

Holidays Bill

Government Bill

Explanatory note

General policy statement

Overview

The Holidays Bill implements government policy by providing entitlements that are easy to understand and apply. The Bill also recognises the need to maintain a balance between work and life outside the workplace. It complements other employment relations legislation passed by this Government to support dialogue and good faith in the workplace, and is designed to support productive workplace relationships in the modern employment environment. The recognition of these factors necessitates the repeal of the Holidays Act 1981.

General provisions

The Bill provides minimum entitlements to annual holidays, public holidays, sick leave, and bereavement leave. The Bill does not prevent an employer from providing an employee with additional entitlements, but employment agreements will have no effect to the extent they restrict the minimum entitlements under the Bill.

The Bill ensures that the application of holiday and leave entitlements can be achieved through reference to the provisions of the Bill without needing to further examine outside sources. An example of this is a comprehensive explanation of what types of income are defined as **gross earnings** for the purposes of calculating holiday pay and leave pay.

The Bill applies equally to the State sector and to the private sector. Special provision is made, however, to exempt the Armed Forces from the Bill.

Annual holidays

The Bill provides employees with the opportunity for rest and recreation through an entitlement to 3 weeks' paid annual holidays after each 12 months of employment. 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. The employer must also allow the employee to take 2 weeks of their entitlement in a continuous period. Payment for annual holidays must be made before the employee takes the holidays unless the employee and employer otherwise agree, for example, to have the payment made during the employee's normal pay period.

The Bill provides a clear process for consultation between an employer and employee to determine the most beneficial timing for the employee to take his or her annual holidays. As a last resort, the employer may direct the employee to take an annual holiday at a time determined by the employer by giving the employee 14 days' notice.

Employees will be able to take annual holidays in advance of their entitlement accruing, with the agreement of their employer. The Bill also provides that, if an employer customarily closes down each year, they can require their employees to take any outstanding annual holidays during that period, but only for 1 closedown period a year. During a closedown period, the employer may direct their employees to take their annual holidays in advance. If that occurs, the date of the closedown period becomes the employee's anniversary date for the purpose of calculating the employee's future annual holiday entitlements.

The method for calculating annual holiday pay in the full range of circumstances is spelt out in the Bill in order to make the calculations easier to understand and apply.

In order to preserve an employee's right to rest and recreation, limits have been placed on the ability of employers to have pay as you go annual holiday pay provisions. **Pay as you go** means the employee's entitlement to payment for annual holidays is met through payment of 6% of their ordinary pay in their normal pay cycle. The Bill provides that this arrangement can only occur—

- with the employee's agreement; and
- if the employee's employment agreement is for a fixed term of less than 12 months; and

- if the 6% payment is an identifiable component of the employee's pay.

The Bill codifies the present case law with regard to the treatment of annual holidays when an employee's employment is terminated. In particular, it makes clear that, while the employment relationship ends at the date of termination, any unused annual holidays that the employee has accrued are added to the date of termination. It also clarifies that an employee must be paid for a public holiday that falls within that period if the public holiday would otherwise be a working day for the employee.

The Bill provides clear guidance on the circumstances in which annual holidays continue to accrue. An employee's entitlement to annual holidays will continue to accrue during periods of unpaid leave of up to 1 week. However, during periods of unpaid leave of more than 1 week, the employer and employee must agree to the employee's annual holidays entitlement continuing to accrue. The Bill does not deal with the effect of annual holiday entitlements on other statutory leave entitlements (such as parental leave). Those relationships are provided for in the legislation that relates to the specific type of leave concerned.

Public holidays

The Bill provides employees with 11 public holidays per year for the common observance of days of national, religious, or cultural significance.

If a public holiday falls on a day that would otherwise be a working day for the employee and the employer, and employee have agreed that the employee will not work on that day, the employee is entitled to a day off at their ordinary rate of pay. Payment for the public holiday must be made in the pay that relates to the pay period in which the public holiday occurs.

The Bill provides that employers and employees are able to decide whether a day would otherwise be a working day for the employee, and sets out a number of guiding factors that must be taken into account when assessing what would otherwise be a working day. If the employer and employee cannot agree on what would otherwise be a working day for the employee, the Bill provides that a Labour Inspector will be able to determine the matter for them.

If an employee works on a public holiday and the day would otherwise be a working day for the employee, the Bill provides that the

employee is entitled to another day's holiday (an **alternative holiday**) on pay. If the employer and employee cannot agree on what day should be taken as the alternative holiday, the day may be determined by the employee, taking into account the employer's views as to when it is convenient for the employee to take the day and provided that the day is taken within 12 months of the entitlement to it accruing. If the alternative holiday is not taken within 12 months, the employer may direct the employee to take the alternative holiday on a date determined by the employer by giving the employee 14 days' notice of the requirement to take the holiday. An employee may also, at that stage, seek to exchange his or her entitlement to an alternative holiday for a payment.

The Bill introduces a minimum of one and a half times the employee's ordinary rate of pay for working on a public holiday. If an employee's current rate of pay incorporates a component for payment of an ordinary rate and a half for working on a public holiday, or one of the parties contends that it does, the employee's employment agreement must be addressed so that the employment agreement clearly reflects the requirements of the Act. Lining the employment agreement up with the requirement to pay an employee their ordinary rate and a half for working on a public holiday must occur either when the employment agreement is next amended or within 12 months of the Bill coming into force, whichever is earlier. Mediation services and the employment institutions will be able to assist employers and employees in addressing this matter.

The Bill provides that public holidays over Christmas and New Year must be transferred to the working week of the employee if those holidays fall on a Saturday or a Sunday. Accordingly, if Christmas Day and Boxing Day, or New Year's Day and 2 January, fall over the weekend and the employee does not otherwise work on the weekend, then the public holidays will be transferred to the following Monday and Tuesday. If Christmas Day and Boxing Day, or New Year's Day and 2 January, fall over the weekend and those days would otherwise be working days for an employee, then those public holidays will be observed on the days on which they fall. The Bill gives employers and employees the flexibility to agree to observe alternative days as public holidays. The remaining public holidays are observed on the day on which they fall.

Waitangi Day and Anzac Day are treated consistently for payment purposes with the other public holidays in the Bill. An employee is

also entitled to an alternative holiday for working on either of those days if the day would otherwise be a working day for the employee.

Sick leave and bereavement leave

The Bill provides employees with separate entitlements to sick leave and bereavement leave to provide “insurance” when employees are unable to work because of sickness or injury, or a bereavement. Employees become entitled to sick leave and bereavement leave on the completion of 6 months’ current continuous employment with their employer.

Employees will be entitled to 5 days’ sick leave per year, which may be taken upon the sickness or injury of the employee, the employee’s spouse, or a person who depends on the employee for care when they are sick or injured. The Bill provides that this entitlement may be accumulated to a maximum of 15 days, but expires on the termination of employment. The Bill enables an employer to require an employee to provide proof of injury or sickness if the employee is absent from work for a period of 5 or more consecutive days. In these circumstances, the employee’s entitlement to pay for sick leave only arises if the proof is provided.

