

# **Employment Leave Bill**

Government Bill

As reported from the Education and Workforce Committee

## **Commentary**

### **Recommendation**

The Education and Workforce Committee has examined the Employment Leave Bill and recommends by majority that it be passed. We recommend all amendments unanimously.

### **Introduction**

The Employment Leave Bill is an omnibus bill that would repeal and replace the Holidays Act 2003 and make related amendments to other legislation. The bill would establish a new framework for leave that fundamentally changes how leave entitlements are determined, provided, and calculated.

Key features of the bill include:

- a leave framework that distinguishes between different types of working hours: standard, additional, and casual
- new rules for earning and taking annual and sick leave, including accrual against standard hours, with methods for determining the standard hours against which leave can be taken
- access to bereavement and family violence leave from the first day of employment for all employees, with rules for when it can be taken
- a new “otherwise working day” (OWD) test to determine public holiday entitlements and alternative leave accrual in hours
- a consistent leave payment method for all leave types under which every hour of leave taken is paid at an hourly rate
- a “leave compensation payment” (LCP) for every additional and casual hour of work—instead of annual and sick leave accruing on these hours—set at 12.5 percent of an employee’s ordinary hourly wage

- other changes to support the new leave system, including the introduction of a framework enabling the transfer of leave entitlements in restructuring situations, updated record-keeping and enforcement settings, and pay statement requirements
- rules to support implementation and transition, such as calculations for converting existing leave balances, provisions to support the alignment of existing employment agreements with the new settings, and a remediation framework for historical non-compliance with the current Holidays Act.

We also refer readers to the departmental initial briefing document, which contains more information about how the new legislation would work.

### **Legislative scrutiny**

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

### **Proposed amendments**

Our proposed amendments to the bill are set out in the attached revision-tracked version of the bill. This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments, for which explanations are set out in the departmental report and supplementary advice we received. We note that some recommendations set out in the departmental report (numbered 3, 6, 18, 22, 25, 59, and 64) did not result in drafting changes as it was considered the bill sufficiently covered the policy intent behind them.

### **Notional rosters**

An employment agreement may have hours that meet the definition of standard hours but not specify all the information about the number of them or the days and times of day during which they are worked. Clause 9 provides that, in those situations, the employee and employer must agree a notional roster in writing when entering into an employment agreement. They must also ensure it is kept up to date.

Under the bill as introduced, a notional roster would need to include information about the employee's number of standard hours and when they are worked. Notional rosters would be used to determine annual and sick leave accrual, and when annual, sick, bereavement, and family violence leave could be taken.

### **Accurate reflection of working pattern**

Some submitters highlighted concerns about the prospect of a notional roster that does not match a person's actual working patterns, and a consequent risk of unfair outcomes.

As noted above, clause 9 already requires notional rosters to be kept up to date. We consider that, in practice, employers and employees could choose to treat the 13-week

work pattern period specified in clause 10 for Labour Inspector determinations as a guideline to follow when assessing whether a notional roster should be updated.

Despite this, we recommend amending clause 9 to emphasise that a notional roster must, to the extent possible, be an accurate reflection of an employee's pattern of standard hours. Related to this, we also make a recommendation below to enable greater flexibility for parties to agree to a process for determining some information in the notional roster.

### **Approach for agreeing a notional roster**

Some submitters raised concerns about the administrative burden and practical difficulties of determining a notional roster, especially in situations where there are varying roster scenarios.

As noted earlier, the bill would require notional rosters to be kept updated, and we consider our recommendation above would strengthen that.

We consider that some additional flexibility in the approach for determining the hours and days in a notional roster would be beneficial in cases where standard hours vary frequently or where another approach might be more workable. Therefore, we recommend amending clause 9 to provide an alternative approach, whereby parties may instead agree in the notional roster to a methodology for determining the days and hours that are the employee's standard hours. We consider that this more flexible approach might be a worthwhile option for some employers and employees.

Overall, we also note feedback from submitters that guidance about notional rosters will be required to explain matters including when a notional roster is required, the processes for agreeing to one and what should be considered, what it must include, and when it should be reviewed and updated.

### **Employees with multiple roles with same employer**

An employee may have multiple roles with the same employer, under one or more employment agreements. The current Holidays Act lacks clarity about how its provisions apply in these situations. The bill seeks to provide a framework for managing leave entitlements where an employee undertakes distinct roles with different terms and conditions for the same employer.

Clause 17 provides that if an employee has multiple roles with one employer, leave entitlements apply to each role separately. This means that an employee would hold separate leave balances for each role and take leave from each balance against the hours they work in each role.

Submitters had mixed views on this proposal. Some raised concerns that treating the leave balances separately may make it more difficult for employees to get approval for sustained periods of leave. Some submitters also suggested that there would be added complexity in administering separate leave records for the same employee, and especially those whose hours, patterns of work, or roles change frequently.

We acknowledge that there is a wide spectrum of multi-role employment arrangements and that requiring roles to be treated separately for leave purposes may not be the best option for all situations.

We propose amending the bill to allow flexibility for an employer and employee to agree to arrangements that best suit their situation. We recommend amending clause 17 of the bill as introduced to provide that, where an employee has more than 1 role with standard hours with the same employer—whether under 1 or separate employment agreements—they may agree in writing to how the roles will be treated for the purposes of leave entitlements and payments under the legislation.

We propose that the provision in the bill as introduced—stipulating that the legislation’s provisions apply to each role separately—be retained as the backstop for situations where parties have been unable to come to an agreement or where it is the preference of both parties.

### **Annual leave entitlements**

Under the bill, employees would accrue annual leave at the rate of at least 0.0769 hours for each standard hour. Additional hours would not accrue annual leave; instead, they would attract the 12.5 percent leave compensation payment (LCP) which includes compensation for annual leave on those hours.

### **Additional hours while on leave**

Some submitters raised concerns about the effect on employees of not accruing annual leave on all hours. They considered this might undermine employees’ rest and recovery.

We consider that some features of the bill may help address those concerns. Clause 31 of the bill stipulates that when an employee takes annual leave, the number of standard hours they can be required to work is reduced by the number of hours taken as leave. Clause 7, which sets out the definition of additional hours, provides that additional hours are hours an employee cannot be required to work. By definition, the employee is under no obligation to work any extra hours over the number of standard hours taken as leave. At the same time, there may be situations where an employee would like to work additional hours while taking annual leave on their standard hours. For example, they may take leave on some days and then choose to work additional hours on a different day in the week.

We consider that the bill should be clearer that an employee cannot be required to work any additional hours during a period they take leave, while allowing them to do so if they agree to. We recommend amending clause 31 (and its equivalent for alternative leave in clause 66) accordingly.

We note the importance of the Ministry of Business, Innovation and Employment providing guidance to employees and employers about the rights and obligations under this provision.

**Purpose of annual leave**

Clause 3 of the bill sets out the purpose of the legislation as being to promote a balance between work and other aspects of employees' lives. The purpose of annual leave under the clause is to give employees an opportunity to take paid time away from work.

Submitters noted the contrast with the Holidays Act, which states that annual holidays are to "provide the opportunity for rest and recreation". As noted earlier, submitters raised concerns about the effect this change may have on attitudes to leave and, consequently, on the application of the legislation and leave requests.

We consider the bill should highlight the prominence of rest and recreation amongst the range of purposes for which an employee may take annual leave. We recommend amending clause 3 accordingly.

**When employee can take annual leave**

Some submitters raised concerns that the framework under the bill reduces employees' agency over when leave is taken.

Under the Holidays Act, annual leave entitlements begin after 12 months of employment. Annual leave may only be taken before then if the employer agrees. Part 2, subpart 1 of the bill provides that annual leave accrues on standard hours from the first day of employment. It also provides that an employer cannot unreasonably refuse an employee's request to take their accrued annual leave from the first day of employment. Submissions highlighted that the drafting of these provisions may not be clear. We recommend some drafting changes to Part 2, subpart 1, accordingly.

We note that clauses 25 to 30 retain the underlying principles of the current rules about agreeing, allowing, and requiring annual leave to be taken. We recommend some amendments to the bill as introduced to make these principles clearer, namely that:

- employers and employees must make all reasonable efforts to agree when annual leave will be taken
- an employer must not unreasonably withhold consent to an employee taking their accrued annual leave
- employers and employees should have the ability to have upfront, negotiated practices that structure when leave is taken.

