

## Explainer: What's changing with employment leave?

New Zealand's employment leave legislation is changing to make the system simpler and easier to understand.

### What's wrong with our current legislation?

Employers struggle to understand and apply the Holidays Act 2003 correctly, leading to workers not getting their correct entitlements. Administrative burden and compliance costs are high for employers, and despite good intentions, non-compliance is widespread and ongoing across both the public and private sectors. In the current legislation, many provisions are unclear, complex, difficult to apply for diverse working arrangements, and hard to systematise in payroll systems.

For example, annual leave entitlements are provided in weeks, but hours vary from week to week for many workers. Employers have to figure out how to define a working week for each worker, which can be challenging for those who work variable hours. Non-traditional working weeks are becoming increasingly common, especially in sectors like tourism, hospitality and health. There are multiple complex leave pay calculations that also require a high level of employer judgement to get right.

Fixing the system will reduce errors, save time, and lower costs for businesses. These changes will simplify how leave is earned, taken, and paid – so that employers know what they need to do, and workers know what they should be getting.

The proposed new system will be simpler, giving confidence to employers and workers alike. Workers will have greater transparency and certainty about their leave balances and payments. The changes will give employers confidence they're paying staff correctly, supporting them to focus on their business.

### Transition to the new legislation

- There will be a 24-month implementation period between when the Bill has passed and when it comes into force. This provides time for payroll providers and employers to make changes to business and payroll systems. MBIE will ensure that information about the changes is available to support employers, workers and payroll providers as soon as practical after the Bill is passed.
- Until the Holidays Act is repealed, and a new Act comes into force, all of the existing rules still apply. This means that employers still need to comply with the current Holidays Act, and ensure they are providing the correct entitlements and payments to workers.
- Additionally, employers retain an obligation to correct historical underpayments that have occurred due to non-compliance with the current Holidays Act.

### Next steps

- All stakeholders will have the opportunity to provide input at the Select Committee stage.

## Proposed changes to the legislation

Here are the proposed key changes and what they mean:

### Annual leave based on hours worked

- **Current system:** All workers are entitled to 4 weeks' annual leave after twelve months 'continuous employment'.
- **New system:** Workers earn annual leave from day one in direct proportion to contracted hours of work. Annual leave accrues at a rate of 0.0769 hours (4/52) per "contracted" hour (providing the equivalent of four weeks' leave for workers whose contracted hours do not change).

### Sick leave based on hours worked

- **Current system:** After 6 months eligible workers are entitled to a lump sum entitlement of 10 days' sick leave, and a new entitlement arises after every subsequent 12 months, regardless of the number of days they work per week.  
**New system:** Workers earn sick leave from day one, in direct proportion to contracted hours of work. Sick leave accrues at a rate of 0.0385 hours (2/52) of sick leave per "contracted" hour (providing the equivalent of 10 days per year for a worker who works five days a week and the same hours every day). There will be a cap of 160 hours. Once hit the cap will stop new accrual until a worker has used some of their stored entitlement.

### Provision of leave entitlements during unworked periods

- **Current system:** Annual leave is earned during paid leave, unpaid sick, bereavement and family violence leave, parental and volunteers leave, when receiving accident compensation and during the first week of any other unpaid leave.
- **New system:** Annual leave and sick leave accrue when a worker is on paid leave under any legislation and when on parental, jury and volunteers leave. It does not accrue when a worker is receiving accident compensation and not working or on any unpaid leave.

### Changes in work hours

- **Current system:** A workers' annual leave balances are held in weeks and automatically "scale" to match their working week when they reduce or increase their hours. For example, if a worker increases their weekly hours of work, they receive an effective increase in their leave balance. If they reduce their hours, they receive an effective reduction.
- **New system:** Accrued annual leave hours will be 'banked', meaning balances will reflect hours actually worked in the past rather than scaling when work pattern changes.

### Using annual leave

- **Current system:** A worker can take 'portions' of weeks of annual leave. Employers and workers must agree on the portion of a week being taken based on what 'genuinely constitutes a working week' at the time leave is taken. A worker can request to cash up one week of annual leave in each 12 months.
- **New system:** Workers can use accrued leave hours to take any part of a day off work. Annual leave is taken in hours against contracted hours. Leave can be taken on days a worker would have worked their

contractual hours under their employment agreement, or a roster created when leave is requested. If a worker doesn't have days of work in their employment agreement, they must agree to a notional roster for leave purposes that would be used if a roster had not been created when leave is requested.

A worker can request to cash up 25% of their annual leave as at their last 12 month employment anniversary in each 12 month period. This means that, where a worker has a large annual leave balance, there will be more flexibility to cash it up. Employers who agree to cashing up will benefit from reduced leave liability.