The Bill provides a two-tier entitlement to bereavement leave. The first-tier provides the employee with an entitlement to 3 days’ leave upon the death of the employee’s spouse, parent, child, sibling, grandparent, grandchild, or spouse’s parent. The second-tier provides an entitlement to 1 day’s leave on the death of any other person if the employer accepts that the employee has suffered a bereavement. In considering whether the employee has suffered a bereavement under the second-tier, the employer must take into account:

- the closeness of the association between the employee and the deceased person; and
- whether the employee has to take significant responsibility for all or any of the arrangements for the ceremonies relating to the death; and
- any cultural responsibilities of the employee in relation to the death.

An employee must notify the employer of their intention to take sick leave or bereavement leave as early as possible on the day that is intended to be taken as leave. Payment for sick leave or bereavement leave must be made in the pay that relates to the pay period in which the leave is taken.

An employee cannot take sick leave or bereavement leave under the Bill if they have decided to take annual holidays during that period. Conversely, the Bill provides that, if an employee has exhausted their sick leave or bereavement leave entitlement, the employee and employer may agree that any period of leave taken due to sickness or injury, or because of a bereavement, may be taken as annual holidays.

Employer responsibilities and enforcement

The Bill places a positive duty on employers to provide information to their employees, at the time they enter into the employment agreement, about employee entitlements under the Bill and where they can access further information.

The Bill continues to require employers to keep a written record (now called the **holiday and leave record**), for at least 6 years, of all information about the employee's current entitlements to annual leave, public holidays, sick leave, and bereavement leave and the relevant dates that relate to those entitlements.

The Bill provides rights to the employee, the employee's representative, the representative of a union of which the employee is a member, and a Labour Inspector to request to view the holiday and leave record or to be given a copy of, or certified extract of, information entered in the record. An employer must comply with the request as soon as practicable.

Actions may be taken in the Employment Relations Authority to recover any money that is believed to be owed to the employee under the Bill. The penalty for an employer who fails to comply with the provisions of the Bill is \$5,000 in the case of an employer who is an individual and \$10,000 in the case of an employer who is a company or other body corporate.

The Bill also provides a presumption of continuous employment if an employee is dismissed and re-employed within 1 month. This means that the period of service remains continuous for the accrual of holiday and leave entitlements under the Bill.

Clause by clause analysis

Clause 1 is the Title clause.

Part 1

Preliminary provisions

Part 1 (clauses 2 to 14) contains preliminary provisions.

Clause 2 relates to the commencement of the Bill. The Bill comes into force 3 months after the date on which it receives the Royal assent.

Clause 3 states the purpose of the Bill, which is to provide minimum entitlements to—

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

Clause 4 provides an overview of the Bill.

Clause 5 defines certain terms used in the Bill. 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 (the **ERA**). The term **employee** has the same meaning as in section 6 of the ERA, except that it does not include persons intending to work.

Clause 6 defines the term **week** for the purposes of an employee's entitlements under the Bill.

Clause 7 defines the term **ordinary pay** to mean the amount of pay that an employee would have received under his or her employment agreement for an ordinary working day.

Clause 8 provides that the ordinary pay of an employee does not include certain payments. Examples of those payments are a payment for overtime, the payment of bonuses, and productivity or incentive-based payments.

Clause 9 provides that the ordinary pay of an employee includes the cash value of any board or lodgings provided by the employer.

Clauses 10 and 11 relate to the determination of an ordinary working day for an employee. If an employer and employee are unable to agree on what constitutes an ordinary working day for the employee, then a Labour Inspector may make the determination.

Clause 12 defines **gross earnings**.

Clause 13 applies the Bill to all employers and employees, including the Crown and its employees (except members of the Armed Forces).

Clause 14 clarifies the relationship between the Bill and employment agreements. The entitlements provided to employees under the Bill are minimum entitlements, and the Bill does not prevent an employer from providing an employee with additional entitlements to annual holidays, public holidays, sick leave, or bereavement leave. However, an employment agreement that excludes, restricts, or reduces an employee's entitlements under the Bill has no effect to the extent that it does so.

Part 2

Holiday and leave entitlements

Part 2 (clauses 15 to 65) sets out the entitlements to annual holidays, public holidays, sick leave, and bereavement leave and contains provisions relating to payment for those entitlements.

Subpart 1—Annual holidays

Clause 15 states the purpose of this subpart, which is—

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

Clause 16 provides that an employee is entitled to not less than 3 weeks' paid annual holidays after the end of each completed 12 months of employment. The entitlement remains in force until the employee has taken all of the entitlement as paid holidays.

Clause 17 states that an employee's entitlement to annual holidays may be calculated in either days or weeks.

Clause 18 provides that 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. An employer must also allow an employee to take at least 2 weeks of his or her entitlement in a continuous period. The actual timing of the employee's annual holidays is a matter for agreement between the employer and employee. However, an employer must not unreasonably withhold consent to an employee's request to take annual holidays.

Clause 19 provides that an employer may require an employee to take annual holidays at the time determined by the employer if the employer and employee are unable to reach agreement under *clause 18* as to when the employee will take annual holidays. If agreement is not reached, an employer must give an employee not less than 14 days' notice of the requirement to take the holidays.

Clause 20 provides that an employee, with the agreement of his or her employer, may take 1 or more days of his or her annual holiday entitlement in advance.

Clauses 21 to 25 deal with the calculation and payment of annual holiday pay in various circumstances, including—

- how annual holiday pay is to be calculated for an employee taking an annual holiday after becoming entitled to take the holiday (*clause 21*);
- how annual holiday pay is to be calculated for an employee taking an annual holiday in advance (*clause 22*);
- how annual holiday pay is to be calculated for an employee whose employment has come to an end before the employee has completed 12 months of employment (*clause 23*);
- how annual holiday pay is to be calculated for an employee whose employment has come to an end and who is entitled to take annual holidays, but who has not taken the holidays or has taken only some of them (*clause 24*);
- how annual holiday pay is to be calculated for an employee whose employment has come to an end, but who 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 second or subsequent 12 months (*clause 25*).

Clause 26 states the general rule that an employer must pay annual holiday pay to the employee in the pay that relates to the pay period

in which the holidays are taken. Certain other arrangements may also be agreed between the employer and employee.

Clause 27 sets out the limited circumstances when annual holiday pay may be regularly paid with the employee's pay.

Clauses 28 to 33 deal with the effect of customary annual closedown periods on annual holidays.

Clause 28 defines a **closedown period**.

Clause 29 provides that, in relation to an employee's annual holiday entitlement, an employer may have only 1 closedown period in any 12-month period.

Clause 30 provides that an employee must, if required by an employer, take annual holidays during a closedown period whether or not the employee agrees to do so.

