

Reprint  
as at 1 September 2017



## Holidays Act 2003

Public Act 2003 No 129  
Date of assent 17 December 2003  
Commencement see section 2

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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

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**1 Title**

This Act is the Holidays Act 2003.

**Part 1  
Preliminary provisions****2 Commencement**

- (1) Subpart 2 of Part 2 and Schedule 1 come into force on 1 April 2007.
- (2) The rest of this Act comes into force on 1 April 2004.

**3 Purpose**

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:
- (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:
- (d) bereavement leave to assist employees who are unable to attend work because they have suffered a bereavement.

**4 Overview**

- (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:
    - (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:
    - (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—
    - (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:
- (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

**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 daily pay** means a rate of pay calculated in accordance with section 9A(2)

**average weekly earnings** means 1/52 of an employee's gross earnings

**bereavement leave** means paid bereavement leave provided under subpart 4 of Part 2

**closedown period** has the meaning given to it by section 29

**discretionary payment**—

- (a) means a payment that the employer is not bound, by the employee's employment agreement, to pay the employee; but
- (b) does not include a payment that the employer is bound, by the employee's employment agreement, to pay the employee, even though—
  - (i) the amount to be paid is not specified in that employment agreement and the employer may determine the amount to be paid; or
  - (ii) the employer is required under that employment agreement to make the payment only if certain conditions are met

**employee** has the same meaning as in section 6 (except subsection (1)(b)(ii)) of the Employment Relations Act 2000

**existing collective agreement** means a collective agreement that was entered into before 1 April 2004

**existing employment agreement** means an employment agreement that is entered into before 1 April 2004

**existing individual employment agreement** means an individual employment agreement that was entered into before 1 April 2004

**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 14

**holiday**—

- (a) means—
  - (i) a paid annual holiday provided under subpart 1 of Part 2;
  - (ii) a paid public holiday provided under subpart 3 of Part 2; and
- (b) includes any alternative holiday an employee is entitled to under section 56 or section 59

**holiday and leave record** means the record required to be kept under section 81

**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 61

**in advance**,—

- (a) in relation to an annual holiday, means an annual holiday taken by an employee before the entitlement to the holiday has arisen under section 16;
- (b) in relation to sick leave or bereavement leave, means any sick leave or bereavement leave taken by the employee before the entitlement to the leave has arisen under section 63

**leave pay** means pay for sick leave or bereavement leave

**ordinary weekly pay** has the meaning given to it by section 8

**partner**, in the phrase “spouse or partner” and in related contexts, means civil union partner or de facto partner

**public holiday**—

- (a) means a day specified in section 44(1); and
- (b) if there is a written agreement under section 44A or 44B,—
  - (i) includes a calendar day or period of 24 hours agreed to be treated as a public holiday; but
  - (ii) excludes the day (or part of a day) specified in section 44(1) agreed not to be treated as a public holiday

**relevant daily pay** has the meaning given to it by section 9

**sick leave** means paid sick leave provided under subpart 4 of Part 2.

- (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.
- (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.

Section 5(1) **average daily pay**: inserted, on 1 April 2011, by section 4(1) of the Holidays Amendment Act 2010 (2010 No 126).

Section 5(1) **closedown period**: inserted, on 1 April 2011, by section 4(1) of the Holidays Amendment Act 2010 (2010 No 126).

Section 5(1) **discretionary payment**: inserted, on 1 April 2011, by section 4(1) of the Holidays Amendment Act 2010 (2010 No 126).

Section 5(1) **existing collective agreement**: inserted, on 22 October 2004, by section 3 of the Holidays Amendment Act 2004 (2004 No 85).

Section 5(1) **existing individual employment agreement**: inserted, on 22 October 2004, by section 3 of the Holidays Amendment Act 2004 (2004 No 85).

Section 5(1) **partner**: inserted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 5(1) **public holiday**: substituted, on 1 April 2011, by section 4(2) of the Holidays Amendment Act 2010 (2010 No 126).

Section 5(1) **spouse**: repealed, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

## 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.

Section 5A: inserted, on 1 April 2016, by section 4 of the Holidays Amendment Act 2016 (2016 No 10).

## 6 Relationship between Act and employment agreements

- (1) Each entitlement provided to an employee by this Act is a minimum entitlement.
- (2) This Act does not prevent an employer from providing an employee with enhanced or additional entitlements (whether specified in an employment agreement or otherwise) on a basis agreed with the employee.
- (3) However, 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
  - (b) is not an illegal contract under subpart 5 of Part 2 of the Contract and Commercial Law Act 2017.

Section 6(3)(b): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

## 7 Application

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.

Compare: 1981 No 15 s 7

*Key terms defined*

**8 Meaning of ordinary weekly pay**

- (1) In this Act, unless the context otherwise requires, **ordinary weekly pay**, for the purposes of calculating annual holiday pay,—
- (a) means the amount of pay that the employee receives under his or her employment agreement for an ordinary working week; and
  - (b) includes—
    - (i) productivity or incentive-based payments (including commission) if those payments are a regular part of the employee’s pay;
    - (ii) payments for overtime if those payments are a regular part of the employee’s pay;
    - (iii) the cash value of any board or lodgings provided by the employer to the employee; but
  - (c) excludes—
    - (i) productivity or incentive-based payments that are not a regular part of the employee’s pay;
    - (ii) payments for overtime that are not a regular part of the employee’s pay;
    - (iii) any one-off or exceptional payments;
    - (iv) any discretionary payments that the employer is not bound, under the terms of the employee’s employment agreement, to pay the employee;
    - (v) any payment of any employer contribution to a superannuation scheme for the benefit of the employee.
- (2) If it is not possible to determine an employee’s ordinary weekly 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 (iii)
  - c is 4.
- (3) However, an employment agreement may specify a special rate of ordinary weekly pay for the purpose of calculating annual holiday pay if the rate is equal to, or greater than, what would otherwise be calculated under subsection (1) or subsection (2).

Compare: 1981 No 15 s 4

Section 8(1)(c)(iv): amended (with effect on 17 May 2007), on 19 December 2007, by section 119 of the Taxation (Kiwisaver) Act 2007 (2007 No 110).

Section 8(1)(c)(v): added (with effect on 17 May 2007), on 19 December 2007, by section 119 of the Taxation (Kiwisaver) Act 2007 (2007 No 110).

## 9 Meaning of relevant daily pay

- (1) In this Act, unless the context otherwise requires, **relevant daily pay**, for the purposes of calculating payment for a public holiday, an alternative holiday, sick leave, or bereavement leave,—
  - (a) means the amount of pay that the employee would have received had the employee worked on the day concerned; and
  - (b) includes—
    - (i) productivity or incentive-based payments (including commission) if those payments would have otherwise been received had the employee worked on the day concerned;
    - (ii) payments for overtime if those payments would have otherwise been received had the employee worked on the day concerned;
    - (iii) the cash value of any board or lodgings provided by the employer to the employee; but
  - (c) excludes any payment of any employer contribution to a superannuation scheme for the benefit of the employee.
- (2) However, an employment agreement may specify a special rate of relevant daily pay for the purpose of calculating payment for a public holiday, an alternative holiday, sick leave, or bereavement leave if the rate is equal to, or greater than, the rate that would otherwise be calculated under subsection (1).
- (3) 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).

Section 9: substituted, on 1 April 2011, by section 5 of the Holidays Amendment Act 2010 (2010 No 126).

**9A Average daily pay**

- (1) An employer may use an employee's average daily pay for the purposes of calculating payment for a public holiday, an alternative holiday, sick leave, or bereavement leave if—
- (a) it is not possible or practicable to determine an employee's relevant daily pay under section 9(1); or
  - (b) the employee's daily pay varies within the pay period when the holiday or leave falls.
- (2) The employee's average daily pay must be calculated in accordance with the following formula:

$$\frac{a}{b}$$

where—

- a is the employee's gross earnings for the 52 calendar weeks before the end of the pay period immediately before the calculation is made
  - b is the number of whole or part days during which the employee earned those gross earnings, 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.
- (3) To avoid doubt, if subsection (2) 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).

Section 9A: inserted, on 1 April 2011, by section 5 of the Holidays Amendment Act 2010 (2010 No 126).

**10 Cash value of board or lodgings included in ordinary weekly pay and relevant daily pay**

- (1) For the purposes of section 8 and section 9, the ordinary weekly pay or relevant daily pay (as the case may be) 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
  - (b) as determined by a Labour Inspector if the employer and employee cannot agree on the cash value.
- (2) Despite subsection (1), the ordinary weekly pay or relevant daily pay of an employee does not include the cash value of any board or lodgings provided by an employer to the employee—
- (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.

