



Holidays Act 2003

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Commencement see section 2

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Schedule 1

Modifications to subpart 1 of Part 2 to increase minimum entitlement to annual holidays from 1 April 2007

Schedule 2

Enactments repealed

Schedule 3

Enactments amended

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Holidays Act 2003.

Part 1

Preliminary provisions

2 Commencement

- (1) Subpart 2 of Part 2 and Schedule 1 come into force on 1 April 2007.
- (2) The rest of this Act comes into force on 1 April 2004.

3 Purpose

The purpose of this Act is to promote balance between work and other aspects of employees' lives and, to that end, to provide employees with minimum entitlements to—

- (a) annual holidays to provide the opportunity for rest and recreation:
- (b) public holidays for the observance of days of national, religious, or cultural significance:
- (c) sick leave to assist employees who are unable to attend work because they are sick or injured, or because someone who depends on the employee for care is sick or injured:
- (d) bereavement leave to assist employees who are unable to attend work because they have suffered a bereavement.

4 Overview

(1) This Act replaces the Holidays Act 1981.

(2) In this Act,—

- (a) this Part deals with preliminary matters, including—
 - (i) the definition of key terms:
 - (ii) the purpose of the Act:
 - (iii) the application of the Act:
 - (iv) the relationship between the Act and employment agreements:
- (b) Part 2—
 - (i) confers minimum entitlements to annual holidays, public holidays, sick leave, and bereavement leave:
 - (ii) contains provisions dealing with how holiday pay and leave pay is calculated in various circumstances and when it must be paid:
- (c) Part 3 deals with the enforcement of an employee's entitlements and other matters, including—
 - (i) who can enforce entitlements in addition to the employee:
 - (ii) the penalties for non-compliance with the Act:
 - (iii) the requirement of an employer to keep a holiday and leave record:
 - (iv) the presumption of continuous employment in certain circumstances.

5 Interpretation

(1) In this Act, unless the context otherwise requires,—

annual holiday means an annual holiday provided under subpart 1 of Part 2

authorised representative, in relation to an employee, means a person who is authorised under section 236 of the Employment Relations Act 2000 to represent the employee

average weekly earnings means 1/52 of an employee's gross earnings

bereavement leave means paid bereavement leave provided under subpart 4 of Part 2

employee has the same meaning as in section 6 (except subsection (1)(b)(ii)) of the Employment Relations Act 2000

existing employment agreement means an employment agreement that is entered into before 1 April 2004

former Act, in relation to the Injury Prevention, Rehabilitation, and Compensation Act 2001, has the same meaning as in section 6(1) of that Act

gross earnings has the meaning given to it by section 14

holiday—

(a) means—

- (i) a paid annual holiday provided under subpart 1 of Part 2;
- (ii) a paid public holiday provided under subpart 3 of Part 2; and

(b) includes any alternative holiday an employee is entitled to under section 56 or section 59

holiday and leave record means the record required to be kept under section 81

holiday pay—

- (a) means pay for an annual holiday or a public holiday; and
- (b) includes a payment an employee is entitled to under section 61

in advance,—

- (a) in relation to an annual holiday, means an annual holiday taken by an employee before the entitlement to the holiday has arisen under section 16;
- (b) in relation to sick leave or bereavement leave, means any sick leave or bereavement leave taken by the

employee before the entitlement to the leave has arisen under section 63

leave pay means pay for sick leave or bereavement leave

ordinary weekly pay has the meaning given to it by section 8

public holiday means a public holiday provided under subpart 3 of Part 2

relevant daily pay has the meaning given to it by section 9

sick leave means paid sick leave provided under subpart 4 of Part 2

spouse, in relation to an employee, means—

- (a) the husband or wife of the employee; or
- (b) the de facto partner of the employee (whether that partner is of the same or different sex).

(2) In this Act, unless the context otherwise requires,—

- (a) the terms **Authority, Court, Department, employer, employment agreement, Labour Inspector, and union** have the same meanings as in section 5 of the Employment Relations Act 2000; and
- (b) any other term or expression that is used but not defined in this Act, but that is defined in the Employment Relations Act 2000, has the meaning given to it by that Act.

(3) In this Act, a reference to—

- (a) an employee, in relation to an employer, means a person employed by the employer;
- (b) an employer, in relation to an employee, means the employee's employer.

6 Relationship between Act and employment agreements

- (1) Each entitlement provided to an employee by this Act is a minimum entitlement.
- (2) This Act does not prevent an employer from providing an employee with enhanced or additional entitlements (whether specified in an employment agreement or otherwise) on a basis agreed with the employee.
- (3) However, an employment agreement that excludes, restricts, or reduces an employee's entitlements under this Act—
 - (a) has no effect to the extent that it does so; but
 - (b) is not an illegal contract under the Illegal Contracts Act 1970.

7 Application

This Act—

- (a) applies to all employers and employees, including the Crown and its employees; but
- (b) does not apply in respect of the Armed Forces as defined in section 2(1) of the Defence Act 1990.

Compare: 1981 No 15 s 7

Key terms defined

8 Meaning of ordinary weekly pay

(1) In this Act, unless the context otherwise requires, **ordinary weekly pay**, for the purposes of calculating annual holiday pay,—

- (a) means the amount of pay that the employee receives under his or her employment agreement for an ordinary working week; and
- (b) includes—
 - (i) productivity or incentive-based payments (including commission) if those payments are a regular part of the employee's pay;
 - (ii) payments for overtime if those payments are a regular part of the employee's pay;
 - (iii) the cash value of any board or lodgings provided by the employer to the employee; but
- (c) excludes—
 - (i) productivity or incentive-based payments that are not a regular part of the employee's pay;
 - (ii) payments for overtime that are not a regular part of the employee's pay;
 - (iii) any one-off or exceptional payments;
 - (iv) any discretionary payments that the employer is not bound, under the terms of the employee's employment agreement, to pay the employee.

(2) If it is not possible to determine an employee's ordinary weekly pay under subsection (1), the pay must be calculated in accordance with the following formula:

$$\frac{a - b}{c}$$

where—

a is the employee's gross earnings for—

- (i) the 4 calendar weeks before the end of the pay period immediately before the calculation is made; or
 - (ii) if, the employee's normal pay period is longer than 4 weeks, that pay period immediately before the calculation is made
 - b is the total amount of payments described in subsection (1)(c)(i) to (iii)
 - c is 4.
- (3) However, an employment agreement may specify a special rate of ordinary weekly pay for the purpose of calculating annual holiday pay if the rate is equal to, or greater than, what would otherwise be calculated under subsection (1) or subsection (2).

Compare: 1981 No 15 s 4

9 Meaning of relevant daily pay

- (1) In this Act, unless the context otherwise requires, **relevant daily pay**, for the purposes of calculating payment for a public holiday, alternative holiday, sick leave, or bereavement leave,—
- (a) means the amount of pay that the employee would have received had the employee worked on the day concerned; and
 - (b) includes—
 - (i) productivity or incentive-based payments (including commission) if those payments would have otherwise been received on the day concerned;
 - (ii) payments for overtime if those payments would have otherwise been received on the day concerned;
 - (iii) the cash value of any board or lodgings provided by the employer to the employee.
- (2) To avoid doubt, if subsection (1)(a) is to be applied in the case of a public holiday, the amount of pay does not include any amount that would be added by virtue of section 50.

- (3) If it is not possible to determine an employee's relevant daily pay under subsection (1), the pay must be calculated in accordance with the following formula:

$$\frac{a}{b}$$

where—

- a is the employee's gross earnings for—
- (i) the 4 calendar weeks before the end of the pay period immediately before the calculation is made; or
 - (ii) if, the employee's normal pay period is longer than 4 weeks, that pay period immediately before the calculation is made
- b is the number of whole or part days during which the employee earned those earnings in the 4 calendar weeks, or longer period (as the case may be) including any day on which the employee was on a paid holiday or paid leave; but excluding any other day on which the employee did not actually work.
- (4) However, an employment agreement may specify a special rate of relevant daily pay for the purpose of calculating payment for a public holiday, alternative holiday, sick leave, or bereavement leave if the rate is equal to, or greater than, what would otherwise be calculated under subsection (1) or subsection (3).