Clause 31 states how annual holiday pay is to be calculated for an employee who is entitled to annual holidays at the commencement of a closedown period.

Clause 32 deals with the calculation of annual holiday pay for an employee who is not entitled to annual holidays at the commencement of a closedown period.

Clause 33 states the effect of a closedown period on the anniversary date of an employee who is not entitled to annual holidays at the commencement of a closedown period.

Clauses 34 to 36 clarify the relationship between annual holidays and other entitlements under the Bill.

Clause 34 provides that an employee must not, without the agreement of his or her employer, take any day or period that the employee proposed to take, or is taking, as an annual holiday as sick leave or bereavement leave.

Clause 35 provides that an employer may, if requested by an employee, agree to the employee taking annual holidays if the employee requires extra leave for the purposes of sick leave or bereavement leave.

Clause 36 clarifies the relationship between annual holidays and public holidays. 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. If the employee's employment comes to an end and the employee is entitled to annual holidays, the employee must be paid for any public holiday that would have

occurred during the annual holidays had they been taken immediately after the date on which the employee's employment came to an end.

Subpart 2—Public holidays

Clause 37 states the purpose of this subpart, which is—

- to provide all employees with an entitlement not to work on 11 public holidays if the holidays fall on a day that would otherwise be a working day:
- to enable employees to agree to work on a public holiday in exchange for another day's paid leave.

Clause 38 lists the following 11 days as public holidays:

- Christmas Day:
- Boxing Day:
- New Year's Day:
- 2 January (or some other day in its place):
- Good Friday:
- Easter Monday:
- ANZAC Day:
- Labour Day (being the fourth Monday in October):
- the birthday of the reigning Sovereign (observed on the first Monday in June):
- Waitangi Day:
- the day of the anniversary of the province or the day locally observed as that day (or some other day in its place).

Clause 39 enables Christmas Day, Boxing Day, New Year's Day, and 2 January to be observed on other days if they fall on a Saturday or Sunday and those days are not otherwise working days for an employee.

Clauses 40 and 41 relate to the determination of what would otherwise be a working day for an employee.

Clause 40 lists the factors that must be taken into account if an employer and employee are initially unable to agree on whether a day would otherwise be a working day for the employee.

Clause 41 provides that a Labour Inspector may determine whether a day would otherwise be a working day for an employee if the employer and employee are unable to do so under *clause 40*.

Clause 42 provides employees with an entitlement to public holidays, and states that public holidays are in addition to annual holidays that an employee is entitled to under the Bill or otherwise.

Clause 43 states when an employer may require an employee to work on public holiday.

Clause 44 states how an employer complies with *clause 42*. If a public holiday falls on a day that would not otherwise be a working day for an employee, *clause 42* is complied with if the employee does not work on that day. If a public holiday falls on a day that would otherwise be a working day for an employee, *clause 42* is complied with if—

- the employee does not work on that day and the employer pays the employee in accordance with *clause 45*; or
- the employee works on any part of that day and the employer pays the employee in accordance with *clause 46*.

Clauses 45 to 48 relate to payment for public holidays.

Clause 45 provides that, if an employee does not work on a public holiday and the day would otherwise be a working day for the employee, an employer must pay the employee his or her ordinary pay for the public holiday.

Clause 46 provides that, if an employee works on any part of a public holiday, an employer must pay the employee the greater of—

- the employee's ordinary pay plus half that rate again; or
- the amount specified in the employee's employment agreement.

Clause 47 states how, and when, an employer must comply with *clause 46*.

Clause 48 states when payment for a public holiday must be made.

Clause 49 provides that an employee is entitled to another day's holiday (an **alternative holiday**) if the employee works on a public holiday and that day would otherwise be a working day for the employee.

Clause 50 sets out the requirements of an alternative holiday.

Clause 51 states when an employer may require an employee to take an alternative holiday at a time determined by the employer.

Clause 52 deals with an employee's entitlement to an alternative holiday if the employee is on call on a public holiday.

Clause 53 states when payment for an alternative holiday must be made.

Clause 54 provides that an employee may agree to exchange his or her entitlement to an alternative holiday for a payment.

Subpart 3—Sick leave and bereavement leave

Clause 55 states the purpose of this subpart, which is to provide all employees with a minimum entitlement to paid leave in the event of their sickness or injury, or the sickness, injury, or death of certain other persons.

Clause 56 provides that an employee is entitled to sick leave and bereavement leave after the employee has completed 6 months of current continuous employment with the employer. An employee must be provided with an entitlement to sick leave and bereavement leave in respect of—

- the 12-month period beginning at the completion of the employee's first 6 months of employment; and
- each subsequent 12-month period of employment.

Clause 57 requires an employee who intends to take sick leave or bereavement leave to notify his or her employer of that intention as early as possible before the employee is due to start work or, if that is not practicable, as early as possible after that time.

Clauses 58 to 61 relate to sick leave. *Clause 58* provides that an employee may take sick leave if the employee is sick or injured, the employee's spouse is sick or injured, or someone who depends on the employee for care is sick or injured. An employee is entitled to 5 days' sick leave for each of the periods specified in *clause 56*.

Clause 59 provides that an employee may carry over any sick leave that has not been taken in the 12-month period to which the leave relates, to a maximum of 15 days.

Clause 60 provides that unless otherwise agreed between the employer and employee, an employee is not entitled to be paid out for any sick leave that has not been taken before the date on which the employee's employment ends.

Clause 61 prohibits an employer from requiring an employee to produce proof of sickness or injury in respect of sick leave taken by the employee unless the sickness or injury lasts for more than 5 consecutive calendar days (whether or not those days would otherwise be working days). However, it does not prevent an employer and employee from agreeing that an employee will provide proof of sickness or injury in the case of sick leave taken in addition to the employee's minimum entitlement.

Clauses 62 and 63 relate to bereavement leave.

Clause 62 provides that an employee may take bereavement leave if the employee has suffered a bereavement due to the death of a person listed in *subclause (2)*. Those persons are the employee's spouse, parent, child, brother or sister, grandparent, grandchild, spouse's parent, or other person if the employer accepts that the employee has suffered a bereavement as a result of the death.

Clause 63 specifies the duration of bereavement leave that an employee is entitled to under *clause 62*.

Clauses 64 and 65 deal with payment for sick leave and bereavement leave.

Clause 64 provides that an employer must pay an employee an amount that is equivalent to the employee's ordinary pay for each day of sick leave or bereavement leave taken by the employee.

Clause 65 states when payment for sick leave and bereavement leave must be made.

Part 3

Enforcement and other matters

Part 3 (clauses 66 to 80) contains provisions relating to enforcement and other miscellaneous matters.

Subpart 1—Enforcement

Clause 66 provides that when dealing with each other on matters under the Bill, an employer and employee must deal with each other in good faith. In line with this requirement, *subclause (2)* provides that the employer must inform an employee of his or her entitlements under the Bill at the time the employee enters into an employment agreement with the employer.