**Part-year employees taking leave**

Clause 32 defines a part-year employee as an employee who works standard hours, but who is not required to work—and will not be paid—for 1 or more periods of 7 or more consecutive days each year. The clause would enable part-year employees to take leave during their non-working periods. We recommend amendments to give more information about how the hours a part-year employee can take as annual leave in a non-working period can be determined. We recommend amending clause 32 to require the use of a roster in these situations.

**Cashing up annual leave and alternative leave**

As currently provided for under the Holidays Act, the bill would continue to enable an employee to exchange a portion of their annual leave and all or some alternative leave for cash. Clauses 33 to 37 set out the rules for cashing up annual leave and clause 67 to 71 set out the rules for cashing up alternative leave.

Clauses 37 and 71 set out the process if an employer makes an incorrect payment for cashed-up annual leave or alternative leave. The provisions stipulate that employees are entitled to retain both an incorrect cash-up payment and the underlying leave. Some submitters raised concerns this rule would be unduly punitive for employers, especially in cases of genuine error. We understand the intention was to maintain the current position as under the Holidays Act, so that the employer could seek recovery of overpayments. We recommend amending the bill accordingly.

**Sick, bereavement, or family violence leave**

Clause 73 provides that employees accrue sick leave from their first day of employment at a rate of at least 0.0385 hours for each standard hour of work. Sick leave would not accrue on additional or casual hours; instead, a portion of the 12.5 percent leave compensation payment would account for sick leave.

Under the bill, all employees, including those who work casual hours, would be entitled to bereavement leave and family violence leave from their start date. Clause 110 provides that an employee may take up to 10 days' family violence leave in each 12-month period. The entitlement and duration of bereavement leave is set out in clauses 89 and 92.

**When leave can be used on additional hours**

Clauses 84 and 85 provide that an employee who works standard hours may take sick leave on additional hours required under an availability provision or hours already agreed under a work roster.

Submissions highlighted that the intended approach to taking leave on additional hours under availability provisions may not be clear. We recommend a change to clause 84 to make clear that sick leave can be used to cover hours of work triggered under an availability provision, rather than the entire potential period of availability. We recommend amendments which would have the same effect on the provisions for family violence and bereavement leave in clauses 97 and 115.

**Sick, bereavement, and family violence leave during a closedown**

Clauses 38 to 41 relate to an employee's ability to use sick leave, bereavement leave, and family violence leave in the place of annual leave. Clause 48 would enable an employer to require an employee to take annual or unpaid leave during a closedown.

Section 12(3A) of the current Holidays Act provides that an employee can take sick, bereavement, or family violence leave during a closedown. We recommend amending clauses 86, 100, and 118, which set out when employees may take such leave, to make it clear that this position would continue under the bill.

## **Public holidays and alternative leave**

Public holiday entitlements—paid time off work and alternative leave accrual if an employee works—would apply to all employees, including those who work casual hours, if a public holiday falls on a day that is an “otherwise working day” (OWD) for the employee.

### **Test to determine an “otherwise working day”**

Clauses 12 to 16 of the bill set out a new method for determining when a day is an OWD.

Clause 12 provides that a day is an OWD if it is a day an employee would have worked according to the days, or the pattern of days, of work specified in the employment agreement. If days of work are not specified, the OWD test in clause 13 applies. The test is satisfied if the employee has worked (or been on paid or unpaid leave) on 50 percent of the days of the week that correspond to the public holiday in the preceding 13 weeks.

Some submitters raised concerns that the new OWD framework would reduce public holiday entitlements for employees who have some agreed days of work in their employment agreement, but who also regularly work on other days. Under the current Holidays Act, if the additional work day is a day they regularly work, it will likely fall within the work patterns under the list of factors to be considered and, dependent on individual discretion and judgement, it would likely be treated as an OWD. However, under the bill as introduced, because the employee has some set hours under an employment agreement, the OWD test would not be activated.

We agree that there is a gap in the new OWD framework in the bill as introduced. We consider it would be fairer if the OWD test were triggered for both employees who have some days of work specified in their employment agreement, but who work more, and for employees who have no working days specified. We recommend amending clause 12 so that the test in clause 13 also applies where an employee’s employment agreement specifies the days or a pattern of days on which the employee would work and the employee also works on additional days.

### **Informing employee of OWD status**

Clause 15 would require an employer to notify an employee whether a public holiday is being treated as an OWD for them. Subclause (3) provides that the notification could be made in a payslip for the relevant pay period, but we note that it does not preclude other mechanisms.

Some submitters questioned the need for a notification requirement. We do not consider the notification requirement is necessary in all situations. We understand the notification requirement was intended to provide transparency about whether a day is to be treated as an OWD (and for how many hours) under the clause 13 test. We recommend amending clause 15 so that the notification requirement would not apply when a day is treated as an OWD in accordance with the days or pattern of days specified in an employment agreement.

**Definition of work roster**

Some submitters queried the definition of “work roster” set out in clause 5. There were concerns that it would not adequately account for traditional rostering practices, for example, where an employer sets rosters with notice to the employees. We recommend amending clause 5 to provide a more expansive definition of “work roster”.

**Interaction with the Parental Leave and Employment Protection Act 1987**

Section 71K(3) of the Parental Leave and Employment Protection Act 1987 states that an employee can take a period of paid leave at the start of their parental leave.

Clauses 86, 100, and 118 of the bill specify the periods during which an employee is not entitled to take sick, bereavement, or family violence leave, which includes periods when an employee is on parental leave.

However, we understand that the bill’s provisions are not intended to prevent an employee from taking leave at the start of their parental leave in accordance with section 71K(3) of the Parental Leave and Employment Protection Act. This is in line with the current position under the Holidays Act. We recommend inserting clause 185A into the bill to make the position clear.

**Payments for leave****Proof of sickness or injury**

Clause 122(3) sets out that if an employee is required by an employer to provide proof of sickness or injury and fails to do so without reasonable excuse, the employer is not required to pay the employee for that sick leave until the proof has been provided. The clause is not explicit that in these situations, the employer must not deduct sick leave from the employee’s balance. We recommend amending the clause accordingly.

**Proof of family violence**

Clause 109 enables an employer to require an employee who takes family violence leave to produce proof that they are affected by family violence. We recommend amending clause 122 to specify that if an employee is required to provide proof of family violence under clause 109 and fails to do so without reasonable excuse, the employer would not be required to pay the employee for that family violence leave until the proof has been provided (as under the current Act). In such a situation, the employer must not deduct family violence leave from the employee’s balance.

**Meaning of “day” for leave payments**

Clause 121(1) defines “day” for the purpose of a waged employee’s hourly rate of leave. A “day” is defined as either a calendar day or a work period that begins on one calendar day and continues into the next. The employee’s leave payment would



be at the lowest hourly rate payable under an employment agreement on the “day” on which leave is taken.

Due to this definition of “day”, the provision does not reflect that there might be separate continuous periods of work within the same calendar day. As a result, if an employee works two shifts on the same calendar day at different hourly rates, the lowest hourly rate may apply to both for leave purposes. We understand that does not reflect the policy intent of the bill.

We recommend replacing the definition of “day” in clause 121 with a new definition of “shift” to align with the intent that, for the purposes of leave payments, it would be any single continuous period of work from when an employee starts work to when they finish.

### **Fixed allowances**

Fixed allowances are defined under clause 121 as allowances an employer must pay under an employment agreement that do not vary in value, excluding an allowance payable for an expense not incurred on leave. Clause 122 would require fixed allowances to continue to be paid in full during leave.

Some submitters sought further clarity about what would constitute a fixed allowance under the bill. In light of this feedback, we recommend amending clause 122 to provide a clearer definition.

### **Calculating payments for a worked public holiday**

Clause 124 sets out how an employer must calculate the amount to pay an employee for working on a public holiday. Some submitters had concerns about the complexity of the framework for calculating payments for a worked public holiday. We recommend an amendment to clause 124 to make the calculation requirements clearer and simpler.