Compare: 1981 No 15 s 5

**10A Treatment of payments made under Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016**

For the purposes of sections 8, 9, and 14, the ordinary weekly pay, relevant daily pay, or gross earnings (as the case may be) of an employee—

- (a) includes payments made to the employee under section 14 of the Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016; but
- (b) excludes payments made to the employee under section 19 of the Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016.

Section 10A: inserted, on 25 February 2016, by section 32(2) of the Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016 (2016 No 2).

**11 Labour Inspector may determine ordinary weekly pay, relevant daily pay, and average daily pay**

- (1) This section applies if an employer and employee cannot agree on the amount of the employee's—
  - (a) ordinary weekly pay under section 8; or
  - (b) relevant daily pay under section 9; or
  - (c) average daily pay under section 9A.
- (2) A Labour Inspector may determine the amount of the employee's ordinary weekly pay, relevant daily pay, or average daily pay (as the case may be).
- (3) In making a determination, a Labour Inspector must apply the provisions of section 8, 9, or 9A (as the case may be) to the circumstances of the employee as determined by the Labour Inspector.

Section 11: substituted, on 1 April 2011, by section 6 of the Holidays Amendment Act 2010 (2010 No 126).

*Determination of what would otherwise be working day*

**12 Determination of what would otherwise be working day**

- (1) This section applies for the purpose of determining an employee's entitlements to a public holiday, an alternative holiday, to sick leave, or to bereavement leave.
- (2) If it is not clear whether a day would otherwise be a working day for the employee, the employer and employee must take into account the factors listed in subsection (3), with a view to reaching agreement on the matter.
- (3) 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:
    - (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.
  - (d) whether, but for the day being a public holiday, an alternative holiday, or a day on which the employee was on sick leave or bereavement leave, the employee would have worked on the day concerned.
- (3A) If the public holiday, alternative holiday, or day on which the employee was on sick leave or bereavement leave falls during a closedown period, the factors listed in subsection (3) must be taken into account as if the closedown period were not in effect.
- (4) For the purposes of public holidays, if an employee would otherwise work any amount of time on a public holiday, that day must be treated as a day that would otherwise be a working day for the employee.

Section 12(3)(d): added, on 1 April 2011, by section 7(1) of the Holidays Amendment Act 2010 (2010 No 126).

Section 12(3A): inserted, on 27 November 2010, by section 7(2) of the Holidays Amendment Act 2010 (2010 No 126).

### **13 Labour Inspector may determine what would otherwise be working day**

- (1) This section applies if an employer and employee cannot agree under section 12 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.
- (3) In making a determination, the Labour Inspector must take into account the factors listed in section 12(3).

### **14 Meaning of gross earnings**

In this Act, unless the context otherwise requires, **gross earnings**, in relation to an employee for the period during which the earnings are being assessed,—

- (a) means all payments that the employer is required to pay to the employee under the employee's employment agreement, including, for example—
  - (i) salary or wages:
  - (ii) allowances (except non-taxable payments to reimburse the employee for any actual costs incurred by the employee related to his or her employment):

- (iii) payment for an annual holiday, a public holiday, an alternative holiday, sick leave, or bereavement leave taken by the employee during the period:
  - (iv) productivity or incentive-based payments (including commission):
  - (v) payments for overtime:
  - (vi) the cash value of any board or lodgings provided by the employer as agreed or determined under section 10:
  - (vii) first week compensation payable by the employer under section 97 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 or former Act; but
- (b) excludes any payments that the employer is not bound, by the terms of the employee's employment agreement, to pay the employee, for example—
- (i) any discretionary payments:
  - (ii) any weekly compensation payable under the Injury Prevention, Rehabilitation, and Compensation Act 2001 or former Act:
  - (iii) any payment for absence from work while the employee is on volunteers leave within the meaning of the Volunteers Employment Protection Act 1973; and
- (c) also excludes—
- (i) any payment to reimburse the employee for any actual costs incurred by the employee related to his or her employment:
  - (ii) any payment of a reasonably assessed amount to reimburse the employee for any costs incurred by the employee related to his or her employment:
  - (iii) any payment of any employer contribution to a superannuation scheme for the benefit of the employee:
  - (iv) any payment made in accordance with section 28B.

Compare: 1981 No 15 s 4

Section 14(a)(ii): amended, on 1 April 2011, by section 8(1) of the Holidays Amendment Act 2010 (2010 No 126).

Section 14(b)(iii): amended, on 1 April 2004, by section 15 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 14(c)(iii): added (with effect on 17 May 2007), on 19 December 2007, by section 121 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 14(c)(iv): added, on 1 April 2011, by section 8(2) of the Holidays Amendment Act 2010 (2010 No 126).

## Part 2

### Holiday and leave entitlements

#### Subpart 1—Annual holidays

##### 15 Purpose of this subpart

The purpose of this subpart is to—

- (a) provide all employees with a minimum of 4 weeks' annual holidays to be paid at the time the holidays are taken; and
- (b) enable an employee to request that up to 1 week of his or her annual holidays entitlement be paid out; and
- (c) require employers to pay employees at the end of their employment for annual holidays not taken or paid out; and
- (d) enable employers to manage their businesses, taking into account the annual holiday entitlements of their employees.

Section 15: substituted, on 1 April 2011, by section 9 of the Holidays Amendment Act 2010 (2010 No 126).

#### *Entitlement to annual holidays*

##### 16 Entitlement to annual holidays

- (1) After the end of each completed 12 months of continuous employment, an employee is entitled to not less than 4 weeks' paid annual holidays.
- (2) For the purposes of subsection (1), the 12 months of continuous employment—
  - (a) includes any period during which the employee was—
    - (i) on paid holidays or leave under this Act; or
    - (ii) on parental leave under the Parental Leave and Employment Protection Act 1987; or
    - (iii) on volunteers leave within the meaning of the Volunteers Employment Protection Act 1973; or
    - (iv) 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
    - (v) on unpaid sick leave or unpaid bereavement leave; or
    - (vi) 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)(v) and (vi).
- (3) If, for the purposes of subsection (2)(b), an employer and employee agree that any period of unpaid leave of more than 1 week is to be included in the em-



ployee's 12 months of continuous employment, the divisor of 52 to be used for the purposes of calculating the employee's average weekly earnings must be reduced by the number of whole or part weeks greater than 1 week that the employee was on the unpaid leave.

- (4) An employee's entitlement to annual holidays remains in force until the employee has—
  - (a) taken all of the entitlement as paid holidays; or
  - (b) been paid out under section 28B for the entitlement in the entitlement year.

Compare: 1981 No 15 s 11

Section 16(1): amended, on 1 April 2007, by section 42.

Section 16(2)(a)(iii): substituted, on 1 April 2004, by section 15 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 16(4): substituted, on 1 April 2011, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

## **17 How employee's entitlement to annual holidays may be met**

- (1) An employer and employee may agree on how an employee's entitlement to 4 weeks' annual holidays is to be met based on what genuinely constitutes a working week for the employee.
- (2) If an employer and employee cannot agree on how an employee's entitlement to 4 weeks' annual holidays is to be met, a Labour Inspector may determine the matter for them.
- (3) In making a determination, the Labour Inspector may take into account any matters that the Labour Inspector thinks fit, including the matters specified in section 12(3).

Section 17(1): amended, on 1 April 2007, by section 42.

Section 17(2): amended, on 1 April 2007, by section 42.

## **18 Taking of annual holidays**

- (1) 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.
- (2) If an employee elects to do so, the employer must allow the employee to take at least 2 weeks of his or her annual holidays entitlement in a continuous period.
- (3) When annual holidays are to be taken by the employee is to be agreed between the employer and employee.
- (4) An employer must not unreasonably withhold consent to an employee's request to take annual holidays.

## **19 When employee may be required to take annual holidays**

- (1) An employer may require an employee to take annual holidays if—

- (a) the employer and employee are unable to reach agreement under section 18(3) as to when the employee will take his or her annual holidays; or
  - (b) section 32 (which relates to closedown periods) applies.
- (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.

## **20 Employer may allow employee to take annual holidays in advance**

An employer may allow an employee to take an agreed portion of the employee's annual holidays entitlement in advance.