Clause 67 provides that the entitlements set out in the Bill may be enforced by—

- an employee:
- an authorised representative of the employee in terms of section 236 of the ERA (an **authorised representative**):
- a union of which the employee is a member:
- an employer:
- a Labour Inspector.

However, entitlements that are in addition to those in the Bill can be enforced only by the employee, an authorised representative, or a union of which the employee is a member.

Clause 68 provides for the imposition of penalties on employers who do not comply with the Bill. The maximum penalty is \$5,000 in the case of an employer who is an individual, and \$10,000 in the case of an employer who is a company or other body corporate.

Clause 69 enables a Labour Inspector to bring proceedings for a penalty against an employer in the Employment Relations Authority (the **Authority**).

Clause 70 provides that a Labour Inspector may take proceedings on behalf of an employee to recover unpaid holiday pay or leave pay.

Clause 71 provides that a Labour Inspector has, in addition to any powers conferred under the Bill, all the powers that a Labour Inspector has under the ERA.

Clause 72 provides that, 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 *clauses 6(2), 11(2), 41(2), and 77(2)* is binding on the employer and employee.

Clause 73 requires an employer to keep a holiday and leave record, and lists the information that must be entered in the record. The holiday and leave record must be kept in written form or in a form or manner that allows the information in the record to be easily accessed and converted into written form. *Subclause (5)* provides that the record may be kept so as to form part of the wages and time record required to be kept under section 130 of the ERA.

Clause 74 allows an employee, an authorised representative, a union of which the employee is a member, or a Labour Inspector to have access to, or a copy or a certified extract of, information in the holiday and leave record relating to the employee.

Clause 75 provides that evidence that an employer has failed to keep a holiday and leave record, or to comply with a request for access to the record, may be given in an action before the Authority—

- to recover holiday pay or leave pay; or
- to enforce an employee's entitlements to annual holidays, public holidays, sick leave, or bereavement leave.

Subpart 2—Other matters

Clause 76 gives the Authority the power to award interest on unpaid holiday pay or leave pay.

Clause 77 provides that there is a presumption of continuous employment if an employer dismisses an employee and then re-employs the employee within 1 month after the dismissal.

Clause 78 provides that holiday pay or leave pay is to be treated as salary or wages and is subject to deductions that an employer is required or entitled to make from salaries or wages for the purpose of income tax or for any other purpose.

Clause 79 authorises the making of regulations.

Clause 80 repeals the enactments set out in *Schedule 1* and makes the consequential amendments to other enactments set out in *Schedule 2*.

Regulatory impact and compliance cost statement

Statement of problem and need for action

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

(48%) complaints to the Labour Inspectorate related to annual holidays, and 704 (20%) to public holidays.

Statement of public policy objective

The key objectives for Government action in respect of holiday and leave entitlements are to—

- ensure that all employees have access to entitlements at a standard that society as a whole considers to be acceptable:
- ensure that holiday and leave entitlements are both robust and appropriate to accommodate increased diversity in working patterns:
- balance the needs of employers and employees.

Employees should be entitled to 3 types of paid holidays and leave, each of which has a specific objective, namely—

- annual holidays to provide paid time off to employees for rest and recreation; and
- public holidays to provide for the common observance of days of national, religious, or cultural significance, and in this context, providing employees be paid at rate and a half for working on the public holiday; and
- sick leave and bereavement leave to provide “insurance” when an employee is unable to work because he or she is sick or injured, someone in his or her immediate family is sick or injured, or the employee has suffered a bereavement.

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

Statement of options for achieving the desired objective

Status quo

The key features of the Holidays Act 1981 as it relates to the public policy objective are—

- it provides an incomplete explanation of what makes up ordinary pay:
- the Crown is only bound by certain provisions:

- public holidays are only paid at ordinary rate;
- it includes special provisions for employees in factories and undertakings;
- it provides 5 days' special leave to cover both sickness and bereavement.

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

Preferred option

The proposals fall into 3 main categories—

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

Measures to reduce compliance costs

The principal measures set out in the Bill that are aimed at reducing compliance costs are:

- the provision of a complete explanation of how to determine ordinary pay; and
- the provision of simplified calculations for determining annual holiday pay and ordinary pay.

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

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

The measures to ensure that all employees have the same entitlements involve—

- the binding the Crown (except the Armed Forces) to the provisions of the Bill; and
- removing separate provisions for employees in factories and undertakings.

Extending holidays legislation to apply to the Crown in full removes the perception that the Crown may be favouring itself in its employment relations. Any costs this may create are likely to be minimal as the Crown mostly provides holiday entitlements at or above the proposed minimum.

The Holidays Act 1981 currently provides specific directions as to how pay for statutory holidays and for working on Sundays is to be calculated for employees who work in factories and undertakings as defined. Removing the distinction for factories and undertakings will mean that there is one, easy to understand, set of regulations for all types of businesses to follow.

Measures to ensure appropriate minimum standards

The measures to ensure that employees are protected by appropriate minimum standards are—

- providing a payment at a rate and a half to employees who work on public holidays; and
- providing employees with an entitlement to 5 days' sick leave; and
- providing a two-tier entitlement for bereavement leave that includes 3 days' leave on the death of a close relative and 1 day's leave on the death of any other person if the employer accepts that the employee has suffered a bereavement.

These proposals will provide minimum levels of protection for vulnerable employees who would not otherwise be able to negotiate these terms and conditions. The benefits of more leisure time and general social well-being and the positive effects upon the workforce can be described in terms of less stress, greater rest and refreshment, and a better balance of entitlement.

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

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

Fair and effective minimum employment standards also assist in enabling New Zealand to compete internationally on the basis of

quality, through enhancing our ability to attract and retain labour, and to promote quality investment in human capital rather than a simple lowest cost basis.

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

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

Other options considered

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

Business compliance cost statement

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

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

Any compliance costs associated with determining whether current employment agreements provide employees with a rate and a half for working on a public holiday will be minimised. Where the

employee's current rate of pay incorporates a component for payment of a rate and a half for working on a public holiday, or one of the parties contends that it does, the problem must be addressed when the employment agreement is renegotiated or within 12 months of the Bill coming into force, whichever is earlier. Mediation services and the employment institutions will be able to assist parties in addressing this.

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

Consultation

The following Government agencies were consulted on this Bill:

Department of Internal Affairs

Department of Prime Minister and Cabinet

Ministry of Defence

Ministry of Economic Development

Ministry of Justice

Ministry of Pacific Island Affairs

Ministry of Women's Affairs

Ministry of Youth Affairs

State Services Commission

Te Puni Kōkiri

The Treasury.