### **Incorrectly accruing leave when LCP should have been paid**

Clause 130 as introduced sets out an employer’s liability if they incorrectly accrue annual and sick leave for hours worked when the employee was entitled to receive a leave compensation payment (LCP) for those hours worked. Under the provision, an employee would be entitled to either use or cash up the purported annual leave. Any purported sick leave would become accrued sick leave, with no option under the bill to exchange it for cash. The employer would not be liable to provide the employee with LCP retrospectively.

Submissions highlighted that the approach to rectifying incorrectly accrued leave under clause 130 would not lead to the same outcome for the employee as if the LCP had been correctly applied in the first place. Although the employee could cash up purported annual leave, they could not cash up purported sick leave (although they would keep the accrual) and they would not receive the value of the LCP that is over and above the annual and sick leave components of the LCP.

We have proposed new requirements, set out in new subpart 2A of Part 3 of the bill. To help address the difference described above, we propose that an employee who is cashing up the incorrectly accrued annual leave be entitled to an additional payment. The additional payment would be 0.92 percent of the leave payment rate for each hour for which annual leave was incorrectly accrued. The 0.92 percent figure reflects the remaining component of the 12.5 percent LCP rate after the annual leave component (7.69 percent) and sick leave component (3.89 percent) are deducted.

The Ministry of Business, Innovation and Employment informed us that it considered whether to enable an employee to cash up their incorrectly accrued sick leave as well. We were advised this was deemed to add too much complexity.

The additional payment of 0.92 percent would mean that the employee would receive compensation closer to the full value of the LCP, although that would depend on whether they utilised their incorrectly accrued sick leave in the future.

We note the bill does not refer to a payment method for incorrectly accrued annual leave if an employee elects to cash up any or all of it. We recommend specifying that the employee would be entitled to a payment for each hour cashed up in accordance with the rate specified in clause 125 (like any other cashed up annual leave).

### **Leave entitlements in restructuring situations**

Clauses 164 to 165 would amend Part 6A of the Employment Relations Act 2000 to require employers to include the treatment of leave entitlements as a matter that they need to negotiate with any new employer in restructuring situations involving employees not specified in Schedule 1A of the Employment Relations Act.

Clause 165 would replace section 69OJ of the Employment Relations Act with new sections 69OJ and 69OJA. We were advised that the new sections, as introduced, could potentially affect employees' family violence leave entitlements. If the original and new employers decide not to transfer family violence leave entitlements, but still treat the employee's employment as continuous, there may be a period of time when the employee has no family violence leave entitlements, between the point when they transfer employment to the new employer and their next start date anniversary. This would be an unintended consequence, and we recommend amending clause 165 to close this gap.

In the bill as introduced, there is no requirement for the original and new employers to keep a record of how employees' leave entitlements are being treated in restructuring situations. Such a record would be useful if a Labour Inspector were checking whether employers have provided employees with the correct leave entitlements. As employers will already need to know this information to ensure they are providing the correct entitlements, we do not consider it to be a significant administrative burden for them to keep a record that the Labour Inspectorate could access. We recommend amending clause 166 of the bill to include this requirement.

## **Leave records and enforcement**

Clause 133 would require an employer to keep a leave record, and lists the required information to be recorded. We recommend some refinements to the subclauses to better reflect the intention behind them.

## **Penalties provision updated**

Clause 140 sets out the penalties if an employer or an involved person does not comply with the listed provisions. Subclause (2) lists the provisions to which the penalties apply. We note that we have recommended some amendments to the clause to ensure it covers other breaches of the legislation set out in the bill.

## **Transitional provisions**

Schedule 1 of the bill sets out the provisions that would apply during the transition to the new regime. We recommend several changes to make them clearer and more workable in practice.

Clause 6 of Schedule 1 sets out provisions in employment agreements that must comply with the Act 1 year after commencement. The bill is not clear as to who would hold the obligation to ensure that this happens. We consider the obligation should be on employers to make sure that employment agreements specify those matters. If they do not, clause 140 provides a penalty for not updating the employment agreement.

## **Remediation process to resolve Holidays Act liabilities**

The bill would create an optional remediation process that employers may choose to follow to resolve outstanding liabilities under the Holidays Act 2003. The period within the scope of this remediation process would be the six years immediately prior to the Holidays Act ceasing to be in force. While an employer is following the remediation process, their obligations and liabilities under the Holidays Act would be suspended. New claims could not be commenced, and certain existing proceedings would be paused.

Schedule 3 of the bill sets out the main features of the process. There are also regulation-making powers under the bill for determining further details of the process, including how to calculate the amounts that affected employees must be paid.

## **When employer opts in and how they notify past employees**

We note a clear “opt in” date is required for an employer. We recommend amending Schedule 3 to provide that an employer has opted into the remediation process on the date that they notify current employees of their decision to enter the remediation process.

If an employer chooses to use this option, they must notify all current employees and make reasonable efforts to notify former employees. Former employees would have two years to notify the employer if they wish to receive compensation. Submissions queried the adequacy of the requirements imposed on employers to contact past employees. Given the significant potential effects on past employees, we consider it

appropriate to require employers to publish notices in at least two of the media set out in Schedule 3.

We also recommend specifying a deadline of six months from the date an employer opts into the remediation process. Within that period, the employer must use all reasonable efforts to contact past employees. If the employer fails to complete this step by the deadline, the suspension on claims under the Holidays Act for a given past employee would be lifted.

We recommend a change to clause 3 of Schedule 3 to require the employer to request up-to-date contact and bank account details from past employees during the initial stage of the process. We also recommend some adjustments to the maximum time frame for paying past employees.

### **Regulations about minimum amounts payable not needed**

Clause 156 enables regulations to be made by Order in Council to prescribe the minimum amount that an employer who elects to follow the remediation process is required to pay under the process. If a minimum amount payable is set, the employer would not be required to make a payment to an employee under the remediation process if the application of the process determines that the employee is entitled to receive less than the set minimum amount.

Submitters raised concerns about the minimum amount being set by regulations. They argued it raised transparency and fairness concerns. We were advised the intention of allowing a minimum amount payable to be set was to avoid past situations where an employer was required to repay very small remediation amounts that were disproportionate to the administrative cost of doing so.

We note the advice of our departmental advisers that it is no longer necessary to set a minimum amount payable, given the likely nature of the remediation calculations. We recommend removing this power accordingly.

### **Employees' ability to recover costs for other proceedings**

Proposed clause 7(1)(d) of Schedule 3 provides that any proceedings, whether under the Holidays Act or any other legislation, in relation to the employer's obligations under the Holidays Act that were commenced before the employer elected to follow the remediation process are suspended. Submissions suggested that, in the event of a stay in proceedings, it would be fair to ensure an employee in this situation was not prevented from seeking costs in relation to that proceeding. We agree and recommend inserting new clause 7(6) into Schedule 3 accordingly.

### **Other matters noted**

We explored whether the bill could have unintended effects on employment and leave arrangements that are specific to the dairy industry. Some submitters indicated there was uncertainty about how the existing negotiated arrangements would be affected by the bill. Although we cannot comment on specific employment agreements, we consider it important that these negotiated arrangements in the dairy industry can

continue. We understand that, while employers would need to align provisions in agreements with the units of entitlement specified in the bill, the bill would allow for existing arrangements to continue.

The bill would not prevent annualised hour arrangements. These arrangements are where an employee is not paid for all hours worked when they work them, but instead hours are “banked” and paid at a time in the future when the employee does not work. We note the arrangements must meet other legal requirements, such as those in the Minimum Wage Act 1983.

We understand that an important feature of annualised hour arrangements is advance provision of annual leave entitlement, which provides the ability for employers and employees to plan for the taking of leave throughout the year. We note that the bill’s framework setting out the principles for agreeing when and how minimum leave entitlements may be taken is aligned with the current Holidays Act. Under the bill, employers and employees would still be able to agree that employees will have access to their leave entitlements earlier than it would accrue in accordance with minimum requirements (that is, they could agree to provide the amount of annual leave hours the employee would accrue under the bill in advance, at the start of the annualised year, and plan for when it will be taken during it). They would also still be able to negotiate upfront arrangements regarding the timing of annual leave (for example, they could agree that an employee will be guaranteed the ability to take annual leave equivalent to a week off work in the peak season). We consider that this would mean that current negotiated practices for the taking of leave for annualised hours arrangements could continue.