### *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).
- (2) Annual holiday pay must be—
- (a) for the agreed portion of the annual holidays entitlement; and
  - (b) at a rate that is based on the greater of—
    - (i) the employee's ordinary weekly pay as at the beginning of the annual holiday; or
    - (ii) the employee's average weekly earnings for the 12 months immediately before the end of the last pay period before the annual holiday.

Compare: 1981 No 15 s 16

## **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).
- (2) Annual holiday pay must be—
- (a) for the agreed portion of the annual holidays entitlement; and
  - (b) at a rate that is based on the greater of—
    - (i) the employee's ordinary weekly pay as at the beginning of the annual holiday; or
    - (ii) the employee's average weekly earnings for—
      - (A) the 12 months immediately before the end of the last pay period before the annual holiday if the employee has worked for the employer for not less than 12 months; or

- (B) the period of employment before the end of the last pay period before the annual holiday if the employee has worked for the employer for less than 12 months.
- (3) To avoid doubt, for the purposes of subsection (2)(b)(ii)(B), the divisor of 52 for the purpose of calculating the employee's average weekly earnings is to be reduced so that it represents the number of whole or part weeks that the employee worked for the employer in the period of employment.

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 for the purposes of section 16.
- (2) An employer must pay the employee 8% 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 28.

Section 23(2): amended, on 1 April 2007, by section 42.

### **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 portion of the annual holidays entitlement not taken at a rate that is based on the greater of—
  - (a) the employee's ordinary weekly pay as at the date of the end of the employee's employment; or
  - (b) the employee's average weekly earnings during the 12 months immediately before the end of the last pay period 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 for the purposes of section 16.
- (2) An employer must pay the employee 8% of the employee's gross earnings since the employee last became entitled to the annual holidays, less any amount—
- (a) paid to the employee for annual holidays taken in advance; or
  - (b) paid in accordance with section 28.

Section 25(2): amended, on 1 April 2007, by section 42.

## **26 Payments may be cumulative**

To avoid doubt,—

- (a) gross earnings for the purposes of section 25(2) includes any payments under section 24(2); and
- (b) an employee may be entitled to payments for annual holidays under both section 24 and section 25.

## **27 When payment for annual holidays must be made**

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

## **28 When annual holiday pay may be paid with employee's pay**

- (1) Despite section 27, an employer may regularly pay annual holiday pay with the employee's pay if—
- (a) the employee—
    - (i) 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; or
    - (ii) works for the employer on a basis that is so intermittent or irregular that it is impracticable for the employer to provide the employee with 4 weeks' annual holidays under section 16; and
  - (b) the employee agrees in his or her employment agreement; and
  - (c) the annual holiday pay is paid as an identifiable component of the employee's pay; and

- (d) the annual holiday pay is paid at a rate not less than 8% of the employee's gross earnings.
- (2) If an employee to whom subsection (1)(a)(i) applies is employed by the same employer beyond 12 months on a series of fixed-term agreements of less than 12 months each, the employer and employee may agree that the employee is to be paid in accordance with subsection (1) regardless of the number of agreements.
- (3) If the fixed-term agreement of an employee to whom subsection (1)(a)(i) applies is followed by permanent employment with the same employer, the employee—
  - (a) becomes entitled to paid annual holidays at the end of 12 months' continuous employment (including the period of that fixed-term agreement) under section 16; but
  - (b) the amount of the holiday pay that the employee is entitled to be paid for the holidays is reduced by the amount that the employee has already received under subsection (1).
- (4) If an employer has incorrectly paid annual holiday pay with an employee's pay in circumstances where subsection (1) does not apply and the employee's employment has continued for 12 months or more, then, despite those payments, the employee becomes entitled to annual holidays in accordance with section 16 and paid in accordance with this subpart.

Section 28(1)(a)(ii): amended, on 1 April 2007, by section 42.

Section 28(1)(d): amended, on 1 April 2007, by section 42.

#### *Portion of annual holidays may be paid out*

Heading: inserted, on 1 April 2011, by section 10 of the Holidays Amendment Act 2010 (2010 No 126).

### **28A Employee may request portion of annual holidays be paid out**

- (1) An employee may request that his or her employer pay out a portion of the employee's entitlement to annual holidays.
- (2) A request under subsection (1)—
  - (a) must be in writing; and
  - (b) may be made on 1 or more separate occasions until a maximum of 1 week of the employee's annual holidays is paid out in each entitlement year.
- (3) If an employee makes a request under subsection (1), an employer must—
  - (a) consider the request within a reasonable time; and
  - (b) advise the employee in writing as to whether the employer agrees to the request; and
  - (c) if the employer agrees to the request, comply with section 28B.

- (4) An employer—
- (a) may decline an employee's request; and
  - (b) is not required to provide the employee with a reason for declining the request.
- (5) In this section, **entitlement year**—
- (a) means a period of 12 months' continuous employment beginning on the anniversary of the employee's employment; and
  - (b) includes a period of 12 months' continuous employment described in section 16(2).

Section 28A: inserted, on 1 April 2011, by section 10 of the Holidays Amendment Act 2010 (2010 No 126).

### **28B Payment for annual holidays paid out**

- (1) If an employer agrees to pay out a portion of the employee's annual holidays under section 28A(3)(c), the employer must pay the employee for that portion—
- (a) in accordance with section 21(2); and
  - (b) as soon as practicable after the employer has agreed to the employee's request under that provision.
- (2) If an employer has incorrectly paid out a portion of the employee's annual holidays where the employee did not make a request for the payment, the employee's entitlement to take the portion of annual holidays concerned remains in force as if the payment had not been made.

Section 28B: inserted, on 1 April 2011, by section 10 of the Holidays Amendment Act 2010 (2010 No 126).

### **28C Requirement to request payout prohibited**

- (1) A requirement that an employee must make a request under section 28A for a portion of his or her annual holidays entitlement to be paid out must not be a term or condition of the employee's employment (whether contained in an employment agreement or otherwise).
- (2) Despite subsection (1), an employment agreement may set out the process for making a request under section 28A.

Section 28C: inserted, on 1 April 2011, by section 10 of the Holidays Amendment Act 2010 (2010 No 126).

### **28D Requirement to make payout prohibited**

A requirement for an employer to pay out a portion of an employee's entitlement to annual holidays must not be—

- (a) a term or condition of the employee's employment (whether contained in a written employment agreement or otherwise); or

- (b) raised in negotiations between the employer and employee about the employee's terms and conditions relating to salary or wages.

Section 28D: inserted, on 1 April 2011, by section 10 of the Holidays Amendment Act 2010 (2010 No 126).

### **28E Employer may have policy preventing payout**

- (1) An employer may adopt a policy that allows the employer to not consider a request under section 28A for a portion of an employee's annual holidays to be paid out.
- (2) A policy under subsection (1) may apply to—
  - (a) the whole of the employer's business; or
  - (b) some parts of the employer's business but not to others.
- (3) If an employer has a policy under subsection (1), section 28A does not apply in relation to any part of the employer's business to which the policy applies.

Section 28E: inserted, on 1 April 2011, by section 10 of the Holidays Amendment Act 2010 (2010 No 126).

### **28F Labour Inspector may determine payout**

- (1) This section applies if an employer has agreed to an employee's request to pay out a portion of the employee's annual holidays under section 28A, but the employer and employee cannot agree on—
  - (a) the portion of annual holidays that are to be, or have been, paid out; or
  - (b) the amount that the employer is required to pay the employee for the annual holidays that are to be, or have been, paid out.
- (2) A Labour Inspector may determine either or both of the following:
  - (a) the portion of annual holidays paid out or to be paid out;
  - (b) the amount payable for the annual holidays paid out or to be paid out.

Section 28F: inserted, on 1 April 2011, by section 10 of the Holidays Amendment Act 2010 (2010 No 126).

## *Closedown periods*

### **29 Meaning of closedown period**

In this section and sections 12(3A) and 30 to 35, **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
- (b) requires the employer's employees to take all or some of their annual holidays.

Section 29: amended, on 27 November 2010, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

Section 29(b): amended, on 27 November 2010, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

### **30 Frequency of closedown periods**

- (1) For the purposes of sections 31 to 35, the employer may have only 1 closedown period in any 12-month period.
- (2) However, subsection (1) does not prevent an employer and employee from agreeing—
  - (a) that the employer may close his or her operations and discontinue the work of the employee at other times; and
  - (b) on the arrangements that will apply during those times.
- (3) If subsection (2) applies, sections 32 to 35 do not apply.

### **31 Employer may have different closedown period for each part of business**

To avoid doubt, an employer may have different closedown periods for each separate part of the employer's business.