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

Hon Margaret Wilson

Holidays Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Holidays Act **2003**.
- Part 1**
Preliminary provisions 5
- 2 Commencement**
This Act comes into force 3 months after the date on which it receives the Royal assent.
- 3 Purpose** 10
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: 15
 - (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: 20
 - (d) bereavement leave to assist employees who are unable to attend work because they have suffered a bereavement.
- 4 Overview** 25
- (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: 30
 - (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: 35

- (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— 5
 - (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: 10
 - (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** 15
- 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 earnings** means average daily earnings calculated by the division of gross earnings 20
- bereavement leave** means paid bereavement leave provided under **subpart 3 of Part 2**
- employee** has the same meaning as in section 6 (except subsection (1)(b)(ii)) of the Employment Relations Act 2000 25
- 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 12**
- holiday**— 30
- (a) means—
 - (i) a paid annual holiday provided under **subpart 1 of Part 2**;
 - (ii) a paid public holiday provided under **subpart 2 of Part 2**; and 35
 - (b) includes any alternative holiday an employee is entitled to under **section 49 or section 52**
- holiday and leave record** means the record required to be kept under **section 73**

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 54**

5

in advance, in relation to an annual holiday, means an annual holiday taken by an employee before the entitlement to the holiday has arisen

leave pay means pay for sick leave or bereavement leave

ordinary pay has the meaning given to it by **section 7**

10

ordinary working day means a day determined under **section 10** or **section 11**

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

sick leave means paid sick leave provided under **subpart 3 of Part 2**

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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).

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(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.

25

(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.

30

6 Meaning of week

- (1) In this Act, unless the context otherwise requires, **week**, in relation to an employee's entitlements under this Act, means a week based on the employee's ordinary hours or days of work in a week.

35

- (2) If the employer and employee cannot agree under **subsection (1)** on what constitutes a working week for the employee, a Labour Inspector may determine the matter for them.

7 Meaning of ordinary pay

- (1) In this Act, unless the context otherwise requires, **ordinary pay** means the amount of pay (including any commission and the cash value of any board or lodgings provided under **section 8**) that the employee would have received under his or her employment agreement for an ordinary working day. 5
- (2) If an employment agreement sets a composite rate of pay, then **ordinary pay** includes the constituent parts of that rate unless the composite parts are clearly defined and able to be excluded under **section 9**. 10
- (3) An employment agreement may not specify a special rate of ordinary pay for the purpose of calculating holiday pay unless the rate is greater than what would otherwise be calculated under **subsection (1)**. 15
- (4) If it is not possible to determine an employee's ordinary pay under **subsection (1) or subsection (3)**, the pay must be calculated in accordance with the following formula: 20

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

where—

- a is the employee's total earnings (including any commission) in respect of the 4 weeks immediately before the day in respect of which the calculation is made 25
- b is the total amount of payments of the type referred to in **section 9** paid to the employee in respect of those 4 weeks
- c is the number of whole or part days during which the employee earned those earnings in the 4 weeks, 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. 30

Compare: 1981 No 15 s 4

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- 8 Ordinary pay includes cash value of board or lodgings**
- (1) For the purposes of **section 7**, the ordinary pay 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 5
 - (b) as determined by a Labour Inspector if the employer and employee cannot agree on the cash value.
- (2) Despite **subsection (1)**, the ordinary pay of an employee does not include the cash value of any board or lodgings provided by an employer to the employee— 10
- (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. 15
- Compare: 1981 No 15 s 5
- 9 Ordinary pay does not include certain payments**
- (1) For the purposes of **section 7**, the **ordinary pay** of an employee does not include any payments that are payable only in defined circumstances or at defined times, not being payments for an ordinary working day. 20
- (2) Examples of such payments include—
- (a) a payment for overtime:
 - (b) the payment of a bonus in addition to a flat rate of payment: 25
 - (c) the payment of a productivity or incentive-based payment (except where payment by the piece is the primary or sole method of payment).
- 10 Determination of ordinary working day**
- (1) For the purposes of **section 7** and **section 9**, an employer and employee must take into account the factors listed in **subsection (2)** if they cannot agree on what constitutes an ordinary working day for the employee. 30
- (2) The factors are—
- (a) the employee's employment agreement: 35
 - (b) the employee's work patterns:
 - (c) the employer's rosters or other similar systems:

(d) any other relevant factors.

11 Labour Inspector may determine ordinary working day

- (1) This section applies if an employer and employee cannot agree under **section 10** on what constitutes an ordinary working day for the employee. 5
- (2) A Labour Inspector may determine what constitutes an ordinary working day for the employee.
- (3) In making a determination, the Labour Inspector must take into account the factors listed in **section 10(2)**.

12 Meaning of gross earnings

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In this Act, unless the context otherwise requires, **gross earnings**, in relation to an employee,—

- (a) means the total amount of remuneration payable by an employer to the employee for a specified period, including— 15
- (i) salary or wages:
 - (ii) allowances:
 - (iii) commission:
 - (iv) payment for an annual holiday, a public holiday, sick leave, or bereavement leave taken by the employee during the specified period: 20
 - (v) the cash value of any board or lodgings provided by the employer as agreed or determined under **section 8**:
 - (vi) payments of a type referred to in **section 9**: 25
 - (vii) first week compensation payable by the employer under section 97 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 or former Act:
 - (viii) any other payment by the employer to the employee under the employee's employment agreement; but 30
- (b) excludes—
- (i) any payment by an employer to the employee to reimburse the employee for any actual or reasonable costs incurred by the employee related to his or her employment: 35
 - (ii) any payment by an employer to the employee of a reasonably assessed amount to reimburse the

employee for any costs incurred by the employee related to his or her employment:

- (iii) any weekly compensation payable by the Accident Compensation Corporation under the Injury Prevention, Rehabilitation, and Compensation Act 2001 or corresponding former Act: 5
- (iv) any payment for absence from work while the employee is undertaking voluntary service or training within the meaning of the Volunteers Employment Protection Act 1973: 10
- (v) any other payment that the employer is not bound, by the terms of the employee's employment agreement, to pay the employee.

Compare: 1981 No 15 s 4

13 Application 15

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. 20

Compare: 1981 No 15 s 7

14 Relationship between Act and employment agreements

- (1) The entitlements provided to employees by this Act are minimum entitlements.
- (2) This Act does not prevent an employer from providing an employee with additional entitlements (whether specified in an employment agreement or otherwise). 25
- (3) 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 30
 - (b) is not an illegal contract under the Illegal Contracts Act 1970.

