

ARTICLE 22 OF THE CONSTITUTION OF THE ILO

Report for the period 1 June 2008 to 31 May 2010
made by the Government of New Zealand

on the

WEEKLY REST (INDUSTRY) CONVENTION, 1921 (No. 14)

I Please give a list of the legislation and administrative regulations, etc., which apply the provisions of the Convention. Where this has not already been done, please forward copies of the said legislation, etc., to the International Labour Organisation with this report.

Please give any available information concerning the extent to which these laws and regulations have been enacted or modified to permit of, or as a result of, ratification.

- Employment Relations Act 2000;
- Health and Safety in Employment Act 1992;
- Health and Safety in Employment Regulations 1995.
- Minimum Wage Act 1983; and
- Minimum Wage (New Entrants) Amendment Act 2007

No additional relevant legislation has been passed since the last report for the period 1 July 2004 to 31 May 2008.

II Please indicate in detail for each of the following articles of the Convention the provisions of the above-mentioned legislation and administrative regulations., etc. or other measures under which each article is applied.

If the Committee of Experts or the Conference Committee on the Application of Standards has requested additional information or has made an observation on the measures adopted to apply the Convention, please supply the information asked for or indicate the action taken by your Government to settle the points in question.

Article 1

1. For the purpose of this Convention, the term "industrial undertaking" includes particularly-

(a) mines, quarries, and other works for the extraction of minerals from the earth;

(b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed; including shipbuilding and the generation, transformation and transmission of electricity or motive power of any kind;

(c) construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, water work, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure;

(d) transport of passengers or goods by road, rail, or inland waterway, including the handling of goods at docks, quays, wharves, and warehouses, but excluding transport by hand.

2. This definition shall be subject to the special national exceptions contained in the Washington Convention limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week, so far as such exceptions are applicable to the present Convention.

3. Where necessary, in addition to the above enumeration, each Member may define the line of division which separates industry from commerce and agriculture.

Please state what decisions, if any, have been taken in regard to the last paragraph of this Article.

The legislation listed in Section I of this report applies to all employees working in New Zealand.

Article 2

1. The whole of the staff employed in any industrial undertaking, public or private, or in any branch thereof shall, except as otherwise provided for by the following Articles, enjoy in every period of seven days a period of rest comprising at least twenty-four consecutive hours.

2. This period of rest shall, wherever possible, be granted simultaneously to the whole of the staff of each undertaking.

3. It shall, wherever possible, be fixed so as to coincide with the days already established by the traditions or customs of the country or district.

No changes have been made since the last report.

Article 7

In order to facilitate the application of the provisions of this Convention, each employer, director, or manager, shall be obliged-

(a) where the weekly rest is given to the whole of the staff collectively, to make known such days and hours of collective rest by means of notices posted conspicuously in the establishment or any other convenient place, or in any other manner approved by the Government;

(b) where the rest period is not granted to the whole of the staff collectively, to make known, by means of a roster drawn up in accordance with the method approved by the legislation of the country, or by a regulation of the competent authority, the workers or employees subject to a special system of rest, and to indicate that system.

Please forward specimen copies of the notices and rosters specified in virtue of this Article.

No changes have been made since the last report.

III *Please state to what authority or authorities the application of the above-mentioned legislation and administrative regulations, etc., is entrusted and the methods for supervising and enforcing that application. In particular, supply information on the organisation and working of inspection.*

No changes have been made since the last report.

IV *Please state whether courts of law or other tribunals have given decisions involving questions of principle relating to the application of the Convention. If so, please supply the text of these decisions.*

No decisions have been made.

V *Please give a general appreciation of the manner in which the Convention is applied in your country, including, for instance, extracts from official reports and information on any practical difficulties in the application of the Convention.*

No changes have been made since the last report.

VI *Please indicate the representative organisations of employers and workers to which copies of this report have been provided.*

New Zealand Council of Trade Unions
Business New Zealand

Response to comments made by the Committee of Experts on the Application of Conventions and Recommendations in 2010

The Government's position in regard to Convention 14 is that while the principle of weekly rest is supported, the preferred approach to this issue is a non-prescriptive legislative framework which recognises the increasingly complex nature of modern workplaces and work, rather than explicit regulation. The Government considers that the legislative framework set out under Section I of this report and current government policy constitutes compliance with this convention.