10 Cash value of board or lodgings included in ordinary weekly pay and relevant daily pay

- (1) For the purposes of section 8 and section 9, the ordinary weekly pay or relevant daily pay (as the case may be) of an employee includes the cash value of any board or lodgings provided by an employer to the employee—
- (a) as agreed by the employer and employee; or
 - (b) as determined by a Labour Inspector if the employer and employee cannot agree on the cash value.
- (2) Despite subsection (1), the ordinary weekly pay or relevant daily pay of an employee does not include the cash value of any board or lodgings provided by an employer to the employee—

- (a) if the work done by the employee requires the employee to stay overnight in a residence other than the employee's usual place of residence; or
- (b) if the board or lodgings are provided because of special circumstances.

Compare: 1981 No 15 s 5

11 Labour Inspector may determine ordinary weekly pay or relevant daily pay

- (1) This section applies if an employer and employee cannot agree on the amount of the employee's—
 - (a) ordinary weekly pay under section 8; or
 - (b) relevant daily pay under section 9.
- (2) A Labour Inspector may determine the amount of the employee's ordinary weekly pay or relevant daily pay, as the case may be.
- (3) In making a determination, a Labour Inspector must apply the provisions of section 8 or section 9 (as the case may be) to the circumstances of the employee as determined by the Labour Inspector.

Determination of what would otherwise be working day

12 Determination of what would otherwise be working day

- (1) This section applies for the purpose of determining an employee's entitlements to a public holiday, an alternative holiday, to sick leave, or to bereavement leave.
- (2) If it is not clear whether a day would otherwise be a working day for the employee, the employer and employee must take into account the factors listed in subsection (3), with a view to reaching agreement on the matter.
- (3) The factors are—
 - (a) the employee's employment agreement;
 - (b) the employee's work patterns;
 - (c) any other relevant factors, including—
 - (i) whether the employee works for the employer only when work is available;
 - (ii) the employer's rosters or other similar systems;
 - (iii) the reasonable expectations of the employer and the employee that the employee would work on the day concerned.

- (4) For the purposes of public holidays, if an employee would otherwise work any amount of time on a public holiday, that day must be treated as a day that would otherwise be a working day for the employee.

13 Labour Inspector may determine what would otherwise be working day

- (1) This section applies if an employer and employee cannot agree under section 12 on whether a day would otherwise be a working day for the employee.
- (2) A Labour Inspector may determine whether the day would otherwise be a working day for the employee.
- (3) In making a determination, the Labour Inspector must take into account the factors listed in section 12(3).

14 Meaning of gross earnings

In this Act, unless the context otherwise requires, **gross earnings**, in relation to an employee for the period during which the earnings are being assessed,—

- (a) means all payments that the employer is required to pay to the employee under the employee's employment agreement, including, for example—
- (i) salary or wages:
 - (ii) allowances:
 - (iii) payment for an annual holiday, a public holiday, an alternative holiday, sick leave, or bereavement leave taken by the employee during the period:
 - (iv) productivity or incentive-based payments (including commission):
 - (v) payments for overtime:
 - (vi) the cash value of any board or lodgings provided by the employer as agreed or determined under section 10:
 - (vii) first week compensation payable by the employer under section 97 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 or former Act; but
- (b) excludes any payments that the employer is not bound, by the terms of the employee's employment agreement, to pay the employee, for example—
- (i) any discretionary payments:

- (ii) any weekly compensation payable under the Injury Prevention, Rehabilitation, and Compensation Act 2001 or former Act;
 - (iii) any payment for absence from work while the employee is on protected voluntary service or training within the meaning of the Volunteers Employment Protection Act 1973; and
- (c) also excludes—
- (i) any payment to reimburse the employee for any actual costs incurred by the employee related to his or her employment;
 - (ii) any payment of a reasonably assessed amount to reimburse the employee for any costs incurred by the employee related to his or her employment;

Compare: 1981 No 15 s 4

Part 2

Holiday and leave entitlements

Subpart 1—Annual holidays

15 Purpose of this subpart

The purpose of this subpart is to—

- (a) provide all employees with a minimum of 3 weeks' annual holidays to be paid at the time the holidays are taken; and
- (b) require employers to pay employees at the end of their employment for annual holidays not taken; and
- (c) enable employers to manage their businesses, taking into account the annual holiday entitlements of their employees.

Entitlement to annual holidays

16 Entitlement to annual holidays

- (1) After the end of each completed 12 months of continuous employment, an employee is entitled to not less than 3 weeks' paid annual holidays.
- (2) For the purposes of subsection (1), the 12 months of continuous employment—
 - (a) includes any period during which the employee was—
 - (i) on paid holidays or leave under this Act; or

- (ii) on parental leave under the Parental Leave and Employment Protection Act 1987; or
 - (iii) on protected voluntary service or training within the meaning of the Volunteers Employment Protection Act 1973; or
 - (iv) receiving weekly compensation under the Injury Prevention, Rehabilitation, and Compensation Act 2001 or former Act as well as, or instead of, payment from the employer; or
 - (v) on unpaid sick leave or unpaid bereavement leave; or
 - (vi) on unpaid leave for any other reason for a period of no more than 1 week; but
- (b) unless otherwise agreed, does not include any other unpaid leave, being leave other than that referred to in paragraph (a)(v) and (vi).
- (3) If, for the purposes of subsection (2)(b), an employer and employee agree that any period of unpaid leave of more than 1 week is to be included in the employee's 12 months of continuous employment, the divisor of 52 to be used for the purposes of calculating the employee's average weekly earnings must be reduced by the number of whole or part weeks greater than 1 week that the employee was on the unpaid leave.
- (4) An employee's entitlement to annual holidays remains in force until the employee has taken all of the entitlement as paid holidays.

Compare: 1981 No 15 s 11

17 How employee's entitlement to annual holidays may be met

- (1) An employer and employee may agree on how an employee's entitlement to 3 weeks' annual holidays is to be met based on what genuinely constitutes a working week for the employee.
- (2) If an employer and employee cannot agree on how an employee's entitlement to 3 weeks' annual holidays is to be met, a Labour Inspector may determine the matter for them.
- (3) In making a determination, the Labour Inspector may take into account any matters that the Labour Inspector thinks fit, including the matters specified in section 12(3).

18 Taking of annual holidays

- (1) An employer must allow an employee to take annual holidays within 12 months after the date on which the employee's entitlement to the holidays arose.
- (2) If an employee elects to do so, the employer must allow the employee to take at least 2 weeks of his or her annual holidays entitlement in a continuous period.
- (3) When annual holidays are to be taken by the employee is to be agreed between the employer and employee.
- (4) An employer must not unreasonably withhold consent to an employee's request to take annual holidays.

19 When employee may be required to take annual holidays

- (1) An employer may require an employee to take annual holidays if—
 - (a) the employer and employee are unable to reach agreement under section 18(3) as to when the employee will take his or her annual holidays; or
 - (b) section 32 (which relates to closedown periods) applies.
- (2) If subsection (1) applies, an employer must give the employee not less than 14 days' notice of the requirement to take the annual holidays.

20 Employer may allow employee to take annual holidays in advance

An employer may allow an employee to take an agreed portion of the employee's annual holidays entitlement in advance.

*Payment for annual holidays***21 Calculation of annual holiday pay**

- (1) If an employee takes an annual holiday after the employee's entitlement to the holiday has arisen, the employer must calculate the employee's annual holiday pay in accordance with subsection (2).
- (2) Annual holiday pay must be—
 - (a) for the agreed portion of the annual holidays entitlement; and
 - (b) at a rate that is based on the greater of—

- (i) the employee's ordinary weekly pay as at the beginning of the annual holiday; or
- (ii) the employee's average weekly earnings for the 12 months immediately before the end of the last pay period before the annual holiday.

