

House of Representatives

Supplementary Order Paper

Tuesday, 12 October 2004

Holidays Amendment Bill

Proposed amendments

Dr Wayne Mapp, in Committee, to move the following amendments:

Clause 2A

To insert, after line 11 on page 2, the following definition:

“**ordinary daily pay** has the meaning given to it by **section 9**.”

To add as subclause (2), the following subclause:

- (2) Section 5(1) of the principal Act is amended by omitting the definition of **relevant daily pay**.

Clause 3

To omit this clause (line 12 to line 16 on page 2), and substitute the following clause:

3 Ordinary daily pay

The principal Act is amended by repealing section 9, and substituting the following section:

“9 **Meaning of ordinary daily pay**

- “(1) In this Act, unless the context otherwise requires, **ordinary daily pay**, for the purposes of calculating payment for a public holiday, alternative holiday, sick leave, or bereavement leave,—

“(a) means the amount of pay that the employee receives under his or her employment agreement for an ordinary working day; and

“(b) if an employment agreement sets a composite rate of pay, then

ordinary daily pay includes the constituent parts of that rate unless the composite parts are clearly defined and able to be excluded under paragraph (c).

- “(c) excludes—
- “(i) productivity or incentive-based payments (including commission):
 - “(ii) payments for overtime:
 - “(iii) bonuses, allowances, or other payments for actually working the day:
 - “(iv) any one-off or exceptional payments:
 - “(v) any discretionary payments that the employer is not bound, under the terms of the employee’s employment agreement, to pay the employee.
- “(2) To avoid doubt, if **subsection (1)(a)** is to be applied in the case of a public holiday, the amount of pay does not include any amount that would be added by virtue of **section 50(1)(a)** (which relates to the requirement to pay time and a half).
- “(3) If it is not possible to determine an employee’s ordinary daily pay under subsection (1), the pay must be calculated in accordance with the following formula:
- $$\frac{a - b}{c}$$
- where—
- a is the employee’s gross earnings for—
 - (i) the 4 calendar weeks before the end of the pay period immediately before the calculation is made; or
 - (ii) if, the employee’s normal pay period is longer than 4 weeks, that pay period immediately before the calculation is made
 - b is the total amount of payments described in **subsection (1)(c)(i) to (v)**
 - c is the number of whole or part days during which the employee earned those earnings in the 4 calendar weeks, or longer period (as the case may be) including any day on which the employee was on a paid holiday or paid leave; but excluding any other day on which the employee did not actually work.
- “(4) However, an employment agreement may specify a special rate of ordinary daily pay for the purpose of calculating payment for a public holiday, alternative holiday, sick leave, or bereavement leave if the rate is equal to, or greater than, what would otherwise be calculated under **subsection (1)** or **subsection (3)**”.

New Clause 3A

To insert, after clause 3 (after line 16 on page 2), the following clause:

3A Relevant daily pay now ordinary daily pay

- (1) Section 10 of the principal Act is amended by omitting the words “relevant daily pay”, and substituting the words “ordinary daily pay” where ever they occur.
- (2) Section 11 of the principal Act is amended by omitting the words “relevant daily pay”, and substituting the words “ordinary daily pay” where ever they occur.
- (3) Section 49 of the principal Act is amended by omitting the words “relevant daily pay”, and substituting the words “ordinary daily pay”.
- (4) Section 52 of the principal Act is amended by omitting the words “relevant daily pay”, and substituting the words “ordinary daily pay” where ever they occur.
- (5) Section 53 of the principal Act is amended by omitting the words “relevant daily pay”, and substituting the words “ordinary daily pay” where ever they occur.
- (6) Section 60 of the principal Act is amended by omitting the words “relevant daily pay”, and substituting the words “ordinary daily pay” where ever they occur.
- (7) Section 71 of the principal Act is amended by omitting the words “relevant daily pay”, and substituting the words “ordinary daily pay”.

Clause 4

To omit the word “relevant” (line 25 on page 2), and substitute the word “ordinary”.

To omit the word “relevant” (line 28 on page 2), and substitute the word “ordinary”.

New clause 11

To insert, after line 22 on page 6, the following clause:

11 Schedule 3 amended

Part 1 of Schedule 3 of the principal Act is amended by repealing the Item relating to section 79(1) of the Employment Relations Act 2000, and substituting the following item:

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