### Using sick leave

- **Current system:** The Act only provides for sick leave to be taken as a full day.
- **New system:** For every hour a worker takes off work, they will use an hour of accrued leave. Workers can use accrued sick leave hours to take any part of a day off work. Sick leave can be taken on days and against any hours that a worker would have worked under their employment agreement or that they had accepted at the time of the leave request. Like annual leave, a notional roster will be used where an employment agreement doesn't have specific days and/or hours of work and leave is notified in advance.

### Working extra hours – waged workers

- **Current system:** Waged workers who work extra hours have the pay for those hours reflected in higher leave pay at the time leave is taken. Employers and workers must agree what 'genuinely constitutes a working week' at the time leave is taken, taking into account the extra hours.
- **New system:** Any extra hours worked by a waged worker on top of contracted hours will not accrue annual or sick leave, but a leave compensation payment will be paid at the time the hours are worked. The rate will be 12.5% of a worker's ordinary hourly wage rate.

### Working extra hours – salaried workers

- **Current system:** In some cases, salaried workers are compensated for some extra hours by their salary. In these situations, if the worker works extra hours, they will not receive extra pay. However, in other circumstances, salaried workers may receive additional pay for extra hours. In that case, the pay for the extra hours is reflected in leave pay.
- **New system:** In the situation where the agreement specifies salary will compensate the worker for some additional hours, there is no leave accrual or leave compensation payment payable. If a salaried worker receives additional wages for those hours, the leave compensation payment will be payable at a rate of 12.5% of the ordinary hourly salary rate.

### Casual workers

- **Current system:** Employers and workers can agree to use "Pay as you go" (8% of gross earnings each pay period) instead of paid annual leave if work is intermittent or irregular, but use of "Pay as you go" is not required. For sick leave, many casuals do, technically, become entitled to sick leave – although they are unlikely to benefit from this entitlement in practice due to impracticality and compliance issues.
- **New system:** All workers with no contracted hours will receive a leave compensation payment instead of accruing annual and sick leave for every hour they work. The rate will be set at 12.5% of a worker's ordinary hourly wage rate and paid in every pay period. The leave compensation payment is in lieu of accruing both annual leave and sick leave. The 12.5% is a calculation based on the value of both these entitlements (7.69%

for annual leave and 3.85% for sick leave, with a small addition to recognise other factors (eg the insecurity of additional and casual hours of work). Like “Pay as you go”, the leave compensation payment will be a separate component of pay and must be shown separately in employee’s records and pay statements.

### Fixed-term work

- **Current system:** If a worker is employed on a fixed-term basis for less than 12 months the worker and employer can agree to use “Pay as you go” for annual leave on the same basis as casual workers. If the fixed term is for less than 6 months, the worker does not receive any sick leave entitlements.
- **New system:** All fixed term workers must accrue and be able to take annual and sick leave from the first day of employment on their contracted hours. They will also have access to bereavement and family violence leave.

### Payment for leave

- **Current system:** There are different calculations for different leave types and complex calculations to reflect variable components of pay such as overtime, commission and allowances.
- **New system:** The same hourly leave pay rate will be used for all types of leave. It will be based on a worker’s base wage for the day of leave. For those on piece rates (where an employer is paid for the number of pieces produced, e.g. for the number of buckets of apples picked) an average hourly rate will be used. In addition to the hourly leave pay rate, fixed allowances (such as an accommodation allowance) will be paid in full during leave, like normal. Other components of pay, like bonuses, commissions and variable allowances (such as for ad hoc special duties) will not be included in the hourly leave pay rate.

### Parental leave

- **Current system:** An ‘override’ applies to the normal annual leave payment rules for leave a worker becomes entitled to during or in the 12 months after parental leave. When a worker takes that leave, they are only entitled to leave pay at the rate of their average weekly earnings for the preceding 12 months (without the usual comparison to ordinary pay). If a worker takes annual leave soon after returning to work, the average earnings calculation is likely to be very low since the worker has not been working.
- **New system:** Workers will continue to earn leave during parental leave. When annual leave is taken after return to work, it will be paid like leave taken at any other time would be (which will be an increase in minimum entitlement compared with the status quo).

### Bereavement and family violence leave

- **Current system:** Like sick leave, eligible workers are able to access bereavement or family violence leave entitlements after 6 months. The Act only provides for bereavement and family violence leave to be taken as a full day.
- **New system:** All workers will be able to access bereavement and family violence leave from day one. They will remain days-based entitlements, but workers will be able to take part days of leave.

