

REGULATORY IMPACT AND BUSINESS COMPLIANCE COST STATEMENT

STATEMENT OF THE PROBLEM AND THE NEED FOR ACTION

The Holidays Act 1981 does not reflect current working patterns or social and economic developments since its enactment. The Act has attracted criticism from the public, and employer and employee groups over recent years for being complicated and difficult to understand and apply. The Act has been supplemented by copious judicial decisions that are not evident to users and has also been the subject of numerous reviews. Action is also required to ensure that statutory minima apply, as some employees may, because of a relatively weak bargaining position, be unable to negotiate entitlements that ensure quality of lifestyle and well being as well as recognising the relationship and balance between work and the demands of life outside of employment. During the year to 30 September 2002, 59,393 (26%) enquiries to the Employment Relations Service infoline related to holidays. During the same period, 1,676 (48%) complaints to the Labour Inspectorate were related to annual holidays, and 704 (20%) to public holidays.

STATEMENT OF THE PUBLIC POLICY OBJECTIVE

The key objectives for Government action in respect of holiday entitlements are to:

- Ensure that all employees have access to entitlements at a standard that society as a whole considers to be acceptable;
- Ensure that holidays entitlements are both robust and appropriate to accommodate increased diversity in working patterns; and
- Balance the needs of employers and employees.

Employees should be entitled to three types of paid leave of which each has a specific objective:

- Annual Leave to provide paid time off to employees for rest and recreation;
- Public Holidays to provide for the common observance of days of national, religious or cultural significance and in this context providing employees be paid at rate and a half for working on the public holiday; and
- Sick and bereavement leave to provide “insurance” when employees are unable to work because they are sick, someone in their immediate family is sick, or they have suffered a bereavement.

The Bill reflects objectives and commitments in other areas of employment relations policy, which include the promotion of work practices that are family-friendly and provide work/life balance and the more effective management of health and safety in the workplace. More responsive and robust entitlements also contribute to Government objectives of promoting the concept of ‘decent work’.

STATEMENT OF THE FEASIBLE OPTIONS TO ACHIEVE THE DESIRED OBJECTIVE AND NET BENEFITS OF THE PROPOSAL

Status Quo

The key features of the current Holidays Act as it relates to the proposal are:

- An incomplete explanation of what makes up ordinary pay;

- The Crown is only bound by certain provisions;
- Public holidays are only paid at ordinary rate;
- Special provisions for employees in factories and undertakings; and
- Five days special leave to cover both bereavement and sickness.

Remaining with the status quo is not feasible, as it no longer meets the policy objectives of the Act.

Preferred Option

The proposal falls into three main categories:

- Those that are intended to reduce compliance costs through providing holiday entitlements that are easier to understand;
- Those that are intended to ensure that there is consistency in entitlements between different types of employment;
- Those that are intended to ensure that the minimum entitlements meet the public policy objectives set out above.

Measures to reduce compliance costs

The principal measures to reduce compliance costs are to (a) provide a complete explanation of how to determine ordinary pay, and (b) to provide simplified calculations of annual holiday pay and ordinary pay.

Compliance costs associated with the Holidays Act 1981 have been in terms of the difficulty in applying the provisions of the Act to the range of situations where holidays are an issue. This can be seen through the large amount of case law that has supplemented the Act and is necessary to be read with the Act in order to fully understand its application.

Measures to ensure there is consistency in entitlements between different types of employment

The measures to ensure that all employees have the same entitlements involve (a) binding the Crown (except the Defence Force) to the provisions of the whole Act, and (b) removing separate provisions for employees in factories and undertakings. The Holidays Act currently provides specific directions as to how pay for statutory holidays and for working on Sundays is to be calculated for employees who work in factories and undertakings as defined.

Extending the Holidays Act to apply to the Crown in full removes the perception that the Crown may be favouring itself in its employment relations. Any costs this may create are likely to be minimal as the Crown mostly provides holiday entitlements at or above the proposed minimum. Removing the distinction for factories and undertakings will mean that there is one, easy to understand set of regulations for all types of businesses to follow.

