

# Holidays Amendment Act 2004

Public Act 2004 No 85  
Date of assent 21 October 2004

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

- (1) This Act is the Holidays Amendment Act 2004.
- (2) In this Act, the Holidays Act 2003 is called “the principal Act”.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

**Part 1**

**Amendments to principal Act relating to payment for public holidays**

**3 Interpretation**

Section 5(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

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

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

**4 Meaning of relevant daily pay**

Section 9(2) of the principal Act is amended by omitting the expression “section 50”, and substituting the words “section 50(1)(a) (which relates to the requirement to pay time and a half)”.

**5 New section 50 substituted**

The principal Act is amended by repealing section 50, and substituting the following section:

**“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 (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.”

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

Section 51 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

- “(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.”

**7 New employment agreements must include provision relating to time and a half**

- (1) The heading to section 52 of the principal Act is amended by omitting the words “relating to time and a half”, and substituting the words “that complies with section 50”.
- (2) Section 52(2) of the principal Act is amended by omitting the words “at least the portion of the employee’s relevant daily pay plus half that rate again for work on a public holiday, in

accordance with section 50”, and substituting the words “in accordance with section 50 for working on a public holiday”.

**8 Existing employment agreements must include provision relating to time and a half**

- (1) The heading to section 53 of the principal Act is amended by omitting the words “relating to time and a half”, and substituting the words “that complies with section 50”.
- (2) Section 53(2) of the principal Act is amended by omitting the words “at least the portion of the employee’s relevant daily pay plus half that rate again for work on a public holiday, in accordance with section 50”, and substituting the words “in accordance with section 50 for working on a public holiday”.
- (3) Section 53 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

“(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.”

**Part 2**

**Amendments to principal Act relating to sick leave and bereavement leave**

**9 New heading and section 61A inserted**

The principal Act is amended by inserting, after section 61, the following heading and section:

*“Relationship between public holidays and other entitlements*

**“61A Sick, 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 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.”

**10 Proof of sickness or injury**

- (1) Section 68 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) Despite subsection (1), the employer may require proof of sickness or injury within 3 consecutive calendar days if the employer—
- “(a) has reasonable grounds to suspect that the sick leave being taken by the employee is not genuine because none of the grounds in section 65(1) are met; and
  - “(b) informs the employee, as early as possible after forming the suspicion that the sick leave being taken is not genuine, that the proof is required; and
  - “(c) agrees to meet the employee’s reasonable expenses in obtaining the proof.”
- (2) Section 68 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

“(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.”

## **11 When payment for sick leave or bereavement leave must be made**

Section 72(2) of the principal Act is amended by inserting, after the word “fails”, the words “, without reasonable excuse,”.

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### **Legislative history**

31 August 2004	Introduction (Bill 182-1)
7 September 2004	First reading and referral to Transport and Industrial Relations Committee
4 October 2004	Reported from Transport and Industrial Relations Committee (Bill 182-2)
7 October 2004	Second reading
12 October 2004	Committee of the whole House (Bill 182-3)
19 October 2004	Third reading

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