We also note that the bill would not prevent negotiated arrangements that provide public holiday entitlements above the minimum requirements of the bill to recognise seasonal fluctuations in work patterns.

For the above reasons, and those set out in the departmental advice, we are satisfied that the negotiated employment arrangements for the dairy sector would not be prevented from continuing under the bill.

### **New Zealand Labour Party differing view**

Labour does not support the Employment Leave Bill. While the bill has been improved in some respects, it is still a bill that leaves thousands of workers worse off, is arbitrary, and is opposed by pretty much every group except a minority of employers. It is a bill that does not reflect the complexity of work found in New Zealand. We believe this is not a bill that will stand the test of time.

This bill ties annual leave and sick leave to standard hours only, rather than all hours worked. Labour has consistently opposed that approach because it means workers can do the same job for the same employer and receive different leave outcomes depending on how their hours are classified. This bill has been precision engineered to target those workers with the least power in the workforce.

A core principle for Labour is that no worker should be worse off as a result of this legislation. This bill fails that test. Instead of improving leave in a way that lifts all

workers, it promotes insecure work. It creates less predictable access to leave, and reduces entitlements at each opportunity.

The bill also leaves in place the pro-rating of sick leave, which Labour opposed from the outset. Sick leave is a health and well-being entitlement, and it should not be diluted for workers whose hours are irregular, variable, or additional to standard hours. The bill's leave compensation payment is not an adequate substitute for the certainty of proper accrual on all hours worked.

New Zealanders already work some of the longest hours in the developed world, and this bill makes a critical error. It treats leave as a cost, one to be managed by employers. It tackles this by giving leave a value, and then partially compensating employees. Leave is not a cost. It is an essential part of a good life. Leave helps support health and safety. It provides families with precious time together.

Although the select committee has recommended a number of amendments, those changes do not address the core problem. The fundamental design still disadvantages many workers. It risks entrenching unequal access to paid leave for part-time, casual, and otherwise vulnerable workers. It makes accessing leave harder. For these reasons, Labour cannot support the bill.

### **Green Party of Aotearoa New Zealand differing view**

The Green Party opposes this bill. It will leave many workers worse off, particularly those on lower incomes, and will disproportionately affect workers who are employed part-time, have variable hours, work multiple jobs, or face insecure employment conditions. Women, young people, Māori, Pasifika, and migrant workers are all more likely to be in these kinds of “non-standard” employment arrangements and will therefore be disproportionately negatively affected by the bill. Those who have less to spare are the ones taking a pay cut under this bill.

The changes to sick leave, including halving sick leave for part-time workers, will disproportionately impact women, who tend to work part-time more than men, due to an unequal share of caring responsibilities and related factors. This will result in more women having to take unpaid leave if they or their dependents are unwell.

The policy development of this bill has also been contrary to appropriate decision making. During development of this version of the bill MBIE has consulted with employer groups and payroll providers, while workers' representatives have been cut out of the process.

Many submitters have made clear that this bill will fail at its stated purpose of providing greater clarity and certainty to employers and employees, and that the issues with the current Holidays Act which it will replace, have been largely resolved over the 12 years since the problems came to light. This leads to the conclusion that the intent of this bill is not to provide clarity, but to reduce costs to employers over workers' entitlements.

## **Appendix**

### **Committee process**

The Employment Leave Bill was referred to this committee on 12 March 2026. The House instructed us to report the bill back no later than 13 July 2026. We invited the Minister for Workplace Relations and Safety to provide an oral submission on the bill. She did so on 29 April 2026.

Submissions on the bill were called for on 17 March 2026 with a closing date of 14 April 2026. We received and considered submissions from about 660 interested groups and individuals. We heard oral evidence from 45 submitters. We wish to acknowledge the efforts of all submitters and thank them for their engagement.

Advice on the bill was provided by the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

### **Committee membership**

Katie Nimon (Chairperson)

Carl Bates (Deputy Chairperson)

Hon Ginny Andersen (from 25 March 2026)

Shanan Halbert

Grant McCallum

Dr Parmjeet Parmar

Hon Willow-Jean Prime (until 25 March 2026)

Hon Phil Twyford

Dr Vanessa Weenink

Dr Lawrence Xu-Nan

Hon Jan Tinetti and Teanau Tuiono participated in the consideration of the bill.

### **Related resources**

The documents we received as advice and evidence are available on the Parliament website.





**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~



*Hon Brooke van Velden*

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Government Bill

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The Parliament of New Zealand enacts as follows:

# **1 Title**

This Act is the Employment Leave Act **2026**.

## 2 Commencement

- (1) This Act comes into force on the second anniversary of Royal assent.
- (2) However,—
  - (a) ~~section 156 comes~~ and **clause 24 of Schedule 1** come into force on the day after Royal assent; and 5
  - (b) ~~sections 183 and 185 to 190~~ **section 183** (in so far as it relates to **sections 185, 186, and 188 to 190**) and **sections 185, 186, and 188 to 190** come into force on **1 July 2027**.

## Part 1 Preliminary provisions

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## 3 Purpose

The purpose of this Act is to promote balance between work and other aspects of employees' lives and, to that end, to—

- (a) provide employees with minimum entitlements to—
  - (i) annual leave to give them the opportunity to take paid time away from work and for rest and recreation; 15
  - (ii) public holidays for the observance of days of national, religious, or cultural significance;
  - (iii) sick leave to assist employees who are unable to work because they are sick or injured, or because people who depend on them are sick or injured: 20
  - (iv) bereavement leave to assist employees who ~~are unable to work because they have~~ suffered a bereavement;
  - (v) family violence leave to assist employees to deal with the effect on the employees of being persons affected by family violence; 25  
and
- (b) provide employees, under specified circumstances, with— the following minimum entitlements:
  - (i) a leave payment if they take leave:
  - (ii) a leave compensation payment if ~~the employee works~~ they work casual hours or additional hours. 30

## 4 Application

- (1) This Act applies to all employers and employees, including the Crown and its employees, but—
  - (a) does not apply to the Armed Forces as defined in section 2(1) of the Defence Act 1990; and 35

- (b) applies on and from a date or dates set by Order in Council to ~~a person who is employed by the board of a State school and who is paid by a payroll service established under section 578 of the Education and Training Act 2020 (see **clause 1 of Schedule 1**).~~— 5
- (i) a person who is—
- (A) employed by the board of a State school; and
- (B) paid by a payroll service established under section 578 of the Education and Training Act 2020 (see **clause 1 of Schedule 1**); and
- (ii) a person who is the employer of a person described in **paragraph (b)(i)**. 10
- (1A) If this Act does not apply to a person described in **subsection (1)(b)** by the tenth anniversary of Royal assent, it applies to that person on and from that date.
- (2) An Order in Council under **subsection (1)(b)** may set different dates for— 15
- (a) different classes of ~~employees~~ persons described in **subsection (1)(b)**; or
- (b) different provisions of ~~the this~~ Act and for different purposes; or
- (c) different parts of ~~the this~~ Act that a provision of ~~the this~~ Act would otherwise bring into force at the same time. 20
- (3) ~~If this Act does not apply to a person described in **subsection (1)(b)** by the tenth anniversary of Royal assent, it applies to that person on and from that date.~~
- (4) An Order in Council made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 25
- (5) In this section, **board** and **State school** have the meanings set out in section 10(1) of the Education and Training Act 2020.

