

Holidays Amendment Bill

(Divided from the Employment Standards Legislation Bill)

Government Bill

As reported from the committee of the whole House

This Bill was formerly part of the Employment Standards Legislation Bill as reported from the Transport and Industrial Relations Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- Parental Leave and Employment Protection Amendment Bill comprising clauses 1 and 2, Part 1, and Schedules 1 and 2
- Employment Relations Amendment Bill (No 3) comprising Part 2 and Schedule 3
- this Bill comprising Part 3 and Schedule 4
- Minimum Wage Amendment Bill comprising Part 4 and Schedule 5
- Wages Protection Amendment Bill comprising Part 5 and Schedule 6.

Holidays Amendment Bill

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

Hon Michael Woodhouse

Holidays Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Holidays Amendment Act **2016**.

2 Commencement

This Act comes into force on **1 April 2016**.

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114 Principal Act

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

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

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After section 5, insert:

5A Provisions affecting application of amendments to this Act

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

116 Section 75 amended (Penalty for non-compliance)

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

(1A) Replace section 75(2)(e) with:

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

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

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

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

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

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

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

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

- (1A) However, only a Labour Inspector may bring an action in the Authority against a person involved in a failure to comply in order to recover a penalty under section 75.
- (4) In section 76(5), after “Labour Inspector”, insert “or employee concerned”.
- (5) After section 76(5), insert: 5
- (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.
- 118 New sections 76A and 76B inserted** 10
After section 76, insert:
- 76A Matters Authority to have regard to in determining amount of penalty**
In determining an appropriate penalty under section 76, the Authority or the court (as the case may be) must have regard to all relevant matters, including— 15
- (a) the purpose stated in section 3 and, to the extent relevant, the object stated in section 3 of the Employment Relations Act 2000; and
- (b) the matters referred to in **section 133A(b) to (g)** of the Employment Relations Act 2000.
- 76B Chief executive or Labour Inspector may enforce payment of penalty**
The chief executive or a Labour Inspector may recover in a District Court as a debt due to the Crown any penalty ordered by the Authority or the court under section 76 to be paid to the Crown. 20
- 119 New section 77A inserted (Proceedings by Labour Inspector or employee to recover arrears of pay from person involved in failure to comply)**
After section 77, insert: 25
- 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— 30
- (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. 35

- (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. 5
- (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 142V** of the Employment Relations Act 2000.
- 120 Section 81 amended (Holiday and leave record) 10**
- (1) Repeal section 81(1).
 - (2) In section 81(2), replace “The holiday and leave record must contain the following information for each employee:” with “An employer must at all times keep a holiday and leave record showing, in the case of each employee employed by the employer, the following information:” 15
 - (3) Replace section 81(2)(c) with:
 - (c) the number of hours worked each day in a pay period and the pay for those hours: 15
 - (4) After section 81(3), insert:
 - (3A) ~~If an employee’s hours of work are agreed and the employee works those hours (the usual hours), it is sufficient compliance with subsection (2)(c) if those usual hours are stated in—~~ 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— 20
 - (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. 30
 - (3B) ~~In **subsection (3A)**, an employee’s usual hours include any reasonable additional hours worked in accordance with the employee’s employment agreement.~~
 - (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. 35
 - (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 em-

ployer's general obligation under **section 4B(1)** of the Employment Relations Act 2000.

121 New Schedule 1AA inserted

After section 91, insert the **Schedule 1AA** set out in **Schedule 4** of this Act.

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Schedule 4
New Schedule 1AA inserted

s 121

Schedule 1AA

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

s 5A

1 Interpretation
In this schedule, **2015 Act** means **Part 3 of the Employment Standards Legislation Act 2015**.

2 Application, savings, and transitional provisions arising from 2015 Act
The amendments made by the **2015 Act** do not apply to ~~breaches of this Act~~ conduct that occurred before the commencement of that Act.

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Legislative history

8 March 2016

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