### **32 Requirement to take annual holidays during closedown period**

- (1) An employee who is entitled to annual holidays at the commencement of a closedown period must, if required to do so by his or her employer, take annual holidays during the closedown period whether or not the employee agrees to take the holidays.
- (2) An employee who is not yet entitled to annual holidays at the commencement of a closedown period must, if required to do so by his or her employer, discontinue the employee's work during a closedown period.
- (3) If this section applies, the employer must give the employee not less than 14 days' notice of the requirement to take the annual holidays or to discontinue the work (as the case may be).

### **33 Payment of annual holiday pay during closedown period for employee entitled to annual holidays**

- (1) This section applies to an employee who, at the commencement of a closedown period, is entitled to annual holidays under section 16.
- (2) To the extent that the employee has an annual holiday entitlement, the period of the closedown must be taken by the employee as annual holidays.
- (3) If an employee does not have an annual holidays entitlement that covers the whole period of the closedown, the employer and employee may agree that the employee—
  - (a) may take some of the closedown period as annual holidays in advance under section 20; and
  - (b) be paid for that period in accordance with section 22.



- (4) The employer must pay the employee annual holiday pay calculated in accordance with section 21.

**34 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.
- (2) An employer must, in respect of the closedown period, pay the employee 8% of the employee's gross earnings since the commencement of the employee's employment or since the employee last became entitled to annual holidays (as the case may be), less any amount—
- (a) paid to the employee for annual holidays taken in advance; or
- (b) paid in accordance with section 28.
- (3) An employee who is paid annual holiday pay calculated in accordance with subsection (2) is not otherwise entitled—
- (a) to any annual holidays for the period of employment up to the date of the beginning of the closedown period; or
- (b) to any remuneration for the period of the closure or discontinuance of work.
- (4) This section does not prevent an employer and employee from agreeing that the employee may take the period of the closedown as annual holidays in advance under section 20 and be paid for the period in accordance with section 22.

Compare: 1981 No 15 s 18(1)–(4), (7)

Section 34(2): amended, on 1 April 2007, by section 42.

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

- (1) If an employee is required under section 32(2) to discontinue his or her work during a closedown period, the employee's 12 months of continuous employment must, for the purposes of section 16(1) or 28A(5), be treated as commencing on the date on which the closedown began.
- (2) However, to avoid having a different date in each year on which the employee becomes entitled to annual holidays, the employer may nominate a date which must be treated as the date on which the closedown begins provided that the date nominated is reasonably proximate to the actual beginning of the closedown period.

Compare: 1981 No 15 s 18(5)

Section 35(1): amended, on 1 April 2011, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

*Relationship between annual holidays and other entitlements***36 Employer may allow employee taking annual holidays to take sick leave**

- (1) This section applies to an employee who is taking annual holidays under this subpart and who then—
- (a) becomes sick or injured; or
  - (b) has a spouse or partner or dependant who becomes sick or injured.
- (2) An employee may, with his or her employer's agreement, take any period of sickness or injury that the employee would otherwise take as an annual holiday as sick leave.

Compare: 1981 No 15 s 14

Section 36(1)(b): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

**37 Employer must allow employee taking annual holidays to take bereavement leave**

- (1) This section applies to an employee who is taking annual holidays under this subpart and who then suffers a bereavement as described in section 69(2).
- (2) The employer must allow the employee to take any period related to a bereavement that he or she would otherwise take as an annual holiday as bereavement leave.

**38 Sickness, injury, or bereavement arising before scheduled annual holidays**

- (1) This section applies if—
- (a) an employee has been allowed to take annual holidays under this subpart; and
  - (b) before taking those holidays, the employee—
    - (i) becomes sick or injured; or
    - (ii) has a spouse or partner or dependant who becomes sick or injured; or
    - (iii) suffers a bereavement as described in section 69(2).
- (2) The employer must allow the employee to take—
- (a) any period of sickness or injury that the employee would otherwise take as an annual holiday as sick leave;
  - (b) any period related to the bereavement that the employee would otherwise take as an annual holiday as bereavement leave.

Section 38(1)(b)(ii): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

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

- (1) This section applies if—
- (a) an employee has exhausted his or her entitlement to sick leave under subpart 4, but then—
    - (i) becomes or remains sick or injured; or
    - (ii) has a spouse or partner or dependant who becomes or remains sick or injured; or
  - (b) an employee requires more leave for a bereavement than he or she is entitled to under subpart 4.
- (2) The employer—
- (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.

Section 39(1)(a)(ii): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

**40 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.
- (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.
- (3) The employee is entitled to be paid for a public holiday if the holiday would have—
- (a) otherwise been a working day for the employee; and
  - (b) occurred during the employee's annual holidays had the employee taken his or her remaining annual holidays entitlement immediately after the date on which the employee's employment came to an end.

**Subpart 2—Entitlement to 4 weeks' annual holidays from 1 April 2007**

Subpart 2: repealed, on 1 April 2011, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

**41 Purpose of this subpart**

*[Repealed]*

Section 41: repealed, on 1 April 2011, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

**42 Increase in minimum annual holiday entitlement**

*[Repealed]*

Section 42: repealed, on 1 April 2011, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

**Subpart 3—Public holidays****43 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:
- (b) to provide for the transfer of public holidays (whether in whole or in part):
- (c) to specify the entitlements of employees in relation to public holidays.

Section 43(b): substituted, on 1 April 2011, by section 11 of the Holidays Amendment Act 2010 (2010 No 126).

Section 43(c): added, on 30 September 2008, by section 6 of the Holidays (Transfer of Public Holidays) Amendment Act 2008 (2008 No 103).

**44 Days that are public holidays**

(1) The following days are public holidays:

- (a) Christmas Day:
- (b) Boxing Day:
- (c) New Year's Day:
- (d) 2 January:
- (e) Waitangi Day:
- (f) Good Friday:
- (g) Easter Monday:
- (h) ANZAC Day:
- (i) the birthday of the reigning Sovereign (observed on the first Monday in June):
- (j) Labour Day (being the fourth Monday in October):
- (k) the day of the anniversary of a province or the day locally observed as that day.

(2) *[Repealed]*

(3) *[Repealed]*

- (4) If 2 or more of the public holidays specified in subsection (1) fall on the same day, the public holidays must, for the purposes of this subpart, be treated as 1 day.

Compare: 1981 No 15 s 7A(2)

Section 44(2): repealed, on 30 September 2008, by section 7 of the Holidays (Transfer of Public Holidays) Amendment Act 2008 (2008 No 103).

Section 44(3): repealed, on 30 September 2008, by section 7 of the Holidays (Transfer of Public Holidays) Amendment Act 2008 (2008 No 103).

#### **44A Transferring part of public holiday**

- (1) This section applies if—
- (a) an employee is to start work on a day and finish work on the following day; and
  - (b) one or both of those days are specified in section 44(1).
- (2) If the criterion in subsection (3) is met, the employee and his or her employer may agree in writing (whether in an employment agreement or otherwise)—
- (a) that part of one or both days specified in section 44(1) is to be treated as not part of a public holiday; and
  - (b) that,—
    - (i) if the agreement relates to only 1 day specified in section 44(1), a period of 24 hours is to be treated as a public holiday if the period—
      - (A) is to start or finish during the day specified in section 44(1); and
      - (B) includes the period from when the employee is to start work to when the employee is to finish work;
    - (ii) if the agreement relates to 2 days specified in section 44(1), 2 separate periods of 24 hours are to be treated as public holidays if each period—
      - (A) is to start or finish during the days specified in section 44(1); and
      - (B) includes the period from when the employee is to start work to when the employee is to finish work.
- (3) The criterion is that the purpose of the transfer is not to avoid the employee's entitlements under sections 50 and 56 for working on a public holiday, although the transfer may have that effect.
- (4) Where an agreement to transfer part of a public holiday applies, the employee's entitlements under sections 50 and 56 apply only if the employee works during the period of 24 hours or 2 separate periods of 24 hours (as the case may be) to which that part of the public holiday has been transferred.

- (5) To avoid doubt, an agreement under this section must not reduce the total number of paid public holidays that the employee is otherwise entitled to in any year.

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**Example**

An employee is to work from 10 pm on 24 April to 6 am on Anzac Day and from 10 pm on Anzac Day to 6 am on 26 April.

The employer and employee can agree to treat 10 pm to midnight on Anzac Day as not part of a public holiday in exchange for treating a period of 24 hours that finishes on Anzac Day as a public holiday. Just when the 24-hour period starts before or finishes after a work period is a matter for the parties to agree on. For instance, they could agree that it runs from midday on 24 April to midday on Anzac Day.