New Zealand's legislative framework

New Zealand does not have prescriptive legislation to explicitly regulate hours of work or weekly rest periods in workplaces. However the aims of the Convention are still achieved through a combination of existing legislation relating to employment relations, the minimum wage and health and safety in employment, and ongoing government policies designed to reinforce the importance of regular rest periods and the dangers of fatigue.

The Health and Safety in Employment Act 1992 promotes the prevention of harm in the workplace and it requires employers to take all practicable steps to ensure that employees are not harmed while at work. The Act specifically includes harms caused by work-related stress or resulting from physical or mental fatigue. This ensures that there are strong inducements for employers to provide sufficient weekly rest periods.

The Employment Relations Act 2000 requires that all employees must have a written employment agreement. Under the Minimum Wage Act 1983, employment agreements must fix a maximum number of hours to be worked in a week, and this number must not exceed 40 unless both parties to the agreement agree. Where the number of hours is less than 40, the parties must endeavour to fix the hours so that they are not worked on more than five days of the week. This ensures that employees are guaranteed a weekly 24-hour rest period unless explicitly agreed otherwise.

Specific responses to the Committee's comments

The Committee comments that "the provisions of the Health and Safety in Employment Act in relation to weekly rest are general and overly permissive and therefore fail to give effect to specific requirements of the Convention" and that it "hopes that the Government will take all necessary steps in order to bring its legislation into conformity with the basic requirements of the Convention by giving specific legislative expression to the workers' entitlement to 24 consecutive hours of rest every week."

The Government considers that the legislative framework outlined in this report is sufficient to ensure that New Zealand workers are guaranteed an adequate weekly rest period. The approach taken allows for sufficient flexibility for both workers and employers, while also ensuring that minimum standards are enforced and the safety and well-being of workers is protected. The Government considers that the basic principles of regularity and continuity are therefore addressed, while the principle of uniformity is provided for, but not binding. The Government

therefore considers that specific legislative expression is not required to ensure compliance with the Convention.

The Committee also notes the comments made by the New Zealand Council of Trade Unions (NZCTU) concerning the problem of driver fatigue in the road transport sector principally due to existing legislation that allows up to 70 hours of work per week. The NZCTU acknowledges that government agencies work to address the issue, for instance, by developing a strategy to combat the issue of driver fatigue, announced in December 2007, but indicates that cumulative tiredness and stress from excessively long hours may not be resolved by short breaks. The Committee would appreciate receiving any comments the Government may wish to make in response to the observations of the NZCTU.

The Land Transport Act 1998 contains provisions to ensure road user and passenger safety. In doing, it complements occupational health and safety provisions by setting out limits to working hours for drivers of commercial and heavy motor vehicles, in order to reduce the risks associated with fatigue.

In a cumulative work day, which may not exceed 24 hours but could be less, drivers may not exceed 13 hours of work time (during which they may not work for more than five and a half hours without at least 30 minutes break) and must have at least 10 hours of continuous rest time. Drivers must also take a continuous break of at least 24 hours after a maximum of 70 hours work time. Most drivers are required to complete a written record of their working hours, in the form of a logbook, to enable enforcement officers to check their compliance with work time rules.

In effect, this means that drivers are guaranteed to have a 24-hour rest period after 70 hours work time (although this may take more than a week to accumulate). In addition, as the NZCTU has noted, the Government is implementing a range of programmes and initiatives to raise awareness and help to address the issue of driver fatigue. The Government considers that the existing regulation, together with current Government initiatives, is sufficient to meet the requirements of Convention 14 and also helps to minimise the risk of driver fatigue as much as possible.

The Committee also invites the Government to contemplate ratifying Convention No. 106 and to keep the Office informed of any decisions taken or envisaged in this respect.

Convention 106 relates to weekly rest in "commerce and offices". The New Zealand Government only considers ratification of a convention where there is strict compliance of law, policy and practice with all the provisions of that Convention. In general, New Zealand also regards sector specific ILO Conventions as inappropriate for ratification, believing that international labour instruments should provide minimum universal standards setting a framework of minimum working conditions across all sectors.