Measures to ensure appropriate minimum standards

The measures to ensure that employees are protected by adequate minimum entitlements are:

- Providing a payment at rate and a half to employees who work on public holidays;
- Providing employees with five days sick leave entitlement; and
- Providing a two tier entitlement for bereavement leave of three days on the death of a close relative and one day on the death of any other person where the employer accepts that the employee has suffered a bereavement.

These proposals will provide minimum levels for vulnerable workers who would otherwise be unable to negotiate these terms and conditions. The benefits of more leisure time and general social well-being, and the positive effects upon the workforce can be described in terms of less stress, greater rest and refreshment and a better balance of entitlement.

Payment at rate and a half for working on a public holiday provides employees with recognition that they have given up their opportunity to partake in the common observance of days of national, religious or cultural significance.

An increased entitlement to sick and domestic leave will remedy the current problem of employees using their annual holiday entitlement for special leave purposes, which is contrary to the objective of annual holidays as providing an opportunity for rest and recreation.

Fair and effective minimum employment standards also assist in enabling New Zealand to compete internationally on the basis of quality, through enhancing our ability to attract and retain labour and to promote quality investment in human capital rather than a simple lowest cost basis.

The cost to business of payment at rate and a half for working on a public holiday is dependent on the extent to which employees work on public holidays and have penal rates less than rate and a half. While 53% of collective agreements¹ are silent or provide less than rate and a half for working on a public holiday, inclusion in agreements is not indicative of whether work on public holidays is actually undertaken. A number of collective agreements may not specify a penal rate for working on a public holiday because the standard practice is that work is not performed on a public holiday. Because of this, it is likely that much less than 53% of employers will be affected by the change.

The cost to business of the split entitlement to sick and bereavement leave depends entirely on the uptake of this entitlement by employees.

Other options considered

¹ Source: Employment Relations Service database of collective agreements. However, agreements in the database cover approximately 21% of the employed labour force. There is no available data on employees on individual employment agreements.

There are no non-regulatory options that will satisfactorily ensure that all of these objectives are met. The proposal is considered superior to other more indirect options in meeting the policy objectives above. Other options such as media promotion of the benefits of increased leave, and default (but tradable) standards do not directly target vulnerable workers employed on minimum terms and conditions.

BUSINESS COMPLIANCE COST STATEMENT

There will be an overall reduction in compliance costs associated with the proposal due to legislation that is simplified, easier to understand and apply.

While there may be small compliance costs associated with becoming familiar with the provisions of the new Act, a comprehensive information campaign through publications, media statements, websites and the call centre will offset these costs. The comprehensive information campaign will emphasise the use of the internet to facilitate information provision, which is consistent with the e-government goal.

Any compliance costs associated with determining whether current employment agreements provide employees with rate and a half for working on a public holiday will be minimised. Where the employee's current rate of pay incorporates a component for payment of rate and a half for working on a public holiday, or one of the parties contends that it does, the problem must be addressed when the employment agreement is renegotiated or within 12 months of the Act coming into force, whichever is earlier. Mediation services and the employment institutions will be able to assist parties in addressing this.

The proposal provides that sick and domestic leave will be able to be accumulated to a maximum of 15 days. This will involve a minimal increase in compliance costs in terms of additional information to be recorded in an employer's leave records.

CONSULTATION

The Treasury, State Services Commission, Parliamentary Council Office, Ministry of Economic Development, Department of Prime Minister and Cabinet, Ministry of Justice, Department of Internal Affairs, Ministry of Defence, Ministry of Women's Affairs, Ministry of Youth Affairs, Te Puni Kokiri, and Ministry of Pacific Island Affairs have been consulted about the contents of this paper and throughout the Governments' policy decision making.

The New Zealand Council of Trade Unions and Business New Zealand were both involved in the drafting of the Bill and advising the Government through the Holidays Act Advisory Group.