## Public holidays

- **Current system:** Entitlements to paid leave and alternative holidays on public holidays depend on whether it is an otherwise working day. When this is not clear, employers and workers must take into account a range of factors with a view to agreeing whether a day would otherwise be a working day for the worker.
- **New system:** A new clear test for determining whether a worker would have worked on the day. The new test is based on whether the worker has worked 50% or more of the relevant days (e.g. Mondays) in previous weeks.

## Entitlements for working on public holidays

- **Current system:** Workers receive a whole alternative holiday when they work on a public holiday that is an otherwise working day, regardless of the time actually worked on that day. They get paid time and a half for hours actually worked on the day, but they don't get paid for any hours they would normally have worked but didn't due to the public holiday.
- **New system:** Workers will accrue alternative holiday hours at a rate of one hour for every hour worked on a public holiday that is an otherwise working day. Workers who work only some of their contracted hours on a public holiday will receive time and half for the hours they actually work and leave pay for the unworked hours.

## Pay statements

- **Current system:** There is no legal requirement for employers to provide pay statements to their workers. Unless a worker raises a request for information about their pay and leave from their records, their employer does not have to provide the information.
- **New system:** Employers will be required to provide clear pay statements each pay period itemising pay and leave in a way that's transparent and easy to understand. Pay statements will need to include a subset of information from workers' records – sufficient for workers to determine whether their pay and leave have been calculated correctly. There will be flexibility around how an employer provides the pay statement – it could be provided directly in a physical or digital form or made accessible to workers via an online portal.

## Scenario examples

### Tama – Full-Time Warehouse Worker

**Works:** 40 contracted hours a week, 8 hours per day, 5 days per week

**Current Leave:** 4 weeks of annual leave (provided as a lump sum after every 12 months of continuous employment), 10 sick days a year (first provided as a lump sum after 6 months and then after every 12 months).

#### Under the New System:

- Tama accrues leave from the first day of employment based on hours worked:
  - **Annual leave:** 0.0769 hours (4/52) per hour worked → 160 hours/year (equivalent to 4 weeks)
  - **Sick leave:** 0.0385 hours (2/52) per hour worked → 80 hours/year (equivalent to 10 days)
- When Tama takes leave, it is paid at his base hourly wage rate for the day of leave and his fixed acting manager allowance continues to be paid in full.

#### What it means:

✓ Leave pay calculations will be simpler for Tama's employer. Rather than multiple calculations, they will use the single hourly leave pay payment method for any type of leave Tama takes. Rather than the hourly leave pay calculation accounting for the fixed allowance they will continue paying it in full as normal.

✓ Tama will receive the equivalent amount of annual and sick leave but now has access to some leave from day one.

✓ He can use sick leave to take any part days off work – he no longer needs to use a full entitlement day to take a few hours off work.

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### Maia – Part-Time Retail Assistant

**Works:** 20 contracted hours a week, 2 x 8 hour and 1 x 4 hour day a week

**Current Leave:** 4 weeks annual leave and 10 sick days a year (same as full-time workers)

#### Under the New System:

- Maia will accrue both annual leave and sick leave hours from the first day of employment, in proportion to her contracted hours worked:
  - **Annual leave:** 0.0769 hours (4/52) per hour worked → 20 hours a week means she will accrue 80 hours a year (equivalent to what she is entitled to currently)
  - **Sick leave:** 0.0385 hours (2/52) per hour worked → 20 hours a week means she will accrue 40 hours of sick leave a year (the number of days this is equivalent to depends on when she takes leave).

#### What it means:

✓ Maia will receive the equivalent amount of annual leave to now.

✓ Maia's employer will only need to provide her sick leave proportionate to her contracted hours, rather than the same amount as a full-time workers like under the current Act. They may see a reduction in leave costs as a

result (depending how much sick leave Maia currently uses).

✔ Maia will have access to some sick leave and annual leave from day one.

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### **Niamh – Food Service Worker who can pick up additional hours**

**Works:** 24 contracted hours a week over 3 x 8 hour days – but often picks up an additional shift a week, working an average 30 hours a week.

**Current Leave:** Unclear what a ‘week’ of annual leave entitlement is for Niamh – variable hours and days. Niamh and her employer must come to an agreement to determine how much entitlement she needs to use for time off work. Receives 10 days sick leave. Niamh is compensated for leave on her additional hours in her leave pay. She is paid her average weekly earnings (which is greater than her ordinary weekly pay).