## 5 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- ACC accident compensation** means first week compensation or weekly compensation under the Accident Compensation Act 2001 30
- additional hours** has the meaning set out in **section 7**
- alternative leave** means leave provided under **subpart 3 of Part 2**
- annual closedown** has the meaning set out in **section 45**
- annual leave** means leave provided under **subpart 1 of Part 2** 35
- annual leave balance** has the meaning set out in **section 133(5)(a)**

**applicable minimum hourly rate** means the hourly rate of the applicable minimum rate of wages prescribed under section 4, 4A, or 4B of the Minimum Wage Act 1983

**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 5

**Authority** has the meaning set out in section 5 of the Employment Relations Act 2000

**availability provision** has the meaning set out in section 67D of the Employment Relations Act 2000 10

**average hourly rate for piece work**,—

- (a) for the purposes of **subpart 7 of Part 2**, has the meaning set out in **section 121(2)**; or
- (b) for the purposes of **subpart 8 of Part 2**, has the meaning set out in **section 128(2)** 15

**averaged salary employee** or **ASE** means an employee who—

- (a) ~~who~~ works standard hours; and
- (b) ~~who~~ does not work the same standard hours in each pay period; and
- (ba) has an employment agreement that specifies a pattern of days on which the employee works; and 20
- (c) ~~whose annual salary is averaged so that the employee as a result of their annual salary being averaged,~~ is paid the same portion of their salary each pay period

**bereavement leave** means leave provided under **subpart 5 of Part 2**

**casual hours** has the meaning set out in **section 8** 25

**court** has the meaning set out in section 5 of the Employment Relations Act 2000

~~**day**, for the purposes of **subpart 7 of Part 2**, has the meaning set out in **section 121(1)**~~

**employee** has the meaning set out in section 6 (except subsection (1)(b)(ii)) of the Employment Relations Act 2000 30

**employer** has the meaning set out in section 5 of the Employment Relations Act 2000

**employment agreement** has the meaning set out in section 5 of the Employment Relations Act 2000 35

**family violence** has the meaning set out in section 9 of the Family Violence Act 2018

**family violence leave** means leave provided under **subpart 6 of Part 2**

~~fixed allowance~~ has the meaning set out in ~~section 121(1)~~

**Labour Inspector** has the meaning set out in section 5 of the Employment Relations Act 2000

~~LCP employee~~ means an employee described in ~~section 127~~ has the meaning set out in **section 128(1)**

**leave compensation payment** or **LCP** means a payment ~~made payable~~ by an employer to an employee under **section 129**

**leave hourly rate** has the meaning set out in **section 121(1)**

**leave payment** has the meaning set out in **section 121(1)**

**leave payment rate** has the meaning set out in **section 121(1)**

**leave record** means the record required to be kept under **section 133**

**notional roster** means a roster agreed or determined under **section 9**

**ordinary hourly rate**,—

- (a) for the purposes of **section 124**, has the meaning set out in **section 124(5)**; or
- (b) for the purposes of **section 129**, has the meaning set out in **section 129(3)**

**otherwise working day** has the meaning set out in **section 12**

**pay period** has the meaning set out in section YA 1 of the Income Tax Act 2007

**person affected by family violence** has the meaning set out in **section 102**

**public holiday** means a day specified in **section 51(1)**

~~**rate of leave payment** has the meaning set out in **section 121(1)**~~

**relevant hour**,—

- (a) for the purposes of **section 123**, has the meaning set out in **section 123(3)**; or
- (b) for the purposes of **section 129**, has the meaning set out in **section 129(3)**

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

**sick leave balance** has the meaning set out in **section 133(5)(b)**

**standard hours** has the meaning set out in **section 6**

**start date**, in relation to an employee, means—

- (a) the date on which the employee starts their employment with their employer, as specified in the employee's employment agreement; or
- (b) if the employee's employment agreement does not specify a start date, the earlier of—



- (i) the date that the employee and their employer agree will be the first date on which the employee will work for the employer; ~~or~~ and
- (ii) the first date on which the employee is rostered to work for the employer

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**start date anniversary**, in relation to an employee, means an anniversary of the employee's start date

**union** has the meaning set out in section 5 of the Employment Relations Act 2000

**work roster**, in relation to an employee, means a roster that specifies the days of the week, and the hours in each day, when the employee is to work and that—

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- (a) is agreed by the employee and their employer (whether in writing or otherwise); ~~and or~~

- (b) ~~specifies the days of the week, and the hours in each day, when the employee is to work.~~

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- (b) is set by the employer (whether in writing or otherwise).

- (2) In this Act, unless the context otherwise requires, any 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 set out in that Act.

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### *Meanings of key terms*

## **6 Meaning of standard hours**

- (1) In this Act, unless the context otherwise requires, **standard hours** means—

- (a) hours that, under the employee's employment agreement, the employer—

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- (i) ~~requires~~ may require the employee to work; and
- (ii) must pay the employee for, regardless of whether the employer in fact requires the employee to work those hours; and

- (aa) any breaks (for example, meal or rest breaks) from the hours described in **paragraph (a)** for which the employee is entitled to be paid by the employer; and

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- (b) hours that would have been standard hours under **paragraph (a) or (aa)-(c)** if the employee had not been—

- (i) on paid leave under this Act; or
- (ii) on paid leave under any other legislation (*see **subsection (3)***); or
- (iii) on leave or on an absence from work, if—

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- 
- (A) the leave or absence is not provided for under this Act or any other legislation; and
    - (B) the employer pays the employee while the employee is on leave or absent from work; or
    - (iv) on unpaid leave or on an unpaid absence from work under any other legislation (*see* **subsection (4)**);<sup>5</sup> and
    - (e) ~~any breaks from the hours described in paragraph (a) for which the employee is entitled to be paid by the employer.~~
  - (2) For the purposes of **subsection (1)**, ~~the this Act, an employee's standard hours must be specified in—~~ 1 or more of the following: 10
    - (a) the employee's employment agreement; ~~or;~~
    - (b) a work roster (if any); ~~or;~~
    - (c) the employee's notional roster (if any).
  - (3) For the purposes of **subsection (1)(b)(ii)**, examples of paid leave under other legislation include leave while attending— 15
    - (a) ~~leave while attending~~ employment relations education under Part 7 of the Employment Relations Act 2000; and
    - (b) ~~leave while attending~~ training under clause 12 of Schedule 2 of the Health and Safety at Work Act 2015.
  - (4) For the purposes of **subsection (1)(b)(iv)**, examples of unpaid leave or unpaid absence from work under other legislation ~~that may apply~~ include leave or absence under— 20
    - (a) the Volunteers Employment Protection Act 1973; and
    - (b) the Parental Leave and Employment Protection Act 1987; and
    - (c) the Juries Act 1981. 25
  - (5) However, **standard hours** excludes any hours under an availability provision in the employee's employment agreement.
- 7 Meaning of additional hours**
- (1) In this Act, unless the context otherwise requires, **additional hours**, in relation to an employee who works standard hours, means— 30
    - (a) any hours in addition to the employee's standard hours that the employer is not required to make available to the employee and that the employee has the right to refuse and—
      - (i) that the employee works; and
      - (ii) for which the employer must pay the employee an additional 35 payment; or
    - (b) any hours that the employee works under an availability provision.

- (2) Despite **subsection (1)(b)**, **additional hours** excludes any hours that the employee works in addition to the employee's standard hours if—
- (a) the employee is paid a salary; and
  - (b) the employee's employment agreement provides that the employee is not entitled to any payment, in addition to the employee's salary, for working those extra hours because payment for working those hours is included in the employee's salary. 5
- (3) For the purposes of **subsection (1)(a)**, an **additional payment** is a payment that may be paid at a rate that is the same as or a different rate as from the rate of payment for working standard hours. 10

## 8 Meaning of casual hours

In this Act, unless the context otherwise requires, **casual hours** means the hours that an employee works if, under the employee's employment agreement,—

- (a) the employer is not required to offer any work to the employee; and 15
- (b) the employee is not required to accept any work offered by the employer.