Part 2

Holiday and leave entitlements

Subpart 1—Annual holidays

- 15 Purpose of this subpart** 5
- 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 10
 - (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** 15
- (1) After the end of each completed 12 months of 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 employment— 20
 - (a) includes any period during which the employee was—
 - (i) 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 25
 - (ii) on unpaid sick leave or unpaid bereavement leave; or
 - (iii) 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)(ii) and (iii)**. 30
 - (3) An employee's entitlement to annual holidays remains in force until the employee has taken all of the entitlement as paid holidays. 35

Compare: 1981 No 15 s 11

-
- 17 Entitlement may be calculated in days or weeks**
- (1) An employee's entitlement to 3 weeks' annual holidays may be calculated in either days or weeks.
- (2) This section does not limit or affect any other provision of this Act. 5
- 18 Taking of annual holidays**
- (1) An employer must allow an employee—
- (a) to take annual holidays within 12 months after the date on which the employee's entitlement to the holidays arose; and 10
- (b) to take at least 2 weeks of the entitlement in a continuous period.
- (2) When annual holidays are to be taken by the employee is to be agreed between the employer and employee.
- (3) An employer must not unreasonably withhold consent to an employee's request to take annual holidays. 15
- 19 When employee may be required to take annual holidays**
- (1) An employer may require an employee to take annual holidays if— 20
- (a) the employer and employee are unable to reach agreement under **section 18(2)** as to when the employee will take his or her annual holidays; or
- (b) **section 30** applies (which relates to closedown periods).
- (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. 25
- 20 Employer may allow employee to take annual holidays in advance**
- An employer may allow an employee to take 1 or more days of the employee's annual holidays entitlement in advance. 30

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)**. 5
- (2) Annual holiday pay must be—
- (a) for the number of days of the holiday; and
- (b) at a rate that is the greater of—
- (i) the employee's ordinary pay as at the beginning of the annual holiday; or 10
- (ii) the employee's average earnings for the 12 months immediately before the beginning of the annual holiday.
- Compare: 1981 No 15 s 16 15
- 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)**. 20
- (2) Annual holiday pay must be—
- (a) for the number of days of the holiday; and
- (b) at a rate that is the greater of—
- (i) the employee's ordinary pay as at the beginning of the annual holiday; or 25
- (ii) the employee's average earnings for—
- (A) the 12 months immediately before the beginning of the annual holiday if the employee has worked for the employer for not less than 12 months; or 30
- (B) the period of employment before the beginning of the annual holiday if the employee has worked for the employer for less than 12 months.
- (3) This section is subject to **section 32**. 35
- 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.
- (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 27**.
- 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 number of days of annual holidays not taken at a rate that is the greater of—
- (a) the employee's ordinary pay as at the date of the end of the employee's employment; or
 - (b) the employee's average earnings during the 12 months immediately 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.
- (2) An employer must pay the employee 6% of the employee's gross earnings since the last anniversary of the commencement of employment, less any amount paid to the employee since that anniversary for any annual holidays taken in advance.

26 When payment for annual holidays must be made

- (1) An employer must pay an employee for an annual holiday in the pay that relates to the pay period in which the holiday is taken unless—
- (a) the employer and employee agree that the employee is to be paid at the beginning of the annual holiday concerned; or 5
 - (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 employee's final pay. 10

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

- (1) Despite **section 26**, an employer may regularly pay annual holiday pay with the employee's pay if—
- (a) the employee 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; and 15
 - (b) the employee agrees; and
 - (c) the annual holiday pay is paid as an identifiable component of the employee's pay; and 20
 - (d) the annual holiday pay is paid at a rate not less than 6% of the employee's gross earnings.
- (2) If the employee's employment continues for 12 months or more,—
- (a) the agreement of the employee under **subsection (1)(b)** must be treated as having been cancelled at the end of that 12-month period; and 25
 - (b) despite being paid in accordance with **subsection (1)**, the employee, at the end of the 12 months, becomes entitled to paid annual holidays under **section 16**. 30

*Closedown periods***28 Meaning of closedown period**

In this section and **sections 29 to 33**, **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 35
- (b) requires his or her employees to take all or some of their annual holidays.

- 29 Frequency of closedown periods**
In relation to an employee's annual holiday entitlement, the employer may have only 1 closedown period in any 12-month period.
- 30 Effect of closedown period on annual holidays** 5
If required to do so by the employer, an employee must take annual holidays during a closedown period whether or not the employee agrees to take the holidays.
- 31 Payment of annual holiday pay during closedown period**
- (1) This section applies to an employee who, at the commencement of a closedown period, is entitled to annual holidays under **section 16**. 10
- (2) The employer must pay the employee annual holiday pay calculated in accordance with **section 21**, less any payment for annual holidays taken in advance. 15
- 32 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**. 20
- (2) The employee's annual holiday pay must be calculated,—
- (a) in the case of an employee in the first 12 months of employment, as if **section 23(2)** applied;
- (b) in any other case, as if **section 25(2)** applied, and that provision applies, with all necessary modifications, as if the commencement of employment for that purpose was the commencement of the previous closedown period. 25
- (3) An employee who is paid annual holiday pay calculated in accordance with **subsection (2)** is not otherwise entitled— 30
- (a) to any annual holidays for the period of employment up to the date of the closure or discontinuance of work; or
- (b) to any remuneration for the period of the closure or discontinuance of work.
- (4) For the purposes of **subsection (2)(a)**, if an employee is absent from work because of sickness or injury, the employee's gross 35

earnings include, for each whole week of absence, an amount—

- (a) equal to the amount of ordinary pay the employee would have otherwise received; but
- (b) reduced by the amount of sick pay that the employee actually received for that week or any part of that week. 5

Compare: 1981 No 15 s 18(1)–(4), (7)

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

For the purposes of this Act, if an employee is required under **section 30** to take annual holidays during a closedown period, the employee's next year of employment must be treated as commencing on the date on which the premises are closed or the work is discontinued for that period. 10

Compare: 1981 No 15 s 18(5) 15

Relationship between annual holidays and other entitlements

34 Employee must not take sick leave or bereavement leave when taking annual holidays

- (1) This section applies to an employee who has been allowed to take, or is taking, annual holidays under this subpart and who then— 20

- (a) becomes sick or is injured; or
- (b) has a spouse or dependant who becomes sick or injured; or
- (c) suffers a bereavement as described in **section 62(2)**. 25

- (2) An employee must not, without the employer's agreement, take any day or period that the employee proposed to take as an annual holiday, or is taking as an annual holiday as sick leave or as bereavement leave.

Compare: 1981 No 15 s 14 30

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

- (1) This section applies if— 35
 - (a) an employee has exhausted his or her entitlement to sick leave under **subpart 3**, but then—
 - (i) becomes sick or injured; or

- (ii) has a spouse or dependant who becomes sick or injured; or
 - (b) an employee requires more leave for a bereavement than he or she is entitled to under **subpart 3**.
 - (2) The employer— 5
 - (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. 10
- 36 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. 15
 - (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. 20
 - (3) The employee is entitled to be paid for a public holiday that would have occurred during the employee’s annual holidays had the employee taken the holiday immediately after the date on which the employee’s employment came to an end. 25

Subpart 2—Public holidays

- 37 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: 30
 - (b) to enable employees to agree to work on a public holiday in exchange for another day’s paid leave.
- 38 Days that are public holidays**
- Except as an employment agreement otherwise provides, or as an employer and employee otherwise agree, the following days are public holidays: 35

- (a) Christmas Day:
 - (b) Boxing Day:
 - (c) New Year's Day:
 - (d) 2 January (or some other day in its place):
 - (e) Good Friday: 5
 - (f) Easter Monday:
 - (g) ANZAC Day:
 - (h) Labour Day (being the fourth Monday in October):
 - (i) the birthday of the reigning Sovereign (observed on the first Monday in June): 10
 - (j) Waitangi Day:
 - (k) the day of the anniversary of a province or the day locally observed as that day (or some other day in its place).
- Compare: 1981 No 15 s 7A(2) 15

39 Public holidays over Christmas and New Year

For the purposes of this subpart, if any of the public holidays listed in **section 38(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: 20
- (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: 25
- (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. 30

Determination of what would otherwise be working day

40 Determination of what would otherwise be working day

- (1) For the purposes of this subpart, an employer and employee must take into account the factors listed in **subsection (2)** if—
 - (a) they cannot agree whether a day would otherwise be a working day for the employee; or 35
 - (b) it is not clear whether a day would otherwise be a working day for the employee.