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Section 44A: substituted, on 1 April 2011, by section 12 of the Holidays Amendment Act 2010 (2010 No 126).

**44B Transferring whole of public holiday**

- (1) An employer and employee may agree in writing (whether in an employment agreement or otherwise)—
- (a) that a public holiday specified in section 44(1) is to be observed by the employee on another calendar day or during a period of 24 hours (a **transfer**), if the criteria in subsection (2) are met; and
  - (b) the calendar day or period of 24 hours to which the public holiday is transferred is to be treated as the employee's public holiday for the purposes of this subpart.
- (2) The criteria are that—
- (a) the public holiday specified in section 44(1) to be transferred—
    - (i) is identified; and
    - (ii) would otherwise be a working day for the employee; and
  - (b) the calendar day or period of 24 hours to which the public holiday is to be transferred—
    - (i) is identified or identifiable; and
    - (ii) would otherwise be a working day for the employee; and
    - (iii) is not another public holiday or part of a public holiday; and
  - (c) the purpose of the transfer is not to avoid the employee's entitlements under sections 50 and 56 for working on a public holiday, although the transfer may have that effect.
- (3) Where an agreement to transfer a public holiday applies, the employee's entitlements under sections 50 and 56 apply only if the employee works on the identified or identifiable calendar day or period of 24 hours to which the public holiday has been transferred.

- (4) To avoid doubt, an agreement under this section—
- (a) may be made in relation to 1 or more of the public holidays specified in section 44(1); but
  - (b) must not reduce the total number of paid public holidays that the employee is otherwise entitled to in any year.

Section 44B: inserted, on 1 April 2011, by section 12 of the Holidays Amendment Act 2010 (2010 No 126).

#### **44C Employer may have policy preventing transfer**

- (1) An employer may adopt a policy that allows the employer to not enter into agreements that enable all or part of a public holiday being transferred under section 44A or 44B.
- (2) A policy under subsection (1) may apply to—
- (a) the whole of the employer’s business; or
  - (b) some parts of the employer’s business but not to others.
- (3) If an employer adopts a policy under subsection (1), sections 44A and 44B do not apply in relation to any parts of the employer’s business to which the policy applies.

Section 44C: inserted, on 1 April 2011, by section 12 of the Holidays Amendment Act 2010 (2010 No 126).

#### **45 Transfer of public holidays over Christmas and New Year**

- (1) For the purposes of this subpart, if any of the public holidays listed in section 44(1)(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:
  - (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:
  - (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.
- (2) To avoid doubt, this section does not entitle an employee to more than 4 public holidays for the days listed in section 44(1)(a) to (d).

#### **45A Transfer of Waitangi Day and ANZAC Day public holidays**

- (1) For the purposes of this subpart, if Waitangi Day or ANZAC Day—

- (a) falls on a Saturday or 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:
  - (b) falls on a Saturday or 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 Monday.
- (2) To avoid doubt, this section does not entitle an employee to more than 1 public holiday for Waitangi Day or more than 1 public holiday for ANZAC Day.
- Section 45A: inserted, on 1 January 2014, by section 5 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

### *Entitlement to public holidays*

#### **46 Entitlement to public holidays**

- (1) An employee is entitled to public holidays, and payment for those holidays, in accordance with this subpart.
  - (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)

#### **47 When employee required to work on public holiday**

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

#### **48 Compliance with section 46**

- (1) If 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.
- (2) If a public holiday falls on a day that would otherwise be a working day for an employee, section 46 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 49; or
  - (b) the employee—
    - (i) 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 provides the employee with an alternative holiday under section 56.

*Payment for public holidays*

**49 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 relevant daily pay or average daily pay for that day.

Section 49: amended, on 1 April 2011, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

**50 Employer must pay employee at least time and a half for working on public holiday**

- (1) If an employee works (in accordance with his or her employment agreement) on any part of a public holiday, the employer must pay the employee the greater of—

- (a) the portion of the employee's relevant daily pay or average daily pay (less any penal rates) that relates to the time actually worked on the day plus half that amount again; or
- (b) the portion of the employee's relevant daily pay that relates to the time actually worked on the day.

- (2) In subsection (1)(a), **penal rates**—

- (a) means an identifiable additional amount that is payable to compensate the employee for working on a particular day of the week or a public holiday; but
- (b) does not include, for example, any additional payment for a sixth or seventh day of work.

- (3) This section is subject to section 51.

Section 50: substituted, on 22 October 2004, by section 5 of the Holidays Amendment Act 2004 (2004 No 85).

Section 50(1)(a): amended, on 1 April 2011, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

**51 Transitional provision for employers who already pay for work on public holidays in employee's regular pay**

- (1) This section applies to—

- (a) an existing collective agreement until the later of—
  - (i) 1 April 2007; or

- (ii) the date on which a collective agreement that replaces the existing collective agreement comes into force:
  - (b) an existing individual employment agreement, until 1 April 2007.
- (2) An employer may pay an employee for work on a public holiday as part of the employee's regular pay if the requirements of subsection (3) are met.
- (3) The requirements are that—
  - (a) an amount for working on public holidays has been previously genuinely negotiated into the employee's regular pay; and
  - (b) the amount can be demonstrated to meet the objectives of section 50; and
  - (c) the employer can provide evidence to support the requirements in paragraphs (a) and (b).

Section 51(1): substituted, on 22 October 2004, by section 6 of the Holidays Amendment Act 2004 (2004 No 85).

## **52 New employment agreements must include provision that complies with section 50**

- (1) This section applies to an employment agreement that is entered into after 1 April 2004.
- (2) The employment agreement must include a provision that confirms the right of the employee to be paid in accordance with section 50 for working on a public holiday.
- (3) To avoid doubt, the employment agreement may not state that the relevant daily pay or average daily pay of the employee already includes an amount that is calculated to comply with section 50.

Section 52 heading: amended, on 22 October 2004, by section 7(1) of the Holidays Amendment Act 2004 (2004 No 85).

Section 52(2): amended, on 22 October 2004, by section 7(2) of the Holidays Amendment Act 2004 (2004 No 85).

Section 52(3): amended, on 1 April 2011, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

## **53 Existing employment agreements must include provision that complies with section 50**

- (1) This section applies to an existing employment agreement.
- (2) The employment agreement must, from the date referred to in subsection (3), be amended to include a provision that confirms the right of the employee to be paid in accordance with section 50 for working on a public holiday.
- (3) The date is,—
  - (a) for an existing collective agreement to which section 51 applies, the later of—
    - (i) 1 April 2007; or

- (ii) the date on which a collective agreement that replaces the existing collective agreement comes into force:
- (b) for an existing individual employment agreement to which section 51 applies, 1 April 2007:
- (c) for all other existing employment agreements, the earlier of—
  - (i) the date on which the existing employment agreement is next amended; or
  - (ii) 1 April 2005.
- (4) To avoid doubt, an existing employment agreement may not state that the relevant daily pay or average daily pay of the employee already includes an amount that is calculated to comply with section 50.

Section 53 heading: amended, on 22 October 2004, by section 8(1) of the Holidays Amendment Act 2004 (2004 No 85).

Section 53(2): amended, on 22 October 2004, by section 8(2) of the Holidays Amendment Act 2004 (2004 No 85).

Section 53(3): substituted, on 22 October 2004, by section 8(3) of the Holidays Amendment Act 2004 (2004 No 85).

Section 53(4): amended, on 1 April 2011, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

#### **54 Questions about whether sections 50 to 53 complied with**

- (1) This section applies if an employer and employee cannot agree on the amount of pay that should be paid to the employee for work done on a public holiday.
- (2) A Labour Inspector may determine the amount of pay for the employer and employee.
- (3) In making the determination the Labour Inspector must apply the provisions of this subpart to the circumstances as determined by the Labour Inspector.
- (4) To avoid doubt, a dispute about whether an employer is complying, or has complied with, section 50, section 51, section 52, or section 53 is an employment relationship problem for the purposes of the Employment Relations Act 2000.

#### **55 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.

#### *Alternative holiday*

#### **56 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—
  - (a) the public holiday falls on a day that would otherwise be a working day for an employee; and

- (b) the employee works (in accordance with his or her employment agreement) on any part of that day.
- (2) If subsection (1) applies, an employer must—
  - (a) provide the employee with an alternative holiday; and
  - (b) pay the employee for working on the public holiday in accordance with section 50.
- (3) The entitlement to an alternative holiday remains in force until—
  - (a) the employee has taken the holiday; or
  - (b) the employee has been paid for the holiday in accordance with section 60(2) or section 61.
- (4) An employee is not entitled to an alternative holiday under this section if the employee works for the employer only on public holidays.