### *Transitional, savings, and related provisions*

#### 8A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms. 20

### *Notional rosters*

## 9 Notional roster

- (1) This section applies if—
- (a) an employment agreement provides for an employee to work standard hours; but 25
  - (b) it is not possible to determine 1 or more of the following:
    - (i) the number of the employee's standard hours;
    - (ii) the days of the week on which the employee has standard hours;
    - (iii) the hours in each day that the employee has standard hours.
- (2) In the circumstances specified in **subsection (1)**, the employee and their employer must,— 30
- (a) when entering into the employment agreement, agree in writing to a notional roster for the employee ~~for the purposes specified in **subsection (4)**~~; and—
    - (i) for the purposes specified in **subsection (4)**; and 35
    - (ii) that complies with **subsection (5)**; and

- 
- (b) ensure that the notional roster ~~is kept up to date for those purposes:—~~
- (i) accurately reflects the intended pattern of the employee’s standard hours; and
  - (ii) is kept up to date for the purposes specified in **subsection (4)**.
- (3) However, a Labour Inspector may, in accordance with **section 10**, determine an employee’s notional roster if— 5
- (a) the employee and their employer fail to agree to a notional roster; or
  - (b) the employee and their employer have agreed to a notional roster, but—
    - (i) the employee or the employer considers that the agreed notional roster should be amended; and 10
    - (ii) the employee and the employer are not able to agree on whether or how to amend the notional roster; or
  - (c) the Labour Inspector, in the course of performing their functions, forms a belief that the notional roster is not appropriate for the purposes specified in **subsection (4)**. 15
- (4) The notional roster,—
- (a) if **subsection (1)(b)(i)** applies, must be used to determine the number of the employee’s standard hours for the purposes of determining the employee’s entitlement to—
    - (i) annual leave under **section 23**; and 20
    - (ii) sick leave under **section 73**; and
    - (iii) bereavement leave under **section 89**; and
    - (iv) family violence leave under **section 103**; and
  - (b) must be used to determine when the employee may take—
    - (i) annual leave in the circumstances set out in **section 29 or 32**; 25  
and
    - (ii) sick leave in the circumstances set out in **section 83**; and
    - (iii) bereavement leave in the circumstances set out in **section 96**;  
and
    - (iv) family violence leave in the circumstances set out in **section 114**; but 30
  - (c) must not be used to determine the employee’s entitlement to—
    - (i) a public holiday under **section 52**; or
    - (ii) alternative leave under **section 63**.
- (5) ~~An employee’s notional roster must include the following information if that information is not able to be determined from the employee’s employment agreement:~~ 35
- (a) ~~the number of the employee’s standard hours:~~

- (b) ~~the days of the week on which the employee has standard hours:~~
- (c) ~~the hours in each day that are the employee's standard hours.~~
- (5) An employee's notional roster must specify—
  - (a) the following information, if that information cannot be determined from the employee's employment agreement: 5
    - (i) the number of the employee's standard hours:
    - (ii) the days of the week on which the employee has standard hours:
    - (iii) the hours in each day that are the employee's standard hours: or
  - (b) a methodology for determining the information in **paragraph (a)(ii) and (iii).** 10

# 10 How Labour Inspector determines notional roster

To determine an employee's notional roster under **section 9(3)**, a Labour Inspector—

- (a) must take into account—
  - (i) the employee's employment agreement; and 15
  - (ii) the employee's work patterns (if any); and
- (b) may give more weight to the employee's work patterns than to the employee's employment agreement ~~over~~ during—
  - (i) the 13 weeks immediately before the employee takes a period of leave for which the roster would be used to determine the employee's leave entitlement; or 20
  - (ii) the most recent 13 weeks for which the Labour Inspector has records when determining the notional roster.

# 11 Determination by Labour Inspector is binding

Except to the extent that, in any proceedings before the Authority or the court, the Authority or the court makes its own determination, a determination of a notional roster made by a Labour Inspector is binding on the employer and the employee. 25

Compare: 2003 No 129 s 79

*When day is otherwise working day* 30

# 12 When day is otherwise working day

In this Act, unless the context otherwise requires, ~~an otherwise working day~~ means a day on which an employee would ~~otherwise be working~~, but for ~~it the~~ the day being a public holiday, if— 1 of the following applies:

- (a) the employee's employment agreement specifies— 35
  - (i) the days on which the employee would work; or

- (ii) a pattern of days on which the employee would work;~~or;~~
- (aa) **paragraph (a)** applies and,—
  - (i) during the period specified in **section 13(1)(a)(i) or (ii)** (as applicable), the employee has worked 1 or more days in addition to the days specified in **paragraph (a)**; and 5
  - (ii) the test set out in **section 13** is satisfied in relation to the public holiday:
- (b) the employee's employment agreement does not specify the days, or a pattern of days, on which the employee works ~~and~~ but the test set out in **section 13** is satisfied in relation to the ~~day~~ public holiday. 10

Compare: 2003 No 129 s 12

### 13 Test for purposes of **section 12(aa) and (b)**

- (1) For the purposes of **section 12(aa) and (b)**,—
  - (a) the test is ~~satisfied~~ satisfied in relation to a public holiday if the employee worked for the employer (or was on paid or unpaid leave) for 50% or more of the days of the week that correspond to the public holiday in—
    - (i) the period of 13 weeks ending on the day before the public holiday; or
    - (ii) if the employee has worked for the employer for fewer than 13 weeks before the public holiday, the period—
      - (A) starting on the employee's start date; and
      - (B) ending on the day before the public holiday; but
  - (b) if the employee has taken any of the types of leave described in **subsection (3)** during a period described in **paragraph (a)(i) or (ii)**, the test is ~~satisfied~~ satisfied in relation to the public holiday if the employee worked for the employer (or was on paid or unpaid leave) for 50% or more of the days that correspond to the public holiday in the period—
    - (i) starting on the day after the last day of the leave described in **subsection (3)**; and
    - (ii) ending on the day before the public holiday.
- (2) However, if **subsection (1)(b)** applies, the public holiday is not an otherwise working day if there have been no days of the week that correspond to the public holiday in the period—
  - (a) starting on the day after the last day of the leave described in **subsection (3)**; and
  - (b) ending on the day before the public holiday.
- (3) The types of leave are—

- (a) parental leave under the Parental Leave and Employment Protection Act 1987:
- (b) volunteers leave under the Volunteers Employment Protection Act 1973:
- (c) leave for which the employee was paid ~~ACC~~ accident compensation.

**14 Determining hours employee would have worked on day treated as otherwise working day** 5

(1) For the purposes of **section 15(1)(b)**, the number of hours that the employee would have worked on the otherwise working day ~~public holiday~~ is—

- (a) the number of hours that the employee would have worked on that day according to their employment agreement, as it was on the public holiday; or 10
- (b) if the employee's employment agreement does not specify the number of hours that they would have worked on that day, the average number of hours that the employee worked (or was on paid or unpaid leave) each day during the reference period, as calculated using the following formula: 15

$$u \div v = w$$

where—

- u is the total number of hours that the employee worked (or was on paid or unpaid leave) during the reference period 20
- v is the number of days that the employee worked (or was on paid or unpaid leave) during the reference period
- w is the average number of hours that the employee ~~would have worked (or was on paid or unpaid leave) each day during the reference period on the public holiday had it not been a public holiday.~~ 25

(2) In **subsection (1)**, ~~the reference period~~ means—

- (a) each pay period starting in the 93 days before the start of the pay period in which the public holiday falls; or
- (b) if the employee has worked for the employer for fewer ~~less than~~ 93 days before the start of the pay period in which the public holiday falls, each pay period starting in the period— 30
  - (i) starting on the employee's start date; and
  - (ii) ending on the day before the start of the pay period in which the public holiday falls. 35

**15 Employer must notify employee whether day is otherwise working day**

- (1) ~~If a public holiday must be treated as an otherwise working day under section 12, the test in **section 13** is satisfied,~~ an employer must notify the employee as soon as practicable,—
- (a) ~~if that the test under in **section 13** is satisfied, of that fact;~~ and 5
  - (b) of the number of hours that the employee would have worked on that day, calculated in accordance with **section 14**.
- (2) ~~If, as a result of the test under the test in **section 13** not being is not satisfied, a public holiday is not treated as an otherwise working day,~~ an employer must notify the employee ~~of that fact as soon as practicable that the public holiday is not an otherwise working day.~~ 10
- (3) An employer may notify an employee under this section by including the information in the employee's pay statement (provided under **section 130A** of the Employment Relations Act 2000) for the relevant pay period.

