

House of Representatives

Supplementary Order Paper

Wednesday, 2 March 2016

Employment Standards Legislation Bill

Proposed amendments

Clayton Mitchell, in Committee, to move the following amendments:

New clauses 115A to 115D

After clause 115 (page 78, after line 20), insert:

115A Section 48 amended (Compliance with section 46)

Replace section 48(1) with:

- (1) If an employee has a set pattern of work and a public holiday falls on a day that would not otherwise be a working day for an employee, section 46 is complied with if—
 - (a) the employee does not work on the day; or
 - (b) the employee works on any part of the day and the employer pays the employee in accordance with section 50.
- (1A) If an employee works for the employer on a basis that is so intermittent or irregular that they have no set pattern of work, and a public holiday occurs, section 46 is complied with—
 - (a) if—
 - (i) the employee does not work on the day; and
 - (ii) the employer pays the employee in accordance with **section 49A**; or
 - (b) if—
 - (i) the employee works (in accordance with his or her employment agreement) on any part of that day; and

- (ii) the employer pays the employee in accordance with section 50; and
- (iii) the employer pays the employee in accordance with **section 49A**.

115B New section 49A inserted (Recognition of public holidays for employees with no fixed pattern of work)

After section 49, insert:

49A Recognition of public holidays for employees with no fixed pattern of work

- (1) Where an employee works for an employer on a basis that is so intermittent or irregular that they have no set pattern of work, the employer must pay them for public holidays in accordance with this section.
- (2) The employer must ensure that public holiday pay—
 - (a) is paid as an identifiable component of the employee’s pay; and
 - (b) is paid at a rate of not less than 4.4% of the employee’s gross earnings.
- (3) If an employer and employee agree to a set pattern of work, public holiday pay under this section may be discontinued provided the pattern of work is recorded in accordance with **section 67C** of the Employment Relations Act 2000.

115C New section 71A inserted (Sick and bereavement pay for short-term or intermittently-employed employees)

After section 71, insert:

71A Sick and bereavement pay for short-term or intermittently-employed employees

- (1) An employee is entitled to be paid sick and bereavement pay by their employer in accordance with this section if the employee—
 - (a) is employed in accordance with section 66 of the Employment Relations Act 2000 on a fixed-term agreement to work for less than 6 months; or
 - (b) works for the employer on a basis that is so intermittent or irregular that they are not entitled to sick leave and bereavement leave in accordance with section 63(1).
- (2) Sick and bereavement pay must be—
 - (a) paid as an identifiable component of the employee’s pay; and

- (b) paid at a rate not less than 1.6% of the employee's gross earnings.
- (3) If the fixed-term agreement of an employee to whom **subsection (1)(a)** applies is followed by permanent employment with the same employer, the employee—
 - (a) becomes entitled to paid sick leave and bereavement leave at the end of 6 months' continuous employment (including the period of that fixed-term agreement) under section 63; but
 - (b) the amount of the sick pay and bereavement pay that the employee is entitled to be paid for sick pay and bereavement pay is reduced by the amount that the employee has already received under **subsection (2)**.
- (4) If an employer has incorrectly paid sick and bereavement pay with an employee's pay in circumstances where **subsection (1)** does not apply and the employee's employment has continued for 6 months or more, then, despite those payments, the employee becomes entitled to annual holidays in accordance with section 63 and paid in accordance with this subpart.

115D New section 72A inserted (Missed benefits payment for intermittently-employed employees)

After section 72, insert:

72A Missed benefits payment for intermittently-employed employees

- (1) If an employee works for an employer on a basis that is so intermittent or irregular that they have no fixed pattern of work, they are entitled to missed benefits pay in recognition of their lack of employment security and associated benefits.
- (2) Missed benefits pay must be—
 - (a) paid as an identifiable component of the employee's pay; and
 - (b) paid at a rate not less than 5% of the employee's gross earnings.

Explanatory note

This Supplementary Order Paper amends Part 3 of the Bill, which amends the Holidays Act 2003. The proposals are intended to create a loading on any casual employee, giving benefit to the worker and an incentive to the employer to move the employee onto a part-time or full-time contract. All employers will still be subject to paying standard KiwiSaver payments for employees.

In a modern day workplace there is a need for casual employment. Casual employees are in many sectors of the workplace covering areas of peak fluctuations and unpredictable high demands for employers.

New Zealand First strongly opposes parts of the new Employment Standards Legislation Bill, particularly the ‘availability provisions’, which have legitimised zero-hour work contracts.

The purpose of this Supplementary Order Paper is to pay all casual employees a loading of 19% on the average hourly rate of a full-time employee doing the same or similar job as the casual worker. The 19% is broken down as follows:

- 1.6% loading for sick and bereavement leave:
- 4.4% loading for statutory holidays:
- 8% loading for standard holiday pay:
- 5% casual loading.

The employer will have the ability to move workers off a casual employment agreement and onto a part-time or full-time contract without paying any of the loading.

There will be no penalty payments for employers who make part-time or full-time work available for casual employees.