#### **Under the New System:**

- **Annual leave:** 0.0769 hours (4/52) per hour worked → 24 hours a week means she will accrue 96 hours a year (equivalent to what she is entitled to currently).
- **Sick leave:** 0.0385 hours (2/52) per hour worked → 24 hours a week means she will accrue 48 hours of sick leave a year (equivalent to six days).
- Niamh’s hourly leave pay is based on her ordinary hourly rate of pay for the day she takes leave.
- She will also receive a **Leave Compensation Payment** of 12.5% on each of the additional hours she works in every pay period. This replaces both annual and sick leave entitlements on those hours.

#### **What it means:**

✔ No need for Niamh’s employer to follow complex rules to calculate leave entitlements on her variable hours. Niamh’s employer is not required to make multiple complex leave pay calculations.

✔ Leave pay is easier for Niamh to understand.

✔ Leave compensation up front for additional hours rather than reflected in leave pay.

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### **Alice – Casual Café Worker and Student**

**Works:** Irregular and intermittent shifts, no contracted hours. Can turn down work that her employer offers her.

**Current Leave:** Alice and her employer have agreed she will receive PAYG for annual leave at 8% of gross earnings instead of receiving annual leave entitlement; does not meet the eligibility criteria for sick leave, bereavement or family violence leave.

#### **Under the New System:**

- Alice receives a **Leave Compensation Payment** set at 12.5% of her ordinary hourly wage rate for every hour worked. This is in lieu of both annual and sick leave entitlements.
- She won’t accrue leave or be paid for time off, but she gets more money upfront.
- Alice also has access to bereavement and family violence leave from her first day of employment.

#### **What it means:**

- ✓ No need for Alice’s employer to follow complex rules to track leave balances and calculate leave entitlements.
- ✓ Upfront financial compensation for days she has accepted work but may not be able to work due to sickness. She will also be able to access bereavement and family violence leave entitlements.
- ✓ Immediate financial benefit rather than receiving leave compensation in a non-worked period.

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### **Divya – Store Manager returning from parental leave**

**Works:** 25 contracted hours a week (has just returned to work after 12 months away on parental leave).

**Current Leave:** Becomes entitled to four weeks’ annual leave and sick leave at the same time she would if she was working. If she takes that annual leave when she returns to work, her leave pay is very low. She is paid only at her average weekly earnings over the last 12 months (which includes time she was not earning) because of an ‘override’ to the normal leave pay rules.

#### **Under the New System:**

- While on parental leave, Divya accrued leave as normal → 25 hours a week means she accrued 100 hours (equivalent to four weeks).
- On her return, Divya is paid for any annual leave she takes at the same rate any other leave would be.

#### **What it means:**

- ✓ Parents returning to work, who take leave soon afterwards, receive their normal leave pay.
- ✓ Removes complexity and confusion of the current annual leave payment rules after parental leave.

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### **John – Sales Consultant**

**Works:** 40 contracted hours a week, earns salary + bonuses on each sale paid in each pay period.

**Current Leave pay:** John is paid the greater of two rates when he takes annual leave: average weekly earnings and ordinary weekly pay, which both reflect his bonus. To calculate his ordinary weekly pay, John’s employer needs to determine what his ‘regular’ bonus payment is. If that is not possible, he needs to use a four week average calculation.

#### **Under the New System:**

- For each hour of leave taken, John is paid at his base hourly wage rate for the day of leave.
- Bonus payments are not reflected in leave payments.
- If John received bonuses only, the minimum hourly leave pay rate would be the minimum wage.
- John will see a slight reduction in leave pay, due to variable pay not being reflected in leave pay. His employer will see a reduction in leave costs.

**What it means:**

- ✓ John's employer will see a slight reduction in leave pay and cost respectively, due to variable pay not being reflected in leave pay.
- ✓ No complex calculations; easier for John's employer to manage.
- ✓ Simple and consistent leave payments.

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**George – Bank Worker**

**Works:** For the first year, George works 40 contracted hours each week. He then decreases his hours to 20 contracted hours each week as he begins a course of study.

**Current Leave:** George is entitled to four weeks of annual leave each year. What a week means for George adjusts based on his work pattern at the time he takes annual leave. If he took four weeks of annual leave in advance in his first year of employment, it would be equivalent to 160 hours. If he did not take it in the first year, once he starts working 20 contracted hours each week, his four weeks of annual leave becomes equivalent to 80 hours.

**Under the New System:**

- George will accrue 0.0769 hours (4/52) of annual leave for every contracted hour he works. The number of hours in his annual leave balance will not adjust when his work pattern changes.
- Over his first year of employment (when he is working 40 contracted hours each week), he will accrue 160 hours of annual leave.
- Once he starts working 20 contracted hours each week, his annual leave balance (assuming he has taken no leave) will remain at 160 hours (and he will continue to accrue annual leave for every contracted hour he works from then on).
- In the 12 months that follow each employment anniversary George could request to cash up 25% of his leave balance. He could request to cash up 40 hours of annual leave (the equivalent of 2 weeks) in the 12 months after his hours reduced. If he didn't take or cash up any leave in that year his balance would be 240 hours at his next anniversary. He would be able to cash up 60 hours in the next year (the equivalent of 3 weeks).