### **57 Requirements of alternative holiday**

- (1) An alternative holiday provided under section 56 must—
  - (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 working day off work for the employee, regardless of the amount of time the employee actually worked on the public holiday; and
  - (d) not be taken on a public holiday.
- (2) If an employer and employee cannot agree under subsection (1)(a) on when an alternative holiday is to be taken, the day must be taken on a date determined, on a reasonable basis, by the employer.
- (3) If subsection (2) applies, the employer must give the employee at least 14 days' notice of the requirement to take the alternative holiday.

Section 57(1)(c): amended, on 1 April 2011, by section 13(1) of the Holidays Amendment Act 2010 (2010 No 126).

Section 57(1)(d): added, on 1 April 2011, by section 13(1) of the Holidays Amendment Act 2010 (2010 No 126).

Section 57(2): substituted, on 1 April 2011, by section 13(2) of the Holidays Amendment Act 2010 (2010 No 126).

Section 57(3): substituted, on 1 April 2011, by section 13(2) of the Holidays Amendment Act 2010 (2010 No 126).

### **58 When employee may be required to take alternative holiday**

*[Repealed]*

Section 58: repealed, on 1 April 2011, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

**59 Entitlement to alternative holiday if employee on call on public holiday**

- (1) This section—
  - (a) applies to an employee who is on call only if the public holiday would otherwise be a working day for the employee; but
  - (b) does not apply to an employee who is on call if the employee works, or is on call, for the employer only on public holidays.
- (2) 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 an alternative holiday in accordance with section 56.
- (3) If an employee is on call and is not called in to work, the employee is also entitled to an alternative holiday 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.
- (4) This section applies in addition to section 50 (which requires payment of time and a half for working on a public holiday).

**60 Payment for alternative holiday**

- (1) An employer must pay an employee not less than the employee's relevant daily pay or average daily pay for the day which is taken as the alternative holiday.
- (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,—
    - (i) at the rate of the employee's relevant daily pay or average daily pay for his or her last day of employment; and
    - (ii) in the pay that relates to the employee's final period of employment.

Section 60(1): amended, on 1 April 2011, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

Section 60(2)(b)(i): amended, on 1 April 2011, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

**61 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.
- (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
  - (b) may be made whether or not the employee has been required to take the alternative holiday under section 57(2).

- (3) If the employer agrees to the employee's request, the employer must pay the employee the amount agreed between the employer and the employee in exchange for the alternative holiday.
- (4) The employer must make the payment for the alternative holiday as soon as practicable after the employer has agreed under subsection (3).

Section 61(2)(b): amended, on 1 April 2011, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

*Relationship between public holidays and other entitlements*

Heading: inserted, on 22 October 2004, by section 9 of the Holidays Amendment Act 2004 (2004 No 85).

**61A Sickiness, injury, or bereavement on public holiday**

- (1) This section applies to an employee who is required, or has agreed, to work on a public holiday but who does not work on the day because—
  - (a) the employee—
    - (i) becomes or remains sick or injured; or
    - (ii) has a spouse or partner or dependant who becomes or remains sick or injured; or
  - (b) the employee suffers or has suffered a bereavement as described in section 69(2).
- (2) If this section applies,—
  - (a) the public holiday must continue to be treated as a public holiday and not as sick leave or bereavement leave for the employee; and
  - (b) to avoid doubt, the employee—
    - (i) must be paid for the day in accordance with section 49 and is not entitled to be paid at time and a half in accordance with section 50(1)(a); and
    - (ii) is not entitled to an alternative holiday under section 56.

Section 61A: inserted, on 22 October 2004, by section 9 of the Holidays Amendment Act 2004 (2004 No 85).

Section 61A(1)(a)(ii): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

**Subpart 4—Sick leave and bereavement leave**

**62 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.

*Entitlement to sick leave and bereavement leave*

**63 Entitlement to sick leave and bereavement leave**

- (1) An employee is entitled to sick leave and bereavement leave in accordance with this subpart—
  - (a) after the employee has completed 6 months' current continuous employment with the employer; or
  - (b) if, in the case of an employee to whom subsection (1)(a) does not apply, the employee has, over a period of 6 months, worked for the employer for—
    - (i) at least an average of 10 hours a week during that period; and
    - (ii) no less than 1 hour in every week during that period or no less than 40 hours in every month during that period.
- (2) Sick leave and bereavement leave must be provided—
  - (a) to an employee to whom subsection (1)(a) applies, for—
    - (i) the 12-month period of continuous employment beginning at the end of the 6-month period specified in that subsection; and
    - (ii) each subsequent 12 months of current continuous employment:
  - (b) to an employee to whom subsection (1)(b) applies, for—
    - (i) the 12-month period of employment beginning at the end of the 6-month period specified in that subsection; and
    - (ii) each subsequent 12-month period of employment as long as the circumstances referred to in subparagraphs (i) and (ii) of that subsection continue to apply.
- (3) However, an employer and employee may agree that—
  - (a) the employee may take sick leave or bereavement leave in advance; and
  - (b) in the case of sick leave taken in advance, the amount of leave taken is to be deducted from the employee's entitlement under this section.

Compare: 1981 No 15 s 30A(1)

**64 Employee must notify employer of intention to take leave**

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

Compare: 1981 No 15 s 30A(5)

*Sick leave***65 Sick leave**

- (1) An employee may take sick leave if—
  - (a) the employee is sick or injured; or
  - (b) the employee's spouse or partner is sick or injured; or
  - (c) a person who depends on the employee for care is sick or injured.
- (2) An employee is entitled to 5 days' sick leave for each of the 12-month periods specified in section 63(2).

Section 65(1)(b): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

**66 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.
- (2) For the purposes of subsection (1), an employee may carry over up to 15 days' sick leave to a maximum of 20 days' current entitlement in any year.
- (3) To avoid doubt, subsection (2) does not prevent an employer from allowing an employee to carry over any enhanced or additional sick leave entitlement.

Compare: 1981 No 15 s 30A(3)

**67 Sick leave need not be paid out**

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.

**68 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 65 if the sickness or injury that gave rise to the leave is for a period of 3 or more consecutive calendar days, whether or not the days would otherwise be working days for the employee.
- (1A) Despite subsection (1), the employer may require proof of sickness or injury within 3 consecutive calendar days if the employer—
  - (a) informs the employee as early as possible that the proof is required; and
  - (b) agrees to meet the employee's reasonable expenses in obtaining the proof.
- (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 65.
- (3) For the purposes of this section, **proof of sickness or injury** may include a certificate from a medical practitioner that—



- (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 or partner is sick or injured:
    - (ii) because a person who depends on the employee for care is sick or injured.
- (4) To avoid doubt,—
- (a) this section does not prevent an employer who is otherwise legally authorised to so require, from requiring an employee to establish that there are no relevant health and safety reasons or hygiene reasons that would prevent the employee from working:
  - (b) subsection (1) or subsection (1A) does not give the employer the right to require the employee to obtain the proof from a person specified by the employer.
- (5) In this section, **medical practitioner** means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine.

Section 68(1A): substituted, on 1 April 2011, by section 14(1) of the Holidays Amendment Act 2010 (2010 No 126).

Section 68(3): amended, on 1 April 2011, by section 14(2) of the Holidays Amendment Act 2010 (2010 No 126).

Section 68(3)(b)(i): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 68(4): substituted, on 22 October 2004, by section 10(2) of the Holidays Amendment Act 2004 (2004 No 85).

Section 68(5): added, on 1 April 2011, by section 14(3) of the Holidays Amendment Act 2010 (2010 No 126).

### *Bereavement leave*

#### **69 Bereavement leave**

- (1) An employee may take bereavement leave in accordance with sections 63 and 70 if the employee suffers a bereavement.
- (2) An employee suffers a bereavement—
  - (a) on the death of the employee's—
    - (i) spouse or partner:
    - (ii) parent:
    - (iii) child:
    - (iv) brother or sister:
    - (v) grandparent:
    - (vi) grandchild:

- (vii) spouse's or partner's parent; or
  - (b) on the death of any other person if the employer 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 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 to the death.