*When day is not otherwise working day* 15

**16 When day is not otherwise working day**

- (1) Despite **section 12**, a day is not an otherwise working day for an employee if it would be reasonable for the employee and their employer to expect that the employee would not work on that day due to because the employee being is on— 20
- (a) parental leave under the Parental Leave and Employment Protection Act 1987; or
  - (b) volunteers leave under the Volunteers Employment Protection Act 1973; or
  - (c) leave for which the employee is paid ACC accident compensation; or 25
  - (d) unpaid leave.
- (2) For the purposes of **subsection (1)(d)**, unpaid leave does not include any unpaid leave that the employee takes during—
- (a) an annual closedown under **section 46**; or
  - (b) an agreed closure under **section 49**. 30

*Other provisions*

**17 ~~Multiple roles with same employer treated separately~~**

- (1) ~~If an employment agreement provides for an employee to perform more than 1 role, this Act applies to the employee's leave entitlements for each role separately.~~ 35



- (2) ~~If an employee has more than 1 employment agreement with an employer, this Act applies to the employee's leave entitlements for each employment agreement separately.~~

**17A Multiple roles with same employer treated separately**

- (1) This section applies if an employee agrees to perform more than 1 role for an employer by— 5
- (a) entering into a separate employment agreement for each role; or
  - (b) entering into 1 employment agreement for all of the roles.
- (2) If 2 or more roles provide for the employee to work standard hours, the employee and their employer may agree how leave entitlements and payments under this Act will be treated for each of those roles. 10
- (3) However,—
- (a) **subsection (2)** does not apply to a role that provides for the employee to work casual hours; and
  - (b) if the employee and the employer do not agree under **subsection (2)**, this Act applies to the employee's leave entitlements and payments for each role separately. 15

**18 Restrictions on type of hours**

An employee who—

- (a) has standard hours cannot have casual hours in relation to the same role: 20
- (b) does not have standard hours under an employment agreement cannot have additional hours under that employment agreement.

**19 ~~Transitional, savings, and related provisions~~**

~~The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.~~ 25

**20 This Act provides minimum entitlements**

- (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 (**non-statutory entitlements**). 30
- (3) For the purposes of this Act, if an employer provides an employee with non-statutory entitlements but does not record those entitlements separately from minimum entitlements provided under this Act, the non-statutory entitlements must be treated as if they were minimum entitlements provided under this Act. 35

- (4) An employment agreement that purports to exclude, restrict, or reduce an employee's minimum 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.

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Compare: 2003 No 129 s 6

## **20A When employee receiving accident compensation may also take leave**

- (1) This section applies if an employee is receiving accident compensation.
- (2) If the employee does not work in a week during which they are entitled to receive accident compensation, the employee and their employer may agree that, during that week, the employee may take 1 or more of the following types of leave:
- (a) accrued annual leave, in accordance with **subpart 1 of Part 2**:
  - (b) accrued sick leave, in accordance with **subpart 4 of Part 2**:
  - (c) family violence leave, in accordance with **subpart 6 of Part 2**.
- (3) However,—
- (a) for employees who work casual hours, the amount of family violence leave taken under **subsection (2)(c)** must not exceed the amount calculated under **subsection (4)**; and
  - (b) for all other employees, the amount of leave taken under **subsection (2)** must not exceed, in total, 20% of the employee's standard hours for that week.
- (4) For the purposes of **subsection (3)(a)**, the maximum number of hours of family violence leave that the employee may take in the week must be calculated using the following formula:
- $$(h \div w) \times 0.2 = d$$
- where—
- h** is the total number of hours that the employee worked (or was on paid or unpaid leave) in the reference period
  - w** is the number of whole and part weeks in the reference period
  - d** is the maximum number of hours of family violence leave that the employee may take in the week.
- (5) If an employee takes a number of hours of family violence leave under **subsection (2)**, the employer must deduct the corresponding number of days of family violence leave from the employee's family violence leave entitlement.
- (6) For the purposes of **subsection (5)**, in relation to an employee who works casual hours, the number of days to be deducted must be calculated using the following formula:

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$$a \div (b \div c) = v$$

where—

- a is the number of hours of family violence leave that the employee has taken, as calculated under **subsection (4)**
  - b is the number of hours that the employee worked (or was on paid or unpaid leave) in the reference period 5
  - c is the number of days that the employee worked (or was on paid or unpaid leave) in the reference period
  - v is the number of days of family violence leave that the employer must deduct from the employee's family violence leave entitlement. 10
- (7) For the purposes of **subsection (5)**, in relation to an employee who works standard hours, the number of days to be deducted must be calculated using the following formula:

$$d \div (e \div f) = v$$

where—

- d is the number of hours of family violence leave that the employee has taken 15
  - e is the number of standard hours that the employee would have worked (or would have been on paid or unpaid leave) in the week during which they are entitled to receive accident compensation 20
  - f is the number of days that the employee would have worked (or would have been on paid or unpaid leave) in the week during which they are entitled to receive accident compensation
  - v is the number of days of family violence leave that the employer must deduct from the employee's family violence leave entitlement. 25
- (8) For each period of leave that the employee and the employer agree the employee may take under **subsection (2)**, the employer must pay the employee not less than the leave payment calculated under **section 123**.
- (9) In this section, **reference period** means—
- (a) each pay period starting in the 93 days before the start of the pay period in which the employee first becomes entitled to receive accident compensation; or 30
  - (b) if the employee has worked for the employer for fewer than 93 days before the start of the pay period in which the employee first becomes entitled to receive accident compensation, each pay period starting in the period— 35
    - (i) starting on the employee's start date; and
    - (ii) ending on the day before the pay period in which the employee first becomes entitled to receive accident compensation.

## Part 2

### Leave entitlements and payments

#### 21 Overview of this Part

- (1) In this Part, **subpart 1** provides for annual leave as follows:
  - (a) when an employee accrues annual leave; and 5
  - (b) when an employee may take annual leave; and
  - (c) how an employee may apply to cash up ~~their~~ annual leave; and
  - (d) how annual leave relates to other leave entitlements; and
  - (e) ~~how annual leave relates to compensation under the Accident Compensation Act 2001; and~~ 10
  - (f) that an employer may impose an annual closedown; and
  - (g) that an employer and an employee may agree to a closure or restriction of all or part of the employer's operations for a period of time.
- (2) **Subpart 2** provides for public holidays as follows:
  - (a) when an employee is entitled to public holidays; and 15
  - (b) when a public holiday may be transferred to another day; and
  - (c) how public holidays relate to other leave entitlements.
- (3) **Subpart 3** provides for alternative leave for employees who work on a public holiday as follows:
  - (a) when an employee accrues alternative leave; and 20
  - (b) when an employee may take alternative leave; and
  - (c) how an employee may apply to cash up ~~their~~ alternative leave.
- (4) **Subpart 4** provides for sick leave as follows:
  - (a) when an employee accrues sick leave; and
  - (b) when an employee may take sick leave; ~~and~~. 25
  - (e) ~~how sick leave relates to compensation under the Accident Compensation Act 2001.~~
- (5) **Subpart 5** provides for bereavement leave as follows:
  - (a) when an employee is entitled to bereavement leave; and
  - (b) when an employee may take bereavement leave. 30
- (6) **Subpart 6** provides for family violence leave as follows:
  - (a) when an employee is entitled to family violence leave; and
  - (b) when an employee may take family violence leave; ~~and~~.
  - (e) ~~how family violence leave relates to accident compensation under the Accident Compensation Act 2001.~~ 35

- (7) **Subpart 7** provides for—
- (a) an employee to be paid a leave payment,—
    - (i) if the employee works standard hours, for each standard hour or additional hour (if applicable) that the employee does not work because they take— 5
      - (A) annual leave:
      - (B) sick leave:
      - (C) alternative leave:
      - (D) bereavement leave:
      - (E) family violence leave: 10
    - (ii) if the employee works casual hours, for each casual hour that the employee does not work because they take—
      - (A) alternative leave:
      - (B) bereavement leave:
      - (C) family violence leave: 15
    - (iii) if the employee does not work on a public holiday that is an otherwise working day for the employee; and
  - (b) an employee to be paid for working on a public holiday; and
  - (c) an employee to be paid for cashed-up annual leave or alternative leave; and 20
  - (d) an employee to be paid for annual leave or alternative leave if their employment ends.
- (8) **Subpart 8** provides for—
- (a) an employee who works additional hours or casual hours to be paid an LCP for each hour that the employee works in a pay period— 25
    - (i) in addition to any other payment that an employer is required to pay the employee in the same pay period; and
    - (ii) instead of accruing annual leave or sick leave; and
  - (b) how an employer must calculate an LCP; ~~and,~~
  - (e) ~~an employer's liability if the employer—~~ 30
    - (i) ~~purports to accrue an employee's leave instead of paying an LCP to the employee; or~~
    - (ii) ~~does not pay an LCP to an employee who is entitled to be paid an LCP; or~~
    - (iii) ~~pays an LCP to an employee who is not entitled to be paid an LCP.~~ 35

## Subpart 1—Annual leave

**22 Application of this subpart**

- (1) This subpart applies to an employee who works standard hours.
- (2) This subpart does not apply to any—
  - (a) casual hours that the employee works; or 5
  - (b) additional hours that the employee works.