**What it means:**

- ✓ George's annual leave balance reflects hours actually worked in the past rather than scaling when work pattern changes.
- ✓ If George's employer holds his annual leave in a unit other than weeks they will not need to monitor and re-calculate balances when staff hours change.
- ✓ Because George's leave balance is large in proportion to his new hours of work, he can request to cash up more than the equivalent of a week of annual leave in each year and, if his employer agreed, they would reduce their leave liability and George would get his leave paid out.

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## Employment Leave Key Stats

In its 2023 pre-election survey, Simpson Grierson found that 63% of employers selected Holidays Act simplification as their top priority for an incoming government to address – for the fourth election in a row.

Problems with the Act's complexity are well-known and large-scale remediation payments, running into billions of dollars, have been made across both the public and private sectors.

For example: as of December 2024, Health New Zealand / Te Whatu Ora has paid over \$308.2 million in Holidays Act remediation payments to 41,929 current workers. For the health sector alone, the total financial liability is estimated to be over \$2 billion.

## Types of work

- **Workers with contracted hours**

The change to hours-based accrual will affect all **workers with contracted hours (permanent workers and fixed term workers) – approximately 93% or 2,183,700 workers<sup>1</sup>**. This includes the **584,200 part-time workers (20% of those with contracted hours)**. A higher proportion of women work part time, 29% compared to 12% of men)<sup>2</sup>.

- **Workers who earn variable pay such as commission, bonuses and variable**

Data is not available on the number of workers who earn these types of variable payments . However, we know commission is common in the sales workforce. There are approximately 203,499 sales workers, which makes up about 8% of the total workforce<sup>3</sup>.

- **Workers who work extra hours on top of contracted hours**

The shift to a leave compensation payment for additional hours of work (rather than these being reflected in leave pay) affects all workers who have contractual hours but also work additional hours (while there is no definitive source of data on this, MBIE estimated approximately 9-12% or 210,000-285,000, based on information about workers working more or fewer hours than normal in the Household Labour Force Survey).

- **Workers with casual hours**

By definition, casual workers do not have to accept any work offered under their employment agreement, and employers are not required to make any work available to them. The change to a 12.5% Leave Compensation Payment affects all workers who work only casual hours (approximately 5% or 107,300 workers).<sup>4</sup>

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<sup>1</sup> Based on the number of permanent workers according to December 2024 quarter Household Labour Force Survey data.

<sup>2</sup> According to Statistics New Zealand Labour market statistics March 2025 quarter.

<sup>3</sup> According to the 2023 Census.

<sup>4</sup> Based on December 2024 quarter Household Labour Force Survey data.

- **Workers who take parental leave**

The change to parental leave will affect workers who take parental leave and then return to work. In the past year, around 37,000 workers took time off to begin paid parental leave (around 1% of all workers).<sup>5</sup>

## Brief timeline of the Holidays Act reform changes

- **2001 and 2009:** Significant reviews of holidays' legislation were undertaken in 2001 and 2009. The 2001 review resulted in the 2003 Act, replacing the Holidays Act 1981, and the 2009 review resulted in a series of amendments in 2010. In recent years, it became apparent that there is a high level of non-compliance with the Act.
- **2018:** Holidays Act Taskforce established
- **2020:** Government announced it had accepted Taskforce's recommendations.
- **2021 – 2022:** Policy design work required to implement the 2020 Cabinet decisions in legislation completed.
- **2022 – 2023:** Drafting of a Bill began. Work was put on hold before the 2023 General Election.
- **May 2024:** Cabinet agreed to targeted consultation on an Exposure Draft Bill. Cabinet agreed to some changes and additions to the previous Government's decisions to simplify the design and reduce implementation costs.
- **September 2024:** Targeted consultation on the Exposure Draft Bill with employers, workers and technical experts.
- **December 2024:** Report back to Cabinet on the consultation feedback. The Minister of Workplace Relations and Safety announced she was directing officials to take a new approach to reforming the Act.
- **January - August 2025:** Policy design work completed, Cabinet agreement to major policy decisions for the new employment leave legislation (August 18, 2025).

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<sup>5</sup> Based on data from 1 April 2024 to 31 March 2025. This figure does not include workers who took parental leave but were ineligible for parent leave payments.