



Holidays Amendment Act 2016

Public Act 2016 No 10
Date of assent 17 March 2016
Commencement see section 2

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New Schedule 1AA inserted	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Holidays Amendment Act 2016.

2 Commencement

This Act comes into force on 1 April 2016.

3 Principal Act

This Act amends the Holidays Act 2003 (the **principal Act**).

4 New section 5A inserted (Provisions affecting application of amendments to this Act)

After section 5, insert:

5A Provisions affecting application of amendments to this Act

Schedule 1AA contains application, savings, and transitional provisions relating to amendments made to this Act on or after 1 April 2016.

5 Section 75 amended (Penalty for non-compliance)

(1) In section 75(1), after “subsection (2)”, insert “, and every person who is involved in the failure to comply”.

(2) Replace section 75(2)(e) with:

(e) section 81 (which relates to an employer’s obligation to keep a holiday and leave record):

(f) section 82 (which relates to requests for access to a holiday and leave record).

(3) After section 75(2), insert:

(3) For the purposes of subsection (1), a person is **involved in a failure to comply** if the person would be treated as a person involved in a breach within the meaning of section 142W of the Employment Relations Act 2000.

6 Section 76 amended (Proceedings by Labour Inspector for penalty)

(1) In the heading to section 76, after “**Labour Inspector**”, insert “**or employee concerned**”.

(2) In section 76(1), replace “is the only person” with “and the employee concerned are the only persons”.

(3) After section 76(1), insert:

(1A) However, only a Labour Inspector may bring an action in the Authority against a person involved in a failure to comply in order to recover a penalty under section 75.

(4) In section 76(5), after “Labour Inspector”, insert “or employee concerned”.

(5) After section 76(5), insert:

(5A) Despite subsection (5), if a court refuses to make a pecuniary penalty order under section 142E of the Employment Relations Act 2000, an action for the recovery of a penalty in relation to the same matter must be commenced within 3 months after the refusal.

7 New sections 76A and 76B inserted

After section 76, insert:

76A Matters Authority to have regard to in determining amount of penalty

In determining an appropriate penalty under section 76, the Authority or the court (as the case may be) must have regard to all relevant matters, including—

- (a) the purpose stated in section 3 and, to the extent relevant, the object stated in section 3 of the Employment Relations Act 2000; and
- (b) the matters referred to in section 133A(b) to (g) of the Employment Relations Act 2000.

76B Chief executive or Labour Inspector may enforce payment of penalty

The chief executive or a Labour Inspector may recover in a District Court as a debt due to the Crown any penalty ordered by the Authority or the court under section 76 to be paid to the Crown.

8 New section 77A inserted (Proceedings by Labour Inspector or employee to recover arrears of pay from person involved in failure to comply)

After section 77, insert:

77A Proceedings by Labour Inspector or employee to recover arrears of pay from person involved in failure to comply

- (1) A Labour Inspector or an employee may recover from a person who is not the employee's employer any unpaid holiday pay or leave pay that the employee is entitled to if—
 - (a) the employee is entitled to unpaid holiday pay or leave pay under this Act; and
 - (b) the holiday pay or leave pay is unpaid due to non-compliance with this Act; and
 - (c) the person from whom the pay is sought to be recovered is a person involved in the non-compliance.
- (2) However, unpaid holiday pay or leave pay may be recovered under subsection (1) only,—
 - (a) in the case of recovery by an employee, with the prior leave of the Authority or court; and

- (b) to the extent that the employee's employer is unable to pay the holiday pay or leave pay.
- (3) For the purposes of subsection (1), a person is **involved in the non-compliance** if the person would be treated as a person involved in a breach within the meaning of section 142W of the Employment Relations Act 2000.

9 Section 81 amended (Holiday and leave record)

- (1) Repeal section 81(1).
- (2) In section 81(2), replace "The holiday and leave record must contain the following information for each employee:" with "An employer must at all times keep a holiday and leave record showing, in the case of each employee employed by the employer, the following information:".
- (3) Replace section 81(2)(c) with:
 - (c) the number of hours worked each day in a pay period and the pay for those hours:
- (4) After section 81(3), insert:
 - (3A) If an employee's number of hours worked each day in a pay period and the pay for those hours are agreed and the employee works those hours (the **usual hours**), it is sufficient compliance with subsection (2)(c) if those usual hours and pay are stated in—
 - (a) the employee's wages and time record kept under section 130 of the Employment Relations Act 2000; or
 - (b) the employee's employment agreement; or
 - (c) a roster or any other document or record used in the normal course of the employee's employment.
 - (3B) In subsection (3A), the **usual hours** of an employee who is remunerated by way of salary include any additional hours worked by the employee in accordance with the employee's employment agreement.
 - (3C) Despite subsection (3B), the employer must record any additional hours worked that need to be recorded to enable the employer to comply with the employer's general obligation under section 4B(1) of the Employment Relations Act 2000.

10 New Schedule 1AA inserted

After section 91, insert the Schedule 1AA set out in the Schedule of this Act.

Schedule
New Schedule 1AA inserted

s 10

Schedule 1AA
Application, savings, and transitional provisions relating to
amendments made to this Act on or after 1 April 2016

s 5A

1 Interpretation

In this schedule, 2016 Act means the Holidays Amendment Act 2016.

2 Application, savings, and transitional provisions arising from 2016 Act

The amendments made by the 2016 Act do not apply to conduct that occurred before the commencement of that Act.

Legislative history

8 March 2016

Divided from Employment Standards Legislation Bill (Bill 53–2) as Bill 53–3C

10 March 2016

Third reading

17 March 2016

Royal assent

This Act is administered by the Ministry of Business, Innovation, and Employment.