Compare: 1981 No 15 s 16

22 Calculation of annual holiday pay if holiday taken in advance

- (1) If an employee takes an annual holiday in advance, the employer must calculate the employee's annual holiday pay in accordance with subsection (2).
- (2) Annual holiday pay must be—
 - (a) for the agreed portion of the annual holidays entitlement; and
 - (b) at a rate that is based on the greater of—
 - (i) the employee's ordinary weekly pay as at the beginning of the annual holiday; or
 - (ii) the employee's average weekly earnings for—
 - (A) the 12 months immediately before the end of the last pay period before the annual holiday if the employee has worked for the employer for not less than 12 months; or
 - (B) the period of employment before the end of the last pay period before the annual holiday if the employee has worked for the employer for less than 12 months.
- (3) To avoid doubt, for the purposes of subsection (2)(b)(ii)(B), the divisor of 52 for the purpose of calculating the employee's average weekly earnings is to be reduced so that it represents the number of whole or part weeks that the employee worked for the employer in the period of employment.

Compare: 1981 No 15 s 17

23 Calculation of annual holiday pay if employment ends within 12 months

- (1) Subsection (2) applies if—
 - (a) the employment of an employee comes to an end; and
 - (b) the employee is not entitled to annual holidays because he or she has worked for less than 12 months for the purposes of section 16.

- (2) An employer must pay the employee 6% of the employee's gross earnings since the commencement of employment, less any amount—
- (a) paid to the employee for annual holidays taken in advance; or
 - (b) paid in accordance with section 28.

24 Calculation of annual holiday pay if employment ends and entitlement to holidays has arisen

- (1) Subsection (2) applies if—
- (a) the employment of an employee comes to an end; and
 - (b) the employee is entitled to annual holidays; and
 - (c) the employee has not taken annual holidays or has taken only some of them.
- (2) An employer must pay the employee for the portion of the annual holidays entitlement not taken at a rate that is based on the greater of—
- (a) the employee's ordinary weekly pay as at the date of the end of the employee's employment; or
 - (b) the employee's average weekly earnings during the 12 months immediately before the end of the last pay period before the end of the employee's employment.

25 Calculation of annual holiday pay if employment ends before further entitlement has arisen

- (1) Subsection (2) applies if—
- (a) the employment of an employee comes to an end; and
 - (b) the employee is not entitled to annual holidays for a second or subsequent 12-month period of employment because the employee has not worked for the whole of the second or subsequent 12 months for the purposes of section 16.
- (2) An employer must pay the employee 6% of the employee's gross earnings since the employee last became entitled to the annual holidays, less any amount—
- (a) paid to the employee for annual holidays taken in advance; or
 - (b) paid in accordance with section 28.

26 Payments may be cumulative

To avoid doubt,—

- (a) gross earnings for the purposes of section 25(2) includes any payments under section 24(2); and
- (b) an employee may be entitled to payments for annual holidays under both section 24 and section 25.

27 When payment for annual holidays must be made

- (1) An employer must pay an employee for an annual holiday before the holiday is taken unless—
 - (a) the employer and employee agree that the employee is to be paid in the pay that relates to the period during which the holiday is taken; or
 - (b) the employee's employment has come to an end.
- (2) If subsection (1)(b) applies, the employer must pay the annual holiday pay in the pay that relates to the employee's final period of employment.

28 When annual holiday pay may be paid with employee's pay

- (1) Despite section 27, an employer may regularly pay annual holiday pay with the employee's pay if—
 - (a) the employee—
 - (i) is employed in accordance with section 66 of the Employment Relations Act 2000 on a fixed-term agreement to work for less than 12 months; or
 - (ii) works for the employer on a basis that is so intermittent or irregular that it is impracticable for the employer to provide the employee with 3 weeks' annual holidays under section 16; and
 - (b) the employee agrees in his or her employment agreement; and
 - (c) the annual holiday pay is paid as an identifiable component of the employee's pay; and
 - (d) the annual holiday pay is paid at a rate not less than 6% of the employee's gross earnings.
- (2) If an employee to whom subsection (1)(a)(i) applies is employed by the same employer beyond 12 months on a series of fixed-term agreements of less than 12 months each, the employer and employee may agree that the employee is to be

- paid in accordance with subsection (1) regardless of the number of agreements.
- (3) If the fixed-term agreement of an employee to whom subsection (1)(a)(i) applies is followed by permanent employment with the same employer, the employee—
- (a) becomes entitled to paid annual holidays at the end of 12 months' continuous employment (including the period of that fixed-term agreement) under section 16; but
 - (b) the amount of the holiday pay that the employee is entitled to be paid for the holidays is reduced by the amount that the employee has already received under subsection (1).
- (4) If an employer has incorrectly paid annual holiday pay with an employee's pay in circumstances where subsection (1) does not apply and the employee's employment has continued for 12 months or more, then, despite those payments, the employee becomes entitled to annual holidays in accordance with section 16 and paid in accordance with this subpart.

Closedown periods

29 Meaning of closedown period

In this section and sections 30 to 35, **closedown period** means a period during which an employer customarily—

- (a) closes the employer's operations or discontinues the work of 1 or more employees; and
- (b) requires his or her employees to take all or some of their annual holidays.

30 Frequency of closedown periods

- (1) For the purposes of sections 31 to 35, the employer may have only 1 closedown period in any 12-month period.
- (2) However, subsection (1) does not prevent an employer and employee from agreeing—
- (a) that the employer may close his or her operations and discontinue the work of the employee at other times; and
 - (b) on the arrangements that will apply during those times.
- (3) If subsection (2) applies, sections 32 to 35 do not apply.

31 Employer may have different closedown period for each part of business

To avoid doubt, an employer may have different closedown periods for each separate part of the employer's business.

32 Requirement to take annual holidays during closedown period

- (1) An employee who is entitled to annual holidays at the commencement of a closedown period must, if required to do so by his or her employer, take annual holidays during the closedown period whether or not the employee agrees to take the holidays.
- (2) An employee who is not yet entitled to annual holidays at the commencement of a closedown period must, if required to do so by his or her employer, discontinue the employee's work during a closedown period.
- (3) If this section applies, the employer must give the employee not less than 14 days' notice of the requirement to take the annual holidays or to discontinue the work (as the case may be).

33 Payment of annual holiday pay during closedown period for employee entitled to annual holidays

- (1) This section applies to an employee who, at the commencement of a closedown period, is entitled to annual holidays under section 16.
- (2) To the extent that the employee has an annual holiday entitlement, the period of the closedown must be taken by the employee as annual holidays.
- (3) If an employee does not have an annual holidays entitlement that covers the whole period of the closedown, the employer and employee may agree that the employee—
 - (a) may take some of the closedown period as annual holidays in advance under section 20; and
 - (b) be paid for that period in accordance with section 22.
- (4) The employer must pay the employee annual holiday pay calculated in accordance with section 21.

34 Calculation of pay during closedown period for employee not entitled to annual holidays

- (1) This section applies to an employee who, at the commencement of a closedown period, is not entitled to annual holidays under section 16.
- (2) An employer must, in respect of the closedown period, pay the employee 6% of the employee's gross earnings since the commencement of the employee's employment or since the employee last became entitled to annual holidays (as the case may be), less any amount—
 - (a) paid to the employee for annual holidays taken in advance; or
 - (b) paid in accordance with section 28.
- (3) An employee who is paid annual holiday pay calculated in accordance with subsection (2) is not otherwise entitled—
 - (a) to any annual holidays for the period of employment up to the date of the beginning of the closedown period; or
 - (b) to any remuneration for the period of the closure or discontinuance of work.
- (4) This section does not prevent an employer and employee from agreeing that the employee may take the period of the closedown as annual holidays in advance under section 20 and be paid for the period in accordance with section 22.

Compare: 1981 No 15 s 18(1)–(4), (7)

35 Effect of closedown period on anniversary date of employee not entitled to annual holidays

- (1) If an employee is required under section 32(2) to discontinue his or her work during a closedown period, the employee's 12 months of continuous employment must, for the purposes of section 16(1), be treated as commencing on the date on which the closedown began.
- (2) However, to avoid having a different date in each year on which the employee becomes entitled to annual holidays, the employer may nominate a date which must be treated as the date on which the closedown begins provided that the date nominated is reasonably proximate to the actual beginning of the closedown period.