Compare: 1981 No 15 s 30A(7)

Section 69(2)(a)(i): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 69(2)(a)(vii): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

## **70 Duration of bereavement leave**

- (1) An employer must allow an employee to take—
- (a) 3 days' bereavement leave for each type of bereavement described in section 69(2)(a); and
  - (b) 1 day's bereavement leave for a bereavement described in section 69(2)(b).
- (2) If an employee suffers more than 1 bereavement at the same time, he or she may take the amount of bereavement leave specified in subsection (1) in respect of each bereavement.

### *Payment for sick leave and bereavement leave*

## **71 Payment for sick leave and bereavement leave**

- (1) An employer must pay an employee an amount that is equivalent to the employee's relevant daily pay or average daily pay for each day of sick leave or bereavement leave taken by the employee that would otherwise be a working day for the employee.
- (2) Despite subsection (1), 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.
- (3) An employer must not require an employee to take as sick leave any time for which the employee is being paid—
- (a) first week compensation by the employer under section 97 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 or former Act; or

- (b) weekly compensation for a work-related injury within the meaning of that Act or former Act.
- (4) However, if an employer pays the difference between the employee's first week compensation or weekly compensation and ordinary weekly pay, the employer may agree with the employee that he or she may deduct from the employee's current sick leave entitlement 1 day for every 5 whole days that the employer makes that payment.

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

Section 71(1): amended, on 1 April 2011, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

## **72 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.
- (2) However, if an employee is required to provide proof of sickness or injury under section 68 and fails, without reasonable excuse, 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.

Section 72(2): amended, on 22 October 2004, by section 11 of the Holidays Amendment Act 2004 (2004 No 85).

# **Part 3**

## **Enforcement and other matters**

### Subpart 1—Enforcement

## **73 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.
- (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
  - (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.

## **74 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;

- (c) a representative of 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).

### 75 Penalty for non-compliance

- (1) An employer who fails to comply with any of the provisions listed in subsection (2), and every person who is involved in the failure to comply, is liable,—
- (a) if the employer is an individual, to a penalty not exceeding \$10,000:
  - (b) if the employer is a company or other body corporate, to a penalty not exceeding \$20,000.
- (2) The provisions are—
- (a) section 16 and sections 21 to 28 (which relate to an employee's entitlement to, and payment for, annual holidays):
  - (b) section 40(3) (which relates to an employee's entitlement to be paid for a public holiday that would have occurred during the employee's annual holidays):
  - (ba) sections 28A and 28B (which relate to a request by an employee for a portion of his or her annual holidays to be paid out and payment for that portion):
  - (c) section 46, sections 49 to 56, section 60, and section 61(3) (which relate to an employee's entitlement to, and payment for, public holidays and alternative holidays):
  - (d) section 63, section 65, and sections 69 to 72 (which relate to an employee's entitlement to, and payment for, sick leave and bereavement leave):
  - (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) 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.

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

Section 75(1): amended, on 1 April 2016, by section 5(1) of the Holidays Amendment Act 2016 (2016 No 10).

Section 75(1)(a): amended, on 1 April 2011, by section 15(1) of the Holidays Amendment Act 2010 (2010 No 126).

Section 75(1)(b): amended, on 1 April 2011, by section 15(2) of the Holidays Amendment Act 2010 (2010 No 126).

Section 75(2)(ba): inserted, on 1 April 2011, by section 15(3) of the Holidays Amendment Act 2010 (2010 No 126).

Section 75(2)(e): replaced, on 1 April 2016, by section 5(2) of the Holidays Amendment Act 2016 (2016 No 10).

Section 75(2)(f): inserted, on 1 April 2016, by section 5(2) of the Holidays Amendment Act 2016 (2016 No 10).

Section 75(3): inserted, on 1 April 2016, by section 5(3) of the Holidays Amendment Act 2016 (2016 No 10).

## **76 Proceedings by Labour Inspector or employee concerned for penalty**

- (1) A Labour Inspector and the employee concerned are the only persons who may bring an action in the Authority against an employer to recover a penalty under section 75.
- (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.
- (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.
- (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
  - (c) dismiss the action.
- (5) An action for the recovery of a penalty must be commenced within 12 months after the earlier of when the cause of action became known, or should reasonably have become known, to the Labour Inspector or employee concerned.
- (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.
- (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
  - (b) in any other case, into court and then into a Crown Bank Account.

Section 76 heading: amended, on 1 April 2016, by section 6(1) of the Holidays Amendment Act 2016 (2016 No 10).

Section 76(1): amended, on 1 April 2016, by section 6(2) of the Holidays Amendment Act 2016 (2016 No 10).

Section 76(1A): inserted, on 1 April 2016, by section 6(3) of the Holidays Amendment Act 2016 (2016 No 10).

Section 76(5): amended, on 1 April 2016, by section 6(4) of the Holidays Amendment Act 2016 (2016 No 10).

Section 76(5A): inserted, on 1 April 2016, by section 6(5) of the Holidays Amendment Act 2016 (2016 No 10).

Section 76(6)(b): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

#### **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.

Section 76A: inserted, on 1 April 2016, by section 7 of the Holidays Amendment Act 2016 (2016 No 10).

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

The chief executive or a Labour Inspector may recover in the 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.

Section 76B: inserted, on 1 April 2016, by section 7 of the Holidays Amendment Act 2016 (2016 No 10) (amended on 1 March 2017 by section 261 of the District Court Act 2016 (2016 No 49)).

#### **77 Proceedings by Labour Inspector to recover arrears of pay**

- (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.
- (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.
- (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.

Compare: 1981 No 15 s 35

#### **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.

Section 77A: inserted, on 1 April 2016, by section 8 of the Holidays Amendment Act 2016 (2016 No 10).

## **78 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.

Compare: 1981 No 15 s 32

## **79 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 11(2), section 13(2), section 17(2), section 54(2), or section 85(2), is binding on the employer and employee.

## **80 Labour Inspector must consult employer and employee**

Before making a determination under this Act, a Labour Inspector must—

- (a) discuss the matter with the employer and employee; and
- (b) give the employer and employee the opportunity to comment on what the Labour Inspector proposes to consider in making the determination.

### *Holiday and leave record*

## **81 Holiday and leave record**

- (1) *[Repealed]*
- (2) 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:
  - (a) the name of the employee;
  - (b) the date on which the employee's employment commenced;

- (c) the number of hours worked each day in a pay period and the pay for those hours:
  - (d) the employee's current entitlement to annual holidays:
  - (e) the date on which the employee last became entitled to annual holidays:
  - (f) the employee's current entitlement to sick leave:
  - (g) the dates on which any annual holiday, sick leave, or bereavement leave has been taken:
  - (h) the amount of payment for any annual holiday, sick leave, or bereavement leave that has been taken:
  - (ha) the portion of any annual holidays that have been paid out in each entitlement year (if applicable):
  - (hb) the date and amount of payment, in each entitlement year, for any annual holidays paid out under section 28B (if applicable):
  - (i) the dates of, and payments for, any public holiday on which the employee worked:
  - (j) the number of hours that the employee worked on any public holiday:
  - (ja) the day or part of any public holiday specified in section 44(1) agreed to be transferred under section 44A or 44B and the calendar day or period of 24 hours to which it has been transferred (if applicable):
  - (k) the date on which the employee became entitled to any alternative holiday:
  - (l) 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:
  - (m) the cash value of any board or lodgings, as agreed or determined under section 10:
  - (n) the details of any payment to which the employee is entitled under section 61(3) (which relates to payment in exchange for an alternative holiday):
  - (o) the date of the termination of the employee's employment (if applicable):
  - (p) the amount paid to the employee as holiday pay upon the termination of the employee's employment (if applicable):
  - (q) 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.



- (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.
- (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.
- (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

Section 81(1): repealed, on 1 April 2016, by section 9(1) of the Holidays Amendment Act 2016 (2016 No 10).

Section 81(2): amended, on 1 April 2016, by section 9(2) of the Holidays Amendment Act 2016 (2016 No 10).

Section 81(2)(c): replaced, on 1 April 2016, by section 9(3) of the Holidays Amendment Act 2016 (2016 No 10).

Section 81(2)(ha): inserted, on 1 April 2011, by section 16(1) of the Holidays Amendment Act 2010 (2010 No 126).

Section 81(2)(hb): inserted, on 1 April 2011, by section 16(1) of the Holidays Amendment Act 2010 (2010 No 126).

Section 81(2)(ja): inserted, on 1 April 2011, by section 16(2) of the Holidays Amendment Act 2010 (2010 No 126).