- (2) 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: 5
 - (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. 10
- (3) For the purposes of this section, a day is not otherwise a working day for an employee if the employee only works for the employer on public holidays.

41 Labour Inspector may determine what would otherwise be working day 15

- (1) This section applies if an employer and employee cannot agree under **section 40** 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. 20
- (3) In making a determination, the Labour Inspector must take into account the factors listed in **section 40(2)**.

Entitlement to public holidays

42 Entitlement to public holidays

- (1) An employee is entitled to public holidays in accordance with this subpart. 25
- (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)

43 When employee required to work on public holiday 30

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, the employee would otherwise be required to work; and 35
- (b) the employee is required to work on the public holiday under the employee's employment agreement.

44 Compliance with section 42

- (1) If a public holiday falls on a day that would not otherwise be a working day for an employee, **section 42** is complied with if the employee does not work on that day.
- (2) If a public holiday falls on a day that would otherwise be a working day for an employee, **section 42** 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 45**; or
 - (b) the employee—
 - (i) works on any part of that day; and
 - (ii) the employer pays the employee in accordance with **section 46**; and
 - (iii) the employer provides the employee with an alternative holiday under **section 49**.

*Payment for public holidays***45 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 ordinary pay for that day.

46 Payment if employee works on public holiday

- (1) If an employee works on any part of a public holiday, the employer must pay the employee, for the time worked on that day, the greater of the amounts referred to in **subsection (2)**.
- (2) The amounts are—
- (a) the employee's ordinary pay plus half that rate again; or
 - (b) the amount specified in the employee's employment agreement.

47 Compliance with section 46

- (1) Every employment agreement must, from the date referred to in **subsection (2)**, include a provision that explains how the requirement in **section 46** is complied with.
- (2) The date is the earlier of—
- (a) the date on which the employee's employment agreement is next amended; or

- (b) the expiry of 12 months after the commencement of this Act.
- (3) To avoid doubt, a dispute about whether an employment agreement complies with **subsection (1)** is an employment relationship problem for the purposes of the Employment Relations Act 2000. 5
- (4) If an employment agreement is found not to comply with **subsection (1)**, it must, as soon as practicable, be amended so that it does comply.
- (5) However, the fact that the employment agreement does not comply with **subsection (1)** does not affect the employer's obligation to pay the employee in accordance with **section 46**. 10

48 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. 15

Alternative holiday

49 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— 20
- (a) the public holiday falls on a day that would otherwise be a working day for an employee; and
- (b) the employee works on any part of that day.
- (2) If **subsection (1)** applies, an employer must— 25
- (a) provide the employee with an alternative holiday; and
- (b) pay the employee for working on the public holiday in accordance with **section 46**.
- (3) The entitlement to an alternative holiday remains in force until— 30
- (a) the employee has taken the holiday; or
- (b) the employee has been paid for the holiday in accordance with **section 53(2)** or **section 54**.

50 Requirements of alternative holiday

- (1) An alternative holiday provided under **section 49** must— 35
- (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 day off work, regardless of the number of hours the employee actually worked on the public holiday. 5
- (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 10
 - (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. 15

51 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 20
- (b) the employer and employee have not been able to agree under **section 50(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. 25

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

- (1) 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— 30
- (a) payment for the hours worked in accordance with **section 46**; and
 - (b) an alternative holiday under **section 49**. 35
- (2) If an employee is on call and is not called in to work, the employee is entitled to an alternative holiday only 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.

- (3) **Subsections (1) and (2)** apply whether or not—
- (a) the public holiday would otherwise be a working day for the employee; or 5
 - (b) the employee only works for the employer on public holidays.
- 53 Payment for alternative holiday**
- (1) An employer must pay an employee not less than the employee's ordinary pay for the day which is taken as the alternative holiday. 10
- (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, in the employee's final pay. 15
- 54 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. 20
- (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 25
 - (b) may be made whether or not the employee has been required to take the alternative holiday under **section 51**.
- (3) If the employer agrees to the employee's request, the employer must pay the employee not less than the employee's ordinary pay in exchange for the alternative holiday. 30
- (4) The employer must make the payment for the alternative holiday as soon as practicable after the employer has agreed under **subsection (3)**.

Subpart 3—Sick leave and bereavement leave

55 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. 5

Entitlement to sick leave and bereavement leave

56 Entitlement to sick leave and bereavement leave

- (1) An employee is entitled to sick leave and bereavement leave in accordance with this subpart after the employee has completed 6 months' current continuous employment with the employer. 10
- (2) Sick leave and bereavement leave must be provided to an employee in respect of—
- (a) the 12-month period of employment beginning at the completion of the 6-month period specified in **subsection (1)**; and 15
 - (b) each subsequent 12-month period of employment.

Compare: 1981 No 15 s 30A(1)

57 Employee must notify employer of intention to take leave 20

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 25
- (b) if that is not practicable, as early as possible after that time.

Compare: 1981 No 15 s 30A(5)

Sick leave 30

58 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. 35

- (2) An employee is entitled to 5 days' sick leave for each of the 12-month periods specified in **section 56(2)**.

59 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. 5
- (2) However, for the purposes of **subsection (1)**, an employee is not entitled to carry over more than 15 days' sick leave.

Compare: 1981 No 15 s 30A(3)

60 Sick leave need not be paid out 10

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.

61 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 58** if the sickness or injury that gave rise to the leave is for a period of 5 or more consecutive calendar days, whether or not the days would otherwise be working days for the employee. 15
- (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 58**. 20
- (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— 25
- (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: 30
 - (ii) because a person who depends on the employee for care is sick or injured.

Bereavement leave

62 Bereavement leave

- (1) An employee may take bereavement leave in accordance with **sections 56** and **63** if the employee suffers a bereavement. 35

- (2) An employee suffers a bereavement—
- (a) on the death of the employee's—
 - (i) spouse:
 - (ii) parent:
 - (iii) child: 5
 - (iv) brother or sister:
 - (v) grandparent:
 - (vi) grandchild:
 - (vii) spouse's parent; or
 - (b) on the death of any other person if the employer 10

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 15

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 20

to the death.