Compare: 1981 No 15 s 18(5)

*Relationship between annual holidays and other entitlements***36 Employer may allow employee taking annual holidays to take sick leave**

- (1) This section applies to an employee who is taking annual holidays under this subpart and who then—
 - (a) becomes sick or injured; or
 - (b) has a spouse or dependant who becomes sick or injured.
- (2) An employee may, with his or her employer's agreement, take any period of sickness or injury that the employee would otherwise take as an annual holiday as sick leave.

Compare: 1981 No 15 s 14

37 Employer must allow employee taking annual holidays to take bereavement leave

- (1) This section applies to an employee who is taking annual holidays under this subpart and who then suffers a bereavement as described in section 69(2).
- (2) The employer must allow the employee to take any period related to a bereavement that he or she would otherwise take as an annual holiday as bereavement leave.

38 Sickness, injury, or bereavement arising before scheduled annual holidays

- (1) This section applies if—
 - (a) an employee has been allowed to take annual holidays under this subpart; and
 - (b) before taking those holidays, the employee—
 - (i) becomes sick or injured; or
 - (ii) has a spouse or dependant who becomes sick or injured; or
 - (iii) suffers a bereavement as described in section 69(2).
- (2) The employer must allow the employee to take—
 - (a) any period of sickness or injury that the employee would otherwise take as an annual holiday as sick leave;
 - (b) any period related to the bereavement that the employee would otherwise take as an annual holiday as bereavement leave.

39 Employer may allow employee to take annual holidays if sick leave or bereavement leave exhausted

- (1) This section applies if—
- (a) an employee has exhausted his or her entitlement to sick leave under subpart 4, but then—
 - (i) becomes or remains sick or injured; or
 - (ii) has a spouse or dependant who becomes or remains sick or injured; or
 - (b) an employee requires more leave for a bereavement than he or she is entitled to under subpart 4.
- (2) The employer—
- (a) must not require the employee to take any leave in the circumstances set out in subsection (1) as annual holidays; but
 - (b) may agree, if requested by the employee, to the leave being taken as annual holidays to which the employee is entitled.

40 Relationship between annual holidays and public holidays

- (1) A public holiday that occurs during an employee's annual holidays must be treated as a public holiday and not as part of the employee's annual holidays.
- (2) Subsection (3) applies if—
- (a) the employment of an employee comes to an end; and
 - (b) the employee is entitled to annual holidays; and
 - (c) the employee has not taken the annual holidays or has taken only some of them.
- (3) The employee is entitled to be paid for a public holiday if the holiday would have—
- (a) otherwise been a working day for the employee; and
 - (b) occurred during the employee's annual holidays had the employee taken his or her remaining annual holidays entitlement immediately after the date on which the employee's employment came to an end.

Subpart 2—Entitlement to 4 weeks' annual holidays from 1 April 2007

41 Purpose of this subpart

The purpose of this subpart is to ensure that, on and from 1 April 2007, when an employee next becomes entitled to annual holidays the employee's minimum entitlement is increased from 3 weeks' annual holidays to 4 weeks' annual holidays.

42 Increase in minimum annual holiday entitlement

Subpart 1 of this Part is amended in the manner indicated in Schedule 1.

Subpart 3—Public holidays

43 Purpose of this subpart

The purpose of this subpart is—

- (a) to provide employees with an entitlement to 11 public holidays if the holidays fall on days that would otherwise be working days for the employee:
- (b) to enable employees to agree to work on a public holiday in exchange for another day's paid leave.

44 Days that are public holidays

(1) The following days are public holidays:

- (a) Christmas Day:
- (b) Boxing Day:
- (c) New Year's Day:
- (d) 2 January:
- (e) Waitangi Day:
- (f) Good Friday:
- (g) Easter Monday:
- (h) ANZAC Day:
- (i) the birthday of the reigning Sovereign (observed on the first Monday in June):
- (j) Labour Day (being the fourth Monday in October):
- (k) the day of the anniversary of a province or the day locally observed as that day.

- (2) However, an employer and employee may agree (whether in an employment agreement or otherwise) that any public holiday specified in subsection (1) is to be observed by the employee on another day.
- (3) An agreement between the employer and employee under subsection (2) must not diminish the total number of paid public holidays that would otherwise be available to the employee in any year.
- (4) If 2 or more of the public holidays specified in subsection (1) fall on the same day, the public holidays must, for the purposes of this subpart, be treated as 1 day.

Compare: 1981 No 15 s 7A(2)

45 Transfer of public holidays over Christmas and New Year

- (1) For the purposes of this subpart, if any of the public holidays listed in section 44(1)(a) to (d)—
 - (a) falls on a Saturday and the day would otherwise be a working day for the employee, the public holiday must be treated as falling on that day:
 - (b) falls on a Saturday and the day would not otherwise be a working day for the employee, the public holiday must be treated as falling on the following Monday:
 - (c) falls on a Sunday and the day would otherwise be a working day for the employee, the public holiday must be treated as falling on that day:
 - (d) falls on a Sunday and the day would not otherwise be a working day for the employee, the public holiday must be treated as falling on the following Tuesday.
- (2) To avoid doubt, this section does not entitle an employee to more than 4 public holidays for the days listed in section 44(1)(a) to (d).

Entitlement to public holidays

46 Entitlement to public holidays

- (1) An employee is entitled to public holidays, and payment for those holidays, in accordance with this subpart.
- (2) Public holidays are in addition to annual holidays that an employee is entitled to under this Act or otherwise.

Compare: 1981 No 15 s 7A(1)

47 When employee required to work on public holiday

An employer may require an employee to work on a public holiday if—

- (a) the public holiday falls on a day on which, but for it being a public holiday, would otherwise be a working day for the employee; and
- (b) the employee is required to work on the public holiday under the employee's employment agreement.

48 Compliance with section 46

(1) If a public holiday falls on a day that would not otherwise be a working day for an employee, section 46 is complied with if—

- (a) the employee does not work on the day; or
- (b) the employee works on any part of the day and the employer pays the employee in accordance with section 50.

(2) If a public holiday falls on a day that would otherwise be a working day for an employee, section 46 is complied with if—

- (a) the employee—
 - (i) does not work on that day; and
 - (ii) the employer pays the employee in accordance with section 49; or
- (b) the employee—
 - (i) works (in accordance with his or her employment agreement) on any part of that day; and
 - (ii) the employer pays the employee in accordance with section 50; and
 - (iii) the employer provides the employee with an alternative holiday under section 56.

Payment for public holidays

49 Payment if employee does not work on public holiday

If an employee does not work on a public holiday and the day would otherwise be a working day for the employee, the employer must pay the employee not less than the employee's relevant daily pay for that day.

50 Employer must pay employee time and a half for working on public holiday

- (1) If an employee works (in accordance with his or her employment agreement) on any part of a public holiday, the employer must pay the employee at least the portion of the employee's relevant daily pay that relates to the time actually worked on the day plus half that amount again.
- (2) This section is subject to section 51.

51 Transitional provision for employers who already pay for work on public holidays in employee's regular pay

- (1) This section applies to an existing employment agreement for the period of 12 months after 1 April 2004.
- (2) An employer may pay an employee for work on a public holiday as part of the employee's regular pay if the requirements of subsection (3) are met.
- (3) The requirements are that—
 - (a) an amount for working on public holidays has been previously genuinely negotiated into the employee's regular pay; and
 - (b) the amount can be demonstrated to meet the objectives of section 50; and
 - (c) the employer can provide evidence to support the requirements in paragraphs (a) and (b).

52 New employment agreements must include provision relating to time and a half

- (1) This section applies to an employment agreement that is entered into after 1 April 2004.
- (2) The employment agreement must include a provision that confirms the right of the employee to be paid at least the portion of the employee's relevant daily pay plus half that rate again for work on a public holiday, in accordance with section 50.
- (3) To avoid doubt, the employment agreement may not state that the relevant daily pay of the employee already includes an amount that is calculated to comply with section 50.

53 Existing employment agreements must include provision relating to time and a half

- (1) This section applies to an existing employment agreement.
- (2) The employment agreement must, from the date referred to in subsection (3), be amended to include a provision that confirms the right of the employee to be paid at least the portion of the employee's relevant daily pay plus half that rate again for work on a public holiday, in accordance with section 50.
- (3) The date is the earlier of—
 - (a) the date on which employee's employment agreement is next amended; or
 - (b) the expiry of 12 months after 1 April 2004.
- (4) To avoid doubt, an existing employment agreement may not state that the relevant daily pay of the employee already includes an amount that is calculated to comply with section 50.

54 Questions about whether sections 50 to 53 complied with

- (1) This section applies if an employer and employee cannot agree on the amount of pay that should be paid to the employee for work done on a public holiday.
- (2) A Labour Inspector may determine the amount of pay for the employer and employee.
- (3) In making the determination the Labour Inspector must apply the provisions of this subpart to the circumstances as determined by the Labour Inspector.
- (4) To avoid doubt, a dispute about whether an employer is complying, or has complied with, section 50, section 51, section 52, or section 53 is an employment relationship problem for the purposes of the Employment Relations Act 2000.

55 When payment for public holiday must be made

An employer must pay an employee for a public holiday in the pay that relates to the pay period in which the holiday occurs.

*Alternative holiday***56 Alternative holiday must be provided if employee works on public holiday**

- (1) An employee is entitled to another day's holiday (an **alternative holiday**) instead of a public holiday if—

- (a) the public holiday falls on a day that would otherwise be a working day for an employee; and
 - (b) the employee works (in accordance with his or her employment agreement) on any part of that day.
- (2) If subsection (1) applies, an employer must—
 - (a) provide the employee with an alternative holiday; and
 - (b) pay the employee for working on the public holiday in accordance with section 50.
- (3) The entitlement to an alternative holiday remains in force until—
 - (a) the employee has taken the holiday; or
 - (b) the employee has been paid for the holiday in accordance with section 60(2) or section 61.
- (4) An employee is not entitled to an alternative holiday under this section if the employee works for the employer only on public holidays.

57 Requirements of alternative holiday

- (1) An alternative holiday provided under section 56 must—
 - (a) be taken by the employee on a day that is agreed between the employer and employee; and
 - (b) be a day that would otherwise be a working day for the employee; and
 - (c) be a whole working day off work for the employee, regardless of the amount of time the employee actually worked on the public holiday.
- (2) If an employer and employee cannot agree under subsection (1)(a) on when an alternative holiday is to be taken, then the day may be taken—
 - (a) on a date determined by the employee, taking into account the employer's view as to when it is convenient for the employee to take the day; and
 - (b) within 12 months of the employee's entitlement to the alternative holiday having arisen.
- (3) An employee must give an employer at least 14 days' notice of his or her intention to take the alternative holiday.

58 When employee may be required to take alternative holiday

An employer may require an employee to take an alternative holiday on a date determined by the employer only if—

- (a) 12 months have passed since the employee's entitlement to the alternative holiday arose; and
- (b) the employer and employee have not been able to agree under section 57(1)(a) on a date on which the employee will take the day; and
- (c) the employer has given the employee at least 14 days' notice of the date on which the employer requires the alternative holiday to be taken.

59 Entitlement to alternative holiday if employee on call on public holiday

(1) This section—

- (a) applies to an employee who is on call only if the public holiday would otherwise be a working day for the employee; but
- (b) does not apply to an employee who is on call if the employee works, or is on call, for the employer only on public holidays.

(2) If an employee is on call on a public holiday and is called by the employer, or a representative of the employer, to work on that day, the employee is entitled to an alternative holiday in accordance with section 56.

(3) If an employee is on call and is not called in to work, the employee is also entitled to an alternative holiday if the nature of the restriction imposed by the on call condition on the employee's freedom of action is such that, for all practical purposes, the employee has not had a whole holiday.

(4) This section applies in addition to section 50 (which requires payment of time and a half for working on a public holiday).

60 Payment for alternative holiday

(1) An employer must pay an employee not less than the employee's relevant daily pay for the day which is taken as the alternative holiday.

(2) Payment for an alternative holiday must be made—

- (a) in the pay that relates to the pay period in which the alternative holiday is taken; or

- (b) if the employee has not taken the alternative holiday before the date on which his or her employment ends,—
 - (i) at the rate of the employee's relevant daily pay for his or her last day of employment; and
 - (ii) in the pay that relates to the employee's final period of employment.

61 Alternative holiday may be exchanged for payment

- (1) An employee may request the employer to exchange the employee's entitlement to an alternative holiday for a payment.
- (2) A request under subsection (1)—
 - (a) may be made only if 12 months have passed since the employee's entitlement to the alternative holiday arose; and
 - (b) may be made whether or not the employee has been required to take the alternative holiday under section 58.
- (3) If the employer agrees to the employee's request, the employer must pay the employee the amount agreed between the employer and the employee in exchange for the alternative holiday.
- (4) The employer must make the payment for the alternative holiday as soon as practicable after the employer has agreed under subsection (3).

Subpart 4—Sick leave and bereavement leave

62 Purpose of this subpart

The purpose of this subpart is to provide all employees with a minimum entitlement to paid leave in the event of their sickness or injury, or of the sickness, injury, or death of certain other persons.

Entitlement to sick leave and bereavement leave

63 Entitlement to sick leave and bereavement leave

- (1) An employee is entitled to sick leave and bereavement leave in accordance with this subpart—
 - (a) after the employee has completed 6 months' current continuous employment with the employer; or

- (b) if, in the case of an employee to whom subsection (1)(a) does not apply, the employee has, over a period of 6 months, worked for the employer for—
 - (i) at least an average of 10 hours a week during that period; and
 - (ii) no less than 1 hour in every week during that period or no less than 40 hours in every month during that period.
- (2) Sick leave and bereavement leave must be provided—
 - (a) to an employee to whom subsection (1)(a) applies, for—
 - (i) the 12-month period of continuous employment beginning at the end of the 6-month period specified in that subsection; and
 - (ii) each subsequent 12 months of current continuous employment:
 - (b) to an employee to whom subsection (1)(b) applies, for—
 - (i) the 12-month period of employment beginning at the end of the 6-month period specified in that subsection; and
 - (ii) each subsequent 12-month period of employment as long as the circumstances referred to in subparagraphs (i) and (ii) of that subsection continue to apply.
- (3) However, an employer and employee may agree that—
 - (a) the employee may take sick leave or bereavement leave in advance; and
 - (b) in the case of sick leave taken in advance, the amount of leave taken is to be deducted from the employee's entitlement under this section.

Compare: 1981 No 15 s 30A(1)

64 Employee must notify employer of intention to take leave

An employee who intends to take sick leave or bereavement leave must notify the employer of that intention—

- (a) as early as possible before the employee is due to start work on the day that is intended to be taken as sick leave or bereavement leave; or

- (b) if that is not practicable, as early as possible after that time.

Compare: 1981 No 15 s 30A(5)

Sick leave

65 Sick leave

- (1) An employee may take sick leave if—
- (a) the employee is sick or injured; or
 - (b) the employee's spouse is sick or injured; or
 - (c) a person who depends on the employee for care is sick or injured.
- (2) An employee is entitled to 5 days' sick leave for each of the 12-month periods specified in section 63(2).

66 Sick leave may be carried over

- (1) An employee may carry over, to any subsequent 12-month period of employment, any sick leave that has not been taken by the end of the period to which the leave relates.
- (2) For the purposes of subsection (1), an employee may carry over up to 15 days' sick leave to a maximum of 20 days' current entitlement in any year.
- (3) To avoid doubt, subsection (2) does not prevent an employer from allowing an employee to carry over any enhanced or additional sick leave entitlement.

Compare: 1981 No 15 s 30A(3)

67 Sick leave need not be paid out

An employee is not entitled to be paid for any sick leave that has not been taken before the date on which his or her employment ends.

68 Proof of sickness or injury

- (1) An employer may require an employee to produce proof of sickness or injury for sick leave taken under section 65 if the sickness or injury that gave rise to the leave is for a period of 3 or more consecutive calendar days, whether or not the days would otherwise be working days for the employee.

- (2) Subsection (1) does not prevent an employer and employee from agreeing that the employee will produce proof of sickness or injury for sick leave provided to the employee in addition to the entitlement set out in section 65.
- (3) For the purposes of this section, **proof of sickness or injury** may include a certificate from a medical practitioner (within the meaning of the Medical Practitioners Act 1995) that—
 - (a) the employee is not fit to attend work because of sickness or injury; or
 - (b) the employee cannot attend work—
 - (i) because the employee’s spouse is sick or injured;
 - (ii) because a person who depends on the employee for care is sick or injured.
- (4) To avoid doubt, this section does not prevent an employer who is otherwise legally authorised to so require, from requiring an employee to establish that there are no relevant health and safety reasons or hygiene reasons that would prevent the employee from working.

Bereavement leave

69 Bereavement leave

- (1) An employee may take bereavement leave in accordance with sections 63 and 70 if the employee suffers a bereavement.
- (2) An employee suffers a bereavement—
 - (a) on the death of the employee’s—
 - (i) spouse;
 - (ii) parent;
 - (iii) child;
 - (iv) brother or sister;
 - (v) grandparent;
 - (vi) grandchild;
 - (vii) spouse’s parent; or
 - (b) on the death of any other person if the employer accepts, having regard to relevant factors such as those set out in subsection (3), that the employee has suffered a bereavement as a result of the death.
- (3) For the purposes of subsection (2)(b), relevant factors include—
 - (a) the closeness of the association between the employee and the deceased person:

- (b) whether the employee has to take significant responsibility for all or any of the arrangements for the ceremonies relating to the death:
- (c) any cultural responsibilities of the employee in relation to the death.

Compare: 1981 No 15 s 30A(7)

70 Duration of bereavement leave

- (1) An employer must allow an employee to take—
 - (a) 3 days' bereavement leave for each type of bereavement described in section 69(2)(a); and
 - (b) 1 day's bereavement leave for a bereavement described in section 69(2)(b).
- (2) If an employee suffers more than 1 bereavement at the same time, he or she may take the amount of bereavement leave specified in subsection (1) in respect of each bereavement.

Payment for sick leave and bereavement leave

71 Payment for sick leave and bereavement leave

- (1) An employer must pay an employee an amount that is equivalent to the employee's relevant daily pay for each day of sick leave or bereavement leave taken by the employee that would otherwise be a working day for the employee.
- (2) Despite subsection (1), an employer is not required to pay an employee for any time for which the employee is paid weekly compensation under the Injury Prevention, Rehabilitation, and Compensation Act 2001 or former Act.
- (3) An employer must not require an employee to take as sick leave any time for which the employee is being paid—
 - (a) first week compensation by the employer under section 97 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 or former Act; or
 - (b) weekly compensation for a work-related injury within the meaning of that Act or former Act.
- (4) However, if an employer pays the difference between the employee's first week compensation or weekly compensation and ordinary weekly pay, the employer may agree with the employee that he or she may deduct from the employee's

current sick leave entitlement 1 day for every 5 whole days that the employer makes that payment.

Compare: 1981 No 15 s 30A(4), (6)

72 When payment for sick leave or bereavement leave must be made

- (1) An employer must pay an employee for sick leave or bereavement leave in the pay that relates to the pay period in which the leave is taken.
- (2) However, if an employee is required to provide proof of sickness or injury under section 68 and fails to do so, the employer is not required to pay the employee for any sick leave in respect of which the proof is required until the employee complies with that requirement.

Part 3 Enforcement and other matters

Subpart 1—Enforcement

73 Employer and employee obligations under Act

- (1) When dealing with each other under this Act, an employer and employee must deal with each other in good faith.
- (2) At the time an employee enters into an employment agreement with an employer, the employer must inform the employee—
 - (a) about his or her entitlements under this Act; and
 - (b) that the employee can obtain further information about his or her entitlements under this Act from—
 - (i) the union of which the employee is a member (if applicable);
 - (ii) the Department.

74 Who can enforce Act

- (1) The provisions of this Act may be enforced in accordance with this Act by—
 - (a) an employee;
 - (b) an authorised representative;
 - (c) a representative of a union of which the employee is a member;
 - (d) an employer;

- (e) a Labour Inspector.
- (2) An employee's entitlement to annual holidays, public holidays, sick leave, or bereavement leave that are in addition to entitlements under this Act may be enforced only by the persons listed in subsection (1)(a) to (c).

75 Penalty for non-compliance

- (1) An employer who fails to comply with any of the provisions listed in subsection (2) is liable,—
 - (a) if the employer is an individual, to a penalty not exceeding \$5,000;
 - (b) if the employer is a company or other body corporate, to a penalty not exceeding \$10,000.
- (2) The provisions are—
 - (a) section 16 and sections 21 to 28 (which relate to an employee's entitlement to, and payment for, annual holidays):
 - (b) section 40(3) (which relates to an employee's entitlement to be paid for a public holiday that would have occurred during the employee's annual holidays):
 - (c) section 46, sections 49 to 56, section 60, and section 61(3) (which relate to an employee's entitlement to, and payment for, public holidays and alternative holidays):
 - (d) section 63, section 65, and sections 69 to 72 (which relate to an employee's entitlement to, and payment for, sick leave and bereavement leave):
 - (e) section 83 (which relates to the failure to keep or provide access to a holiday and leave record).

Compare: 1981 No 15 s 34(1)(a)

76 Proceedings by Labour Inspector for penalty

- (1) A Labour Inspector is the only person who may bring an action in the Authority against an employer to recover a penalty under section 75.
- (2) A claim for 2 or more penalties against the same employer may be joined in the same action.
- (3) A claim for a penalty may be heard in conjunction with any proceedings for the recovery of holiday pay or leave pay.
- (4) After hearing an action for recovery of a penalty, the Authority may—

- (a) give judgment for the amount claimed; or
 - (b) give judgment for an amount that is less than the amount claimed; or
 - (c) dismiss the action.
- (5) An action for the recovery of a penalty must be commenced within 12 months after the earlier of when the cause of action became known, or should reasonably have become known, to the Labour Inspector.
- (6) A penalty that is recovered must be paid,—
- (a) if, and to the extent, ordered by the Authority, to any person the Authority specifies; or
 - (b) in any other case, into Court and then into the Crown Bank Account.

77 Proceedings by Labour Inspector to recover arrears of pay

- (1) A Labour Inspector may take proceedings on behalf of an employee to recover unpaid holiday pay or leave pay that the employee is entitled to under this Act.
- (2) If a Labour Inspector takes proceedings under subsection (1), the Labour Inspector must not issue a demand notice under section 224 of the Employment Relations Act 2000 in respect of the same pay.
- (3) Section 131 of the Employment Relations Act 2000 applies, with all necessary modifications, to proceedings taken under subsection (1).
- (4) An action initiated or taken under this Act by a Labour Inspector may be completed by another Labour Inspector.

Compare: 1981 No 15 s 35

78 Powers of Labour Inspector

For the purposes of this Act, every Labour Inspector has, in addition to any powers conferred by this Act, all the powers that a Labour Inspector has under the Employment Relations Act 2000.

Compare: 1981 No 15 s 32

79 Determinations by Labour Inspector

Except to the extent that, in any proceedings before the Authority, the Authority makes its own determination on the

matter, a determination made by a Labour Inspector under section 11(2), section 13(2), section 17(2), section 54(2), or section 85(2), is binding on the employer and employee.

80 Labour Inspector must consult employer and employee

Before making a determination under this Act, a Labour Inspector must—

- (a) discuss the matter with the employer and employee; and
- (b) give the employer and employee the opportunity to comment on what the Labour Inspector proposes to consider in making the determination.

Holiday and leave record

81 Holiday and leave record

- (1) An employer must keep a holiday and leave record that complies with this section.
- (2) The holiday and leave record must contain the following information for each employee:
 - (a) the name of the employee;
 - (b) the date on which the employee's employment commenced;
 - (c) the days on which the employee actually works, if the information is relevant to the calculation of entitlements or payment for entitlements under this Act;
 - (d) the employee's current entitlement to annual holidays;
 - (e) the date on which the employee last became entitled to annual holidays;
 - (f) the employee's current entitlement to sick leave;
 - (g) the dates on which any annual holiday, sick leave, or bereavement leave has been taken;
 - (h) the amount of payment for any annual holiday, sick leave, or bereavement leave that has been taken;
 - (i) the dates of, and payments for, any public holiday on which the employee worked;
 - (j) the number of hours that the employee worked on any public holiday;
 - (k) the date on which the employee became entitled to any alternative holiday;
 - (l) the details of the dates of, and payments for, any public holiday or alternative holiday on which the employee

- did not work, but for which the employee had an entitlement to holiday pay:
- (m) the cash value of any board or lodgings, as agreed or determined under section 10:
 - (n) the details of any payment to which the employee is entitled under section 61(3) (which relates to payment in exchange for an alternative holiday):
 - (o) the date of the termination of the employee's employment (if applicable):
 - (p) the amount paid to the employee as holiday pay upon the termination of the employee's employment (if applicable):
 - (q) any other particulars that may be prescribed.
- (3) The holiday and leave record must be kept—
- (a) in written form; or
 - (b) in a form or in a manner that allows the information in the record to be easily accessed and converted into written form.
- (4) Information entered in the holiday and leave record must be kept for not less than 6 years after the date on which the information is entered.
- (5) The holiday and leave record may be kept so as to form part of the wages and time record required to be kept under section 130 of the Employment Relations Act 2000.

Compare: 1981 No 15 s 31

82 Requests for access to holiday and leave record

- (1) The following persons may request an employer to provide access to, or a copy of, or a certified extract from, information in the holiday and leave record relating to an employee:
- (a) the employee:
 - (b) an authorised representative:
 - (c) a representative of a union of which the employee is a member:
 - (d) a Labour Inspector.
- (2) An employer who receives a request under subsection (1) must comply as soon as practicable with the request by—
- (a) allowing the employee, authorised representative, representative of the union, or Labour Inspector to view the record; or

- (b) providing a copy or certified extract of the information concerned.

83 Failure to keep or provide access to holiday and leave record

- (1) Evidence that an employer has failed to comply with section 81 or section 82 may be given in an action before the Authority—
 - (a) to recover holiday pay or leave pay from an employer; or
 - (b) to enforce an entitlement to annual holidays, public holidays, sick leave, or bereavement leave against an employer.
- (2) To avoid doubt, for the purposes of subsection (1), an action before the Authority includes the determination of an objection to a holiday pay demand notice under section 224 of the Employment Relations Act 2000.
- (3) If, after hearing the evidence, the Authority is satisfied that the employer failed to comply with section 81 or section 82 and that the failure prevented the claimant from bringing an accurate claim, the Authority may make a finding to that effect.
- (4) If a finding under subsection (3) is made, then the Authority may accept as proved, in the absence of evidence to the contrary, statements made by the employee about—
 - (a) holiday pay or leave pay actually paid to the employee;
 - (b) annual holidays, public holidays, sick leave, or bereavement leave actually taken by the employee.

Subpart 2—Other matters

84 Power to award interest on unpaid holiday pay or leave pay

- (1) Subsection (2) applies if—
 - (a) the Authority gives judgment for an employee in an action to recover holiday pay or leave pay; or
 - (b) the Authority makes a determination under section 226 of the Employment Relations Act 2000 in favour of the employee.
- (2) The Authority may include, in the sum for which judgment is given or the determination is made, interest for the whole or any part of the period between the date when the cause of

action arose and the date of payment in accordance with the judgment or determination.

- (3) Interest included in a judgment or determination must not exceed interest at the rate calculated under clause 11 of Schedule 2 of the Employment Relations Act 2000.
- (4) This section does not authorise the giving of interest upon interest.

85 Presumption that employment continuous if employee dismissed and re-employed within 1 month

- (1) If an employer dismisses an employee and then re-employs the employee within 1 month after the dismissal, the employee's employment must be treated as being continuous for the purpose of the employee's entitlements under this Act.
- (2) Subsection (1) does not apply if a Labour Inspector makes a determination that the Labour Inspector is satisfied that—
 - (a) the employer acted in good faith; and
 - (b) the employer did not act for the purpose of evading his or her obligations under this Act.

Compare: 1981 No 15 s 20

86 Holiday pay and leave pay treated as salary or wages

Holiday pay and leave pay payable by an employer to an employee is—

- (a) to be treated as salary or wages earned by the employee; and
- (b) without limiting paragraph (a), subject to deductions that the employer is required or entitled to make from salaries or wages for the purpose of income tax or any other purpose.

Compare: 1981 No 15 s 22

87 Regulations

The Governor-General may, by Order in Council, make regulations for 1 or more of the following purposes:

- (a) prescribing forms for the purposes of this Act;
- (b) prescribing the procedure in relation to proceedings under this Act, including the procedure for objecting to a holiday pay demand notice:

- (c) prescribing the procedure for withdrawing a holiday pay demand notice:
- (d) providing for any other matters that are contemplated by or necessary for giving full effect to this Act and its due administration.

*Transitional provisions relating to entitlements under
Holidays Act 1981*

88 Transitional provision relating to annual holidays

- (1) Any annual holidays to which an employee had, before the commencement of this section, become entitled under section 11 of the Holidays Act 1981 and that remain untaken on the commencement of this section—
 - (a) remain in force despite the repeal of the Holidays Act 1981; and
 - (b) must be treated as annual holidays which the employee is entitled to take, or to be paid for, in accordance with subpart 1 of Part 2.
- (2) The operation of this section does not affect the date on which the employee next becomes entitled to annual holidays.

89 Transitional provision relating to public holidays

Any holiday to which an employee had, before the commencement of this section, become entitled under section 7A of the Holidays Act 1981 and that remains untaken on the commencement of this section—

- (a) remains in force despite the repeal of the Holidays Act 1981; and
- (b) must be treated as if it were an alternative holiday which the employee is entitled to take, or to be paid for, in accordance with subpart 3 of Part 2.

90 Transitional provision relating to special leave

- (1) Any special leave to which an employee had, before the commencement of this section, become entitled under section 30A of the Holidays Act 1981 and that remains untaken on the commencement of this section—
 - (a) remains in force despite the repeal of the Holidays Act 1981; and

- (b) must be treated as if it were sick leave which the employee is entitled to take in accordance with subpart 4 of Part 2.
- (2) The operation of this section does not affect the date on which the employee next becomes entitled to sick leave.

91 Repeals and consequential amendments

- (1) The enactments specified in Schedule 2 are repealed.
 - (2) The enactments specified in Schedule 3 are amended in the manner indicated in that schedule.
-

s 42

Schedule 1
Modifications to subpart 1 of Part 2 to increase
minimum entitlement to annual holidays from
1 April 2007

Section 15

Add:

“(d) to ensure that, on and from 1 April 2007, when an employee next becomes entitled to annual holidays, the employee’s minimum entitlement is increased from 3 weeks’ annual holidays to 4 weeks’ annual holidays.”

Section 16

Omit from subsection (1) the expression “3 weeks’” and substitute the expression “4 weeks’”.

Section 17

Omit from subsection (1) the expression “3 weeks’” and substitute the expression “4 weeks’”.

Omit from subsection (2) the expression “3 weeks’” and substitute the expression “4 weeks’”.

Section 23(2)

Omit the expression “6%” and substitute the expression “8%”.

Section 25

Omit from subsection (2) the expression “6%” and substitute the expression “8%”.

Section 28

Omit from subsection (1)(a)(ii) the expression “3 weeks’” and substitute the expression “4 weeks’”.

Omit from subsection (1)(d) the expression “6%” and substitute the expression “8%”.

Section 34

Omit from subsection (2) the expression “6%” and substitute the expression “8%”.

Schedule 2

Enactments repealed

s 91(1)

Anzac Day Act 1966 (1966 No 44)

Section 4.

Employment Relations Act 2000 (2000 No 24)

So much of Schedule 5 as relates to the Holidays Act 1981. So much of Schedule 6 as relates to the Holidays Amendment Act 1991.

Holidays Act 1981 (1981 No 15)**Human Rights Amendment Act 2001** (2001 No 96)

Section 52 and the heading above that section.

Income Tax Act 1994 (1994 No 164)

So much of Schedule 20 as relates to the Holidays Act 1981.

Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49)

So much of Part 1 of Schedule 6 as relates to the Holidays Act 1981.

Labour Department Act Repeal Act 1989 (1989 No 82)

So much of the Schedule as relates to the Holidays Act 1981.

New Zealand Railways Corporation Restructuring Act 1990
(1990 No 105)

So much of the Fourth Schedule as relates to the Holidays Act 1981.

Parental Leave and Employment Protection Act 1987
(1987 No 129)

Section 85(3).

Taxation (Core Provisions) Act 1996 (1996 No 67)

So much of Schedule 3 as relates to the Holidays Act 1981.

Waitangi Day Act 1976 (1976 No 33)

Section 5.

s 91(2)

Schedule 3

Enactments amended

Part 1

Acts amended

Companies Act 1993 (1993 No 105)

Omit from clause 12(b) of the Seventh Schedule the words “sections 11 to 23 of the Holidays Act 1981” and substitute the words “Subpart 1 of Part 2 of the Holidays Act 2003”.

Electoral Act 1993 (1993 No 87)

Omit the definition of **employer** and **worker** in section 162(5) and substitute:

“**employer** has the same meaning as in section 5 of the Employment Relations Act 2000”.

Insert in section 162(5), after the definition of **master**:

“**worker** has the same meaning as that given to **employee** in section 6 of the Employment Relations Act 2000.”

Employment Relations Act 2000 (2000 No 24)

Add to section 66(3):

“(c) to exclude or limit the rights of an employee under the Holidays Act 2003.”

Omit from section 79(1) the words “ordinary pay (as defined in section 4 of the Holidays Act 1981)” and substitute the words “relevant daily pay (as defined in section 9 of the Holidays Act 2003)”.

Omit from section 161(1)(m)(iii) the words “section 20 of the Holidays Act 1981” and substitute the words “section 76 of the Holidays Act 2003”.

Repeal section 223(1)(c) and substitute:

“(c) the Holidays Act 2003; and”.

Omit from section 224(1)(a) the expression “Holidays Act 1981” and substitute the expression “Holidays Act 2003”.

Omit from section 228(1) the expression “Holidays Act 1981” and substitute the expression “Holidays Act 2003”.

Omit from section 229(1)(c)(i) the words “holiday book” and substitute the words “holiday and leave record”.

Insert in section 229(1)(d), after the word “record”, the words “or holiday and leave record”.

Add to section 232:

Part 1—*continued***Employment Relations Act 2000** (2000 No 24)—*continued*

“(5) In this section, a wages and time record, if applicable, includes a holiday and leave record kept under section 81 of the Holidays Act 2003.”

Omit from the definition of **holiday pay** in section 234(4) the expression “Holidays Act 1981” and substitute the expression “Holidays Act 2003”.

Repeal section 236(4)(d) and substitute:

“(d) the Holidays Act 2003:”.

Immigration Act 1987 (1987 No 74)

Omit from section 39A(1)(a)(i) the expression “Holidays Act 1981” and substitute the expression “Holidays Act 2003”.

Omit from section 39A(4)(a) the expression “Holidays Act 1981” and substitute the expression “Holidays Act 2003”.

Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49)

Repeal section 306 and substitute:

“306 Sick leave may be used when employer not liable for first week compensation

“(1) If an employee suffers a personal injury that is not a work-related personal injury and is not a motor vehicle injury described in section 29(2), and the employee is incapacitated, the employee may elect to take any unused sick leave entitlement that the employee may have under subpart 4 of Part 2 of the Holidays Act 2003 and use it in respect of an equivalent part of the first week of incapacity.

“(2) This section applies to avoid doubt.”

Insolvency Act 1967 (1967 No 54)

Omit from section 104(3)(a) the expression “Holidays Act 1981” and substitute the expression “Holidays Act 2003”.

Judicature Act 1908 (1908 No 89)

Omit from clause 19 of the Second Schedule the expression “Holidays Act 1981” and substitute the expression “Holidays Act 2003”.

Parental Leave and Employment Protection Act 1987
(1987 No 129)

Repeal section 42(2) and substitute:

Part 1—*continued***Parental Leave and Employment Protection Act 1987**(1987 No 129)—*continued*

“(2) If an employee becomes entitled to an annual holiday on pay during—

“(a) a period of parental leave under this Act; or

“(b) a period of preference in obtaining employment; or

“(c) the period of 12 months commencing with the date on which the employee returns to work after a period of parental leave under this Act or a period of preference in obtaining employment,—

the employee is, despite anything in section 21 of the Holidays Act 2003, entitled to holiday pay for that holiday only at the rate of the employee’s average weekly earnings for the 12 months immediately before the end of the last pay period before the annual holiday.”

Repeal section 42(3).

Omit from section 71M(1)(b) the words “**ordinary pay**” and substitute the words “**ordinary weekly pay**”.

Omit from section 71M(2) the item relating to **average weekly earnings** and **ordinary pay** and substitute the following item:

“**average weekly earnings** and **ordinary weekly pay** mean the total of those amounts in respect of all the employments from which the employee takes parental leave as an eligible employee”.

Omit from section 71M(2) the item relating to ordinary pay and substitute the following item:

“**ordinary weekly pay** has the meaning given to it by section 8 of the Holidays Act 2003”.

Repeal section 72(1)(b) and (2).

Social Security Act 1964 (1964 No 136)

Omit from section 86G(1) the words “ordinary pay” and substitute the words “ordinary weekly pay”.

Omit section 86G(2) and substitute:

“(2) For the purposes of this section, the debtor’s ordinary weekly pay for a week is the balance left after deducting from the debtor’s **ordinary weekly pay** (as defined in section 8 of the Holidays Act 2003) the tax deductions that would be required to be made in accordance with the PAYE rules of the Income Tax Act 1994 if that ordinary weekly pay were the only salary

Part 1—*continued***Social Security Act 1964** (1964 No 136)—*continued*

or wages paid to the debtor by the employer in respect of a week.”

Volunteers Employment Protection Act 1973 (1973 No 25)

Omit from section 8(1) the expression “Holidays Act 1981” and substitute the expression “Holidays Act 2003”.

Part 2

Regulations amended

Disabled Persons Employment Promotion Order 2002

(SR 2002/332)

Omit from regulation 4(2) the expression “Holidays Act 1981” and substitute the expression “Holidays Act 2003”.

Omit from the heading to Schedule 1 the expression “Holidays Act 1981” and substitute the expression “Holidays Act 2003”.

District Courts Rules 1992 (SR 1992/109)

Omit from rule 17 the expression “Holidays Act 1981” and substitute the expression “Holidays Act 2003”.

Employment Relations (Prescribed Matters) Regulations 2000

(SR 2000/185)

Omit from form 4 of the Schedule the expression “Holidays Act 1981” wherever it appears and substitute in each case the expression “Holidays Act 2003”.

Land Transfer Regulations 2002 (SR 2002/213)

Omit from regulation 40(2)(c) the words “specified in section 7A(2) of the Holidays Act 1981” and substitute the words “listed in section 44 of the Holidays Act 2003”.

Land Transport (Requirements for Storage and Towing of Impounded Vehicles) Regulations 1999 (SR 1999/84)

Revoke the definition of **public holiday** in regulation 2 and substitute:

“**public holiday** means a day listed as a holiday in section 44 of the Holidays Act 2003”.

Land Transport (Storage and Towing Fees for Impounded Vehicles) Regulations 1999 (SR 1999/85)

Revoke the definition of **public holiday** in regulation 2 and substitute:

Part 2—*continued*

Land Transport (Storage and Towage Fees for Impounded Vehicles) Regulations 1999 (SR 1999/85)—continued

“**public holiday** means a day listed as a holiday in section 44 of the Holidays Act 2003”.

Legislative history

18 February 2003	Introduction (Bill 32-1)
25 February 2003	First reading and referral to Transport and Industrial Relations Committee
24 November 2003	Reported from Transport and Industrial Relations Committee (Bill 32-2)
4 December 2003	Second reading
9 December 2003	Committee of the whole House (Bill 32-3)
16 December 2003	Third reading
17 December 2003	Royal assent

This Act is administered in the Department of Labour.