Section 81(3A): inserted, on 1 April 2016, by section 9(4) of the Holidays Amendment Act 2016 (2016 No 10).

Section 81(3B): inserted, on 1 April 2016, by section 9(4) of the Holidays Amendment Act 2016 (2016 No 10).

Section 81(3C): inserted, on 1 April 2016, by section 9(4) of the Holidays Amendment Act 2016 (2016 No 10).

**82 Requests for access to holiday and leave record**

- (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:
  - (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—
  - (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.

**83 Failure to keep or provide access to holiday and leave record**

- (1) Evidence that an employer has failed to comply with section 81 or section 82 may be given in an action before the Authority—
  - (a) to recover holiday pay or leave pay from an employer; 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) an improvement notice issued under section 223D of the Employment Relations Act 2000 that relates to holiday pay; or
  - (b) a demand notice served under section 224 of the Employment Relations Act 2000 that relates to holiday pay.
- (3) If, after hearing the evidence, the Authority is satisfied that the employer failed to comply with section 81 or section 82 and that the failure prevented the claimant from bringing an accurate claim, the Authority may make a finding to that effect.
- (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—
  - (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.

Section 83(2): substituted, on 1 April 2011, by section 40 of the Employment Relations Amendment Act 2010 (2010 No 125).

## Subpart 2—Other matters

### **84 Power to award interest on unpaid holiday pay or leave pay**

- (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.
- (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.
- (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.

### **85 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.
- (2) Subsection (1) does not apply if a Labour Inspector makes a determination that the Labour 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.

Compare: 1981 No 15 s 20

### **86 Holiday pay and leave pay treated as salary or wages**

Holiday pay and leave pay payable by an employer to an employee is—

- (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.

Compare: 1981 No 15 s 22

### **87 Regulations**

The Governor-General may, by Order in Council, make regulations for 1 or more of the following purposes:

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

*Transitional provisions relating to entitlements under Holidays Act 1981*

**88 Transitional provision relating to annual holidays**

- (1) Any annual holidays to which an employee had, before the commencement of this section, become entitled under section 11 of the Holidays Act 1981 and that remain untaken on the commencement of this section—
  - (a) remain in force despite the repeal of the Holidays Act 1981; and
  - (b) must be treated as annual holidays which the employee is entitled to take, or to be paid for, in accordance with subpart 1 of Part 2.
- (2) The operation of this section does not affect the date on which the employee next becomes entitled to annual holidays.

**89 Transitional provision relating to public holidays**

Any holiday to which an employee had, before the commencement of this section, become entitled under section 7A of the Holidays Act 1981 and that remains untaken on the commencement of this section—

- (a) remains in force despite the repeal of the Holidays Act 1981; and
- (b) must be treated as if it were an alternative holiday which the employee is entitled to take, or to be paid for, in accordance with subpart 3 of Part 2.

**90 Transitional provision relating to special leave**

- (1) Any special leave to which an employee had, before the commencement of this section, become entitled under section 30A of the Holidays Act 1981 and that remains untaken on the commencement of this section—
  - (a) remains in force despite the repeal of the Holidays Act 1981; and
  - (b) must be treated as if it were sick leave which the employee is entitled to take in accordance with subpart 4 of Part 2.
- (2) The operation of this section does not affect the date on which the employee next becomes entitled to sick leave.

**91 Repeals and consequential amendments**

- (1) The enactments specified in Schedule 2 are repealed.
- (2) The enactments specified in Schedule 3 are amended in the manner indicated in that schedule.

## **Schedule 1AA**

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

s 5A

Schedule 1AA: inserted, on 1 April 2016, by section 10 of the Holidays Amendment Act 2016 (2016 No 10).

#### **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.

**Schedule 1**  
**Modifications to subpart 1 of Part 2 to increase minimum  
entitlement to annual holidays from 1 April 2007**

*[Repealed]*

s 42

Schedule 1: repealed, on 1 April 2011, by section 17 of the Holidays Amendment Act 2010 (2010 No 126).

## Schedule 2 Enactments repealed

s 91(1)

**Anzac Day Act 1966 (1966 No 44)**

*Amendment(s) incorporated in the Act(s).*

**Employment Relations Act 2000 (2000 No 24)**

*Amendment(s) incorporated in the Act(s).*

**Holidays Act 1981 (1981 No 15)**

**Human Rights Amendment Act 2001 (2001 No 96)**

*Amendment(s) incorporated in the Act(s).*

**Income Tax Act 1994 (1994 No 164)**

*Amendment(s) incorporated in the Act(s).*

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

*Amendment(s) incorporated in the Act(s).*

**Labour Department Act Repeal Act 1989 (1989 No 82)**

*Amendment(s) incorporated in the Act(s).*

**New Zealand Railways Corporation Restructuring Act 1990 (1990 No 105)**

*Amendment(s) incorporated in the Act(s).*

**Parental Leave and Employment Protection Act 1987 (1987 No 129)**

*Amendment(s) incorporated in the Act(s).*

**Taxation (Core Provisions) Act 1996 (1996 No 67)**

*Amendment(s) incorporated in the Act(s).*

**Waitangi Day Act 1976 (1976 No 33)**

*Amendment(s) incorporated in the Act(s).*

## Schedule 3 Enactments amended

s 91(2)

### Part 1 Acts amended

**Companies Act 1993 (1993 No 105)***Amendment(s) incorporated in the Act(s).***Electoral Act 1993 (1993 No 87)***Amendment(s) incorporated in the Act(s).***Employment Relations Act 2000 (2000 No 24)***Amendment(s) incorporated in the Act(s).***Immigration Act 1987 (1987 No 74)***Amendment(s) incorporated in the Act(s).***Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49)***Amendment(s) incorporated in the Act(s).***Insolvency Act 1967 (1967 No 54)***Amendment(s) incorporated in the Act(s).***Judicature Act 1908 (1908 No 89)***Amendment(s) incorporated in the Act(s).***Parental Leave and Employment Protection Act 1987 (1987 No 129)***Amendment(s) incorporated in the Act(s).***Social Security Act 1964 (1964 No 136)***Amendment(s) incorporated in the Act(s).***Volunteers Employment Protection Act 1973 (1973 No 25)***Amendment(s) incorporated in the Act(s).*

### Part 2 Regulations amended

**Disabled Persons Employment Promotion Order 2002 (SR 2002/332)***Amendment(s) incorporated in the order(s).*



**District Courts Rules 1992 (SR 1992/109)**

*Amendment(s) incorporated in the rules.*

**Employment Relations (Prescribed Matters) Regulations 2000 (SR 2000/185)**

*Amendment(s) incorporated in the regulations.*

**Land Transfer Regulations 2002 (SR 2002/213)**

*Amendment(s) incorporated in the regulations.*

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

*Amendment(s) incorporated in the regulations.*

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

*Amendment(s) incorporated in the regulations.*

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## **Holidays Amendment Act 2010**

Public Act	2010 No 126
Date of assent	26 November 2010
Commencement	see section 2

### **1 Title**

This Act is the Holidays Amendment Act 2010.

### **2 Commencement**

- (1) Section 7(2) and Schedule 1 as far as it relates to section 29 of the principal Act come into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on 1 April 2011.

### **3 Principal Act amended**

This Act amends the Holidays Act 2003.

## **Part 2**

### **Amendments to other Acts and transitional provision**

#### **19 Transitional provision**

To avoid doubt, a request under section 28A of the principal Act (as inserted by section 10 of this Act) may be made only in relation to an entitlement year that begins on or after the commencement of this Act.

## Reprints notes

### **1** *General*

This is a reprint of the Holidays Act 2003 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2** *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3** *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4** *Amendments incorporated in this reprint*

Contract and Commercial Law Act 2017 (2017 No 5): section 347

Holidays Amendment Act 2016 (2016 No 10)

Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016 (2016 No 2): section 32(2)

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19)

Holidays Amendment Act 2010 (2010 No 126)

Employment Relations Amendment Act 2010 (2010 No 125): section 40

Holidays (Transfer of Public Holidays) Amendment Act 2008 (2008 No 103)

Taxation (Kiwisaver) Act 2007 (2007 No 110): sections 119–121

Relationships (Statutory References) Act 2005 (2005 No 3): section 7

Holidays Amendment Act 2004 (2004 No 85)

Volunteers Employment Protection Amendment Act 2004 (2004 No 12): section 15

Holidays Act 2003 (2003 No 129): section 42

Public Finance Act 1989 (1989 No 44): section 65R(3)