Compare: 1981 No 15 s 30A(7)

63 Duration of bereavement leave

An employer must provide an employee with—

- (a) 3 days' bereavement leave for each type of bereavement described in **section 62(2)(a)**; and 25
- (b) 1 day's bereavement leave for a bereavement described in **section 62(2)(b)**.

Payment for sick leave and bereavement leave

64 Payment for sick leave and bereavement leave 30

- (1) An employer must pay an employee an amount that is equivalent to the employee's ordinary pay for each day of sick leave or bereavement leave taken by the employee.
- (2) 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. 35

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

- 65 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. 5
- (2) However, if an employee is required to provide proof of sickness or injury under **section 61** 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. 10

Part 3 Enforcement and other matters

Subpart 1—Enforcement

- 66 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. 15
- (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 20
- (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. 25
- 67 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: 30
- (c) 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)**. 35

68 Penalty for non-compliance

An employer who fails to comply with this Act is liable to the following penalty:

- (a) if the employer is an individual, to a penalty not exceeding \$5,000: 5
- (b) if the employer is a company or other body corporate, to a penalty not exceeding \$10,000.

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

69 Proceedings for penalty

- (1) A Labour Inspector may bring an action in the Authority against an employer to recover a penalty under **section 68**. 10
- (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. 15
- (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 20
 - (c) dismiss the action.
- (5) An action for the recovery of a penalty must be commenced within 1 year after the cause of action has arisen.
- (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 25
 - (b) in any other case, into Court and then into the Crown Bank Account.

70 Proceedings by Labour Inspector

- (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. 30
- (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. 35

- (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. 5
Compare: 1981 No 15 s 35
- 71 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. 10
Compare: 1981 No 15 s 32
- 72 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 6(2)**, **section 11(2)**, **section 41(2)**, or **section 77(2)** is binding on the employer and employee. 15
- Holiday and leave record*
- 73 Holiday and leave record** 20
- (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: 25
 - (b) the date on which the employee's employment commenced:
 - (c) the employee's current entitlement to annual holidays:
 - (d) the employee's current entitlement to sick leave:
 - (e) the dates on which any annual holiday, sick leave, or bereavement leave has been taken: 30
 - (f) the amount of pay for any annual holiday, sick leave, or bereavement leave that has been taken:
 - (g) the dates of, and payments for, any public holiday on which the employee worked: 35
 - (h) 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:
- (i) the cash value of any board or lodgings, as agreed or determined under **section 8**:
 - (j) the details of any payment to which the employee is entitled under **section 54(3)**: 5
 - (k) the date of the termination of the employee's employment (if applicable):
 - (l) the amount paid to the employee as holiday pay upon the termination of the employee's employment (if applicable): 10
 - (m) 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. 15
- (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. 20
- (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
- 74 Requests for access to holiday and leave record** 25
- (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: 30
 - (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— 35
- (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. 40

- 75 Failure to keep or provide access to holiday and leave record**
- (1) Evidence that an employer has failed to comply with **section 73 or section 74** may be given in an action before the Authority—
- (a) to recover holiday pay or leave pay from an employer; 5
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. 10
- (3) If, after hearing the evidence, the Authority is satisfied that the employer failed to comply with **section 73 or section 74** and that the failure prevented the claimant from bringing an accurate claim, the Authority may make a finding to that effect. 15
- (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— 20
- (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
- 76 Power to award interest on unpaid holiday pay or leave pay** 25
- (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. 30
- (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. 35

- (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. 5
- 77 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. 10
- (2) **Subsection (1)** does not apply if a Labour Inspector makes a determination that the 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. 15
- Compare: 1981 No 15 s 20
- 78 Holiday pay and leave pay treated as salary or wages**
- Holiday pay and leave pay payable by an employer to an employee is— 20
- (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. 25
- Compare: 1981 No 15 s 22
- 79 Regulations**
- The Governor-General may, by Order in Council, make regulations for 1 or more of the following purposes: 30
- (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: 35

- (d) providing for any other matters that are contemplated by or necessary for giving full effect to this Act and its due administration.

80 Repeals and consequential amendments

- (1) The enactments specified in **Schedule 1** are repealed. 5
 - (2) The enactments specified in **Schedule 2** are amended in the manner set out in that schedule.
-

s 80(1)

**Schedule 1
Acts repealed**

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.	5
Holidays Act 1981 (1981 No 15)	
Human Rights Amendment Act 2001 (2001 No 96) Section 52 and the heading above that section.	10
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.	15
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.	20
Parental Leave and Employment Protection Act 1987 (1987 No 129) Section 75(3).	
Taxation (Core Provisions) Act 1996 (1996 No 67) So much of Schedule 3 as relates to the Holidays Act 1981.	25
Waitangi Day Act 1976 (1976 No 33) Section 5.	

Schedule 2 Enactments amended

s 80(2)

Part 1 Acts amended

Companies Act 1993 (1993 No 105)	5
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)	10
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 .”	
20	
Omit from section 79(1) the words “section 4 of the Holidays Act 1981” and substitute the words “ section 7 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 69 of the Holidays Act 2003 ”.	
25	
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 ”.	
30	
Omit from section 228(1) the expression “Holidays Act 1981” and substitute the expression “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 ”.	
35	
Repeal section 236(4)(d) and substitute:	
“(d) the Holidays Act 2003 :”.	

Part 1—*continued***Immigration Act 1987** (1987 No 74)

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

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

5

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

Omit from section 306(1) the words “section 30A of the Holidays Act 1981” and substitute the words “**subpart 3 of Part 2** of the Holidays Act **2003**”.

10

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**”.

15

Parental Leave and Employment Protection Act 1987

(1987 No 129)

Repeal section 42(2) and substitute:

20

“(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,—

25

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 during the year in respect of which the employee has become entitled to the holiday.”

30

Repeal section 42(3).

Omit from the definition of **ordinary pay** in section 71M(2) the words “section 4 of the Holidays Act 1981” and substitute the words “**section 7** of the Holidays Act **2003**”.

35

Omit from section 72(2) the words “section 33 of the Holidays Act 1981” and substitute “**section 14(3)** of the Holidays Act **2003**”.

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

Omit from section 86G(2) the words “section 4 of the Holidays Act 1981” and substitute the words “**section 7** of the Holidays Act **2003**”.

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**”. 5

Part 2

Regulations amended

Disabled Persons Employment Promotion Order 2001

(SR 2002/332) 10

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 Court Rules 1992 (SR 1992/109) 15

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**”. 20

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 38** of the Holidays Act **2003**”. 25

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

Revoke the definition of **public holiday** in regulation 2 and substitute: 30

“**public holiday** means a day listed as a holiday in **section 38** of the Holidays Act **2003**”.

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

Revoke the definition of **public holiday** in regulation 2 and substitute: 35

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 38** of the Holidays Act **2003**”.