on the web or app, and can choose whether to carry forward to the next year, whether to limit the application date, etc. Employers can also easily view employee leave application records and choose whether to approve or not. 1) Click the Leave Type to view the leave policy required by the built-in Hong Kong enterprises in the system. If you need to add other leave types, you can tap the Add button to supplement the list for all your individual needs. 2) Click the Leave Policy, and select the type of annual leave (AL). After completing the formula setting, no other operations are required, and the system will automatically allocate the leave balance for employees to apply. 3) After completing the Leave setting, employees can easily apply at the terminal by themselves. Employers or HR can click on leave applications to view application records. One-touch approval. 4) Payroll calculation issues from annual leave. When an employee buy-out of a holiday and leaves the company, do I need to export the data for manual calculation? No no no! 4) For the payroll calculation issue arising from annual leave, do employees need to export the data for manual calculation when they buy-out of a holiday and calculate the annual leave left by resignation into the payment? No no no! As a one-stop human resource system, Workstem can calculate the employees paid annual leave balance and related wage settlement according to the employees entry date and historical leave records through the Leave and Payroll function settings. The Workstem system can also provide a full range of solutions to help you business management of other HR processes, such as RosteringAttendanceLeave, MPF and tax return management, etc., help you can truly realize digital transformation and improve management efficiency and employee satisfaction.Read More:How to Calculate Annual Leave Payment on Termination of Employment Contract?How Paid Annual Leave Should Be Calculated?How to Set an Annual Leave Policy? Employees are entitled to a minimum amount of annual leave for each year of employment. The minimum amount of annual leave will depend on the length of employment with your employer, ranging from 7 days of annual leave (if you have been employed for more than one year, but less than three years) and 14 days (if you have been employed for more than nine years). However, an employer may choose to give you additional days of annual leave at their discretion in accordance with your employment contract.During your annual leave, your daily wage is calculated as your average wage over the last year. Employees may choose to receive payment instead of taking holidays (i.e. payment in lieu). Employees are also allowed to rollover any unused statutory annual leave to the next year. However, if you have been employed for more than 12 months, the number of annual leave must be calculated proportionally. The formula is Number of annual leave days X number of employment days / 365 days. Assuming that an employee enjoys 12 days of annual leave every year, the last working day is the 200th day after taking office, and no major leave was taken during the tenure period. The remaining annual leave when resigning is 6.5 days, multiplied by the average daily wage, which is the amount that annual leave pay can be retrieved when resigning. 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As a one-stop human resource system, Workstem can calculate the employees paid annual leave balance and related wage settlement according to the employees entry date and historical leave records through the Leave and Payroll function settings. The Workstem system can also provide a full range of solutions to help you business management of other HR processes, such as RosteringAttendanceLeave, MPF and tax return management, etc., help you can truly realize digital transformation and improve management efficiency and employee satisfaction.Read More:How to Calculate Annual Leave Payment on Termination of Employment Contract?How Paid Annual Leave Should Be Calculated?How to Set an Annual Leave Policy? Statutory Holidays Q1. What are the statutory holidays? Q2. Are the statutory holidays with pay or without pay? Q3. How is statutory holiday pay calculated? When should it be paid? Q4. Can an employer require an employee to work on statutory holidays? Q5. Can an employer make payment to an employee in lieu of a statutory holiday? Q6. If a statutory holiday falls on an employee's rest day, is it obligatory for the employer to grant the employee another holiday? Q1. What are the statutory holidays? A1. An employee, irrespective of his length of service, is entitled to the following statutory holidays: - the first day of January Lunar New Year's Day the second day of Lunar New Year the third day of Lunar New Year Ching Ming Festival Labour Day, being the first day of Maythe Birthday of the BuddhaTuen Ng Festival Hong Kong Special Administrative Region Establishment Day, being the first day of July the day following the Chinese Mid-Autumn Festival National Day, being the first day of October Chung Yeung Festival Chinese Winter Solstice Festival or Christmas Day (at the option of the employer) the first weekday after Christmas DayNewly added from 2024\* Effective from 1 January 2024 The additional statutory holidays from 2026 and thereafter are tabulated as follows: YearNewly added statutory holidayTotal number of statutory holidaysStarting from 2026Easter Monday15Starting from 2028Good Friday16Starting from 2030The day following Good Friday17 Back to questions Q2. Are the statutory holidays with pay or without pay? A2. An employee having been employed under a continuous contract for not less than 3 months is entitled to pay on statutory holidays. Back to questions Q3. How is statutory holiday pay calculated? When should it be paid? A3. The daily rate of statutory holiday pay is a sum equivalent to the average daily wages earned by an employee in the 12-month period preceding the day of the statutory holiday or the first day of the statutory holidays (if more than 1 consecutive statutory holiday). If an employee is employed for less than 12 months, the calculation shall be based on the shorter period. In calculating the average daily wages, an employer has to exclude (i) the periods for which an employee is not paid his wages or full wages, including rest day, statutory holiday, annual leave, sickness day, maternity leave, paternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods. Statutory holiday pay should be paid to the employee not later than the day on which he is next paid his wages after that statutory holiday. Back to questions Q4. Can an employer require an employee to work on statutory holidays? A4. Yes. An employer is required to give his employee at least 48 hours' prior notice for work on a statutory holiday. The employer must then arrange an alternative holiday within 60 days before or after the statutory holiday. If the employer and employee agree, any day within 30 days of the statutory or alternative holiday may be taken by the employee as a substitute holiday. In this situation, an employer is advised to keep clear records of the alternative or substitute holiday taken by an employee. Back to questions Q5. Can an employer make payment to an employee in lieu of a statutory holiday? A5. No. An employer must not make any form of payment to an employee in lieu of a statutory holiday. The employer who contravenes this provision is liable to prosecution and, upon conviction, to a fine of HK\$50,000. Back to questions Q6. If a statutory holiday falls on an employee's rest day, is it obligatory for the employer to grant the employee another holiday? A6. Yes. If the statutory holiday falls on a rest day, a holiday should be granted on the day following the rest day which is not a statutory holiday or an alternative holiday or a substituted holiday or a rest day. 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