*Entitlement to and accrual of annual leave***23 Employee's entitlement to accrue annual leave**

- (1) An employee accrues ~~annual leave at a rate of not less than 0.0769 of an hour, — of annual leave for each standard hour or part of a standard hour.~~ 10
  - (a) ~~if the employee is an ASE, for each standard hour, or part of a standard hour, that the ASE works in a pay period and not for each standard hour, or part of a standard hour, that the ASE is paid in a pay period; or~~
  - (b) ~~in all other cases, for each standard hour, or part of a standard hour.~~

**Example**

An employee works 37.5 standard hours each week. The minimum annual leave that the employee accrues each week is 2.88375 hours, calculated as follows:

$$37.5 \times 0.0769 = 2.88375$$

- (2) An employee's annual leave entitlement remains in force until—
  - (a) ~~the employee has taken the annual leave; or~~ 20
  - (b) ~~the employee has been paid for the annual leave in accordance with section 125 or 126.~~
- (3) For the purpose of determining the annual leave that an employee accrues when they are an employee is on leave under the Parental Leave and Employment Protection Act 1987, the number of the employee's standard hours under 25
  - (a) ~~section 6(1)(b)(iv) is are, —~~
    - (a) if, in the 3 months before the employee starts their leave under that Act, the employee and their employer agree a temporary change to the employee's standard hours, ~~the number of the employee's standard hours immediately before the date on which the temporary change commences;~~ 30
      - or
      - (b) in all other cases, the number of the employee's standard hours immediately before the employee starts their leave under that Act.
- (3A) For the purpose of determining the annual leave that an ASE accrues, the ASE accrues annual leave for each standard hour, or part of a standard hour, in the ASE's pay period and not for each standard hour, or part of a standard hour, that the ASE is paid for in a pay period. 35

- (3B) An employee's entitlement to accrued annual leave remains in force until—
- (a) the employee has taken the annual leave; or
  - (b) the employee has been paid for the annual leave in accordance with **section 125 or 126.**
- (4) In **subsection (3)(a), temporary change** means a change that— 5
- (a) increases or decreases the employee's standard hours; and
  - (b) is in place for no more than 3 months.

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**Example**

~~An employee works 37.5 standard hours each week. The employee's minimum annual leave entitlement each week is 2.88375 hours, calculated as follows:~~ 10

$$37.5 \times 0.0769 = 2.88375$$


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**24 ~~When employee employee's annual leave entitlement does not accrue annual leave~~**

- (1) For the purposes of calculating an employee's annual leave under **section 23**, an employee does not accrue annual leave— 15
- (a) for an hour, or part of an hour, that the employee takes as leave or as an absence from work described in **section 6(1)(b)(iii)** if the employee and their employer agree that the employee does not accrue annual leave for that leave or absence from work; or
  - (b) for an hour, or part of an hour, that the employee takes as unpaid leave (other than any unpaid leave referred to in **section 6(1)(b)(iv)**); or 20
  - (c) during a period for which the employee is receiving ~~ACC~~ accident compensation.
- (2) However, if an employee is receiving ~~ACC~~ accident compensation, the employee accrues annual leave on any standard hours that— 25
- (a) the employee works while receiving that compensation; or
  - (b) the employee takes as paid leave under this Act (for example, if the employee takes paid sick leave to top up their ~~ACC~~ accident compensation).
- (3) **Subsections (1)(c) and (2)** apply even if the employer pays all or part of the ~~ACC~~ accident compensation. 30

**25 ~~When employer must allow employee to take accrued annual leave~~**

- (1) ~~In each 12-month period starting on an employee's start date anniversary, the employer must allow the employee—~~
- (a) ~~to take all or any of the employee's annual leave entitlement in their annual leave balance as at the relevant start date anniversary; and~~ 35

- (b) ~~to take the annual leave before the employee's next start date anniversary; and~~
- (c) ~~to take the annual leave (if the employee requests) on dates that ensure that the employee has a continuous period of at least 14 consecutive days without working.~~ 5
- (2) However,—
  - (a) ~~an employee is only entitled to a continuous period of at least 14 consecutive days under **subsection (1)(c)** if the employee has accrued sufficient annual leave to do so; and~~
  - (b) ~~an employer is not required to approve more than 1 request made under **subsection (1)(c)** in any 12-month period starting on an employee's start date anniversary.~~ 10
- (3) For the purposes of **subsections (1) and (2)**,—
  - (a) ~~a period of at least 14 consecutive days includes any days that the employee would not otherwise have worked; but~~ 15
  - (b) ~~an employer must not require an employee to take annual leave on a day that the employee would not otherwise have worked.~~

## 26 **Employer may allow employee to take annual leave in advance**

~~An employer may allow an employee to take annual leave in advance of the employee accruing the annual leave under **section 23**.~~ 20

*When employee takes annual leave*

### **26A When employee takes annual leave**

- (1) An employee and their employer must make all reasonable efforts to agree when the employee will take annual leave (but see **section 26C** if they are unable to agree). 25
- (2) An employer must not unreasonably withhold consent to an employee's request to take accrued annual leave.

### **26B When employer must allow employee to take annual leave**

- (1) In each 12-month period starting on an employee's start date anniversary, the employer must allow the employee— 30
  - (a) to take all or any of the employee's accrued annual leave in their annual leave balance as at the relevant start date anniversary; and
  - (b) to take the annual leave before the employee's next start date anniversary; and
  - (c) to take the annual leave on dates that ensure that the employee has 1 period of at least 14 consecutive days without working if— 35
    - (i) the employee requests to do so; and



- (ii) the employee has accrued sufficient annual leave to do so.
- (2) For the purposes of **subsection (1)**,—
- (a) a **period of at least 14 consecutive days** includes any days that the employee would not otherwise have worked; but
- (b) an employer must not require an employee to take annual leave on a day that the employee would not otherwise have worked. 5
- 26C When employer may require employee to take annual leave**
- (1) This section applies if an employee and their employer are unable to agree under **section 26A** when the employee will take annual leave (despite making reasonable efforts to reach agreement). 10
- (2) The employer—
- (a) may require the employee to take annual leave on a standard hour determined under **section 27(4), 28(4), or 29(4)** (as applicable); and
- (b) must give the employee no less than 14 days' notice in writing of a requirement to take annual leave under this section. 15
- (3) The maximum amount of annual leave that the employer may require the employee to take under this section is the amount of the employee's annual leave in their annual leave balance as at the employee's most recent start date anniversary.
- 26D Employer may allow employee to take annual leave in advance** 20
- An employer may allow an employee to take annual leave in advance of the employee accruing the annual leave under **section 23**.
- 27 When employee may take annual leave: standard hours specified in employment agreement**
- (1) **~~Subsection (2) (4)~~** applies if an employee's employment agreement— 25
- (a) an employee's employment agreement specifies—
- (i) the days on which the employee works standard hours; or
- (ii) a pattern of days of work on which the employee works standard hours; and
- (b) the employee's employment agreement specifies the hours in each of those days that the employee works standard hours. 30
- (2) The employee and their employer must make all reasonable efforts to agree which of the standard hours specified in the employment agreement the employee will take as annual leave (but see **section 30** if the parties are unable to agree). 35
- (3) The employer must not unreasonably withhold their agreement to the employee's request to take annual leave.

- (4) The employee may, in accordance with this subpart, take as annual leave any standard hours specified in their employment agreement.

**28 When employee may take annual leave: standard hours specified in work roster**

- (1) **Subsection ~~(2)~~ (4)** applies if— 5
- (a) an employee has—
- (i) ~~has an employment agreement described in **section 27(1)**; or~~
- (ii) ~~has a notional roster; and~~
- (b) ~~the employee makes a request to take annual leave after the employer sets a work roster for the period in which the requested annual leave falls; and, —~~ 10
- (i) the employee makes a request to take annual leave in the period covered by the work roster; or
- (ii) the employee and their employer agree that the employee may take annual leave in the period covