

HOLIDAYS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Holidays Act 1981.

Clause 1 relates to the Short Title.

Clause 2: Proposed *section 9 (4)*: Section 9 of the principal Act sets out certain mandatory rules of construction of awards and agreements, which rules apply when Christmas Day and New Year's Day fall on a Friday, Saturday, or Sunday. Generally the rules mean that, for employment purposes, the holidays falling on the weekend are transferred to the following Monday or Tuesday, as the case may be.

The proposed *section 9 (4)* provides that those rules are not to apply in the case of a dairy factory worker who actually works on the holiday but not on the transferred day. In such a case, the holidays are to lie where they fall for employment purposes.

Proposed *section 9 (5)*: Section 95 (3) of the Industrial Relations Act 1973 authorises special provisions (which may depart from the normal rules) relating to statutory holidays to be included in awards and agreements. Because of the mandatory nature of the rules of construction set out in section 9 of the principal Act, doubts have arisen as to whether conflicting provisions made in accordance with the said section 95 (3) are enforceable. The amendment gives priority to the provisions of an award or agreement specifically dealing with those matters otherwise dealt with by section 9 of the Holidays Act 1981.

Clause 3: Section 12 of the principal Act requires an employer to allow a worker to take all his holiday entitlement within 12 months of his becoming entitled. In the case *Higgs v Vibrapac Masonry* (1982), the Chief Justice held that, in the absence of specific agreement to the contrary, annual holiday entitlements not taken do not accumulate from one year to the next.

This clause provides that a worker does not lose his entitlement to annual holidays where he has not been allowed those holidays by his employer in the relevant period.

Clause 4 provides that an Inspector of Factories, when entering premises for the purposes of inspecting a holiday book, is to observe the same procedures as to production of identification and the giving of notice as he would be required to observe when making an inspection of an undertaking under the Factories and Commercial Premises Act 1981.

Hon. Mr Bolger

HOLIDAYS AMENDMENT

ANALYSIS

Title	2. Christmas and New Year holidays in dairy factories
1. Short Title	3. When holidays to be taken 4. Inspection of holiday books

A BILL INTITULED

An Act to amend the Holidays Act 1981

BE IT ENACTED by the General Assembly of New Zealand
in Parliament assembled, and by the authority of the same, as
5 follows:

1. Short Title—This Act may be cited as the Holidays
Amendment Act 1983, and shall be read together with and
deemed part of the Holidays Act 1981* (hereinafter referred
to as the principal Act).

10 **2. Christmas and New Year holidays in dairy factories**—
Section 9 of the principal Act is hereby amended by adding
the following subsections:

“(4) Subsections (1), (2), or (3) of this section shall not apply
with respect to the construction, in relation to any worker, of
15 the provisions of any award or agreement relating to dairy
factories, if that worker—

“(a) Actually works on a Saturday or Sunday (being Christmas
Day, Boxing Day, New Year’s Day, or the second
day of January, as the case may be); and

*1981, No. 15

“(b) Does not actually work on the following Monday (in the case of the holiday on which he has worked falling on a Saturday) or the following Tuesday (in the case of the holiday on which he has worked falling on a Sunday),—

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and, in such a case, any provisions of that award or agreement governing the observance by that worker of certain hours of labour or the payment to that worker of certain rates of wages on Christmas Day, Boxing Day, New Year’s Day, or the second day of January, as the case may be, shall be construed as applying on the day the holiday falls.

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“(5) Where any provisions of any award or agreement (whether made before or after the commencement of this Act) are made in accordance with section 95 (3) of the Industrial Relations Act 1973 and provide specifically for all or any of the circumstances described in subsections (1) to (4) of this section, then, to the extent that those provisions provide for such circumstances, the said subsections (1) to (4) shall not apply.”

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3. When holidays to be taken—Section 12 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

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“(1A) Where an employer fails to allow a worker to take, within the 12-month period specified in subsection (1) of this section, any holiday or any balance of it to which that worker may be entitled, then,—

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“(a) The employer’s obligation to allow that holiday or the balance of it shall remain in force until it is allowed; and

“(b) The worker’s entitlement to that holiday or the balance of it shall not cease until it is allowed.”

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4. Inspection of holiday books—Section 31 of the principal Act is hereby amended by repealing subsection (3), and substituting the following:

“(3) An Inspector of Factories may enter any premises for the purpose of inspecting any holiday book in use for the time being or used within the preceding 6 years, and any such book shall be kept readily available for such inspection:

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“Provided that, before making such an inspection, the Inspector shall observe or carry out such matters relating to the giving of notice to an employer, the production of evidence that he is an Inspector of Factories, and the times when he is empowered to carry out an inspection as he would be required to observe or carry out if he were making an inspection of an undertaking pursuant to the Factories and Commercial Premises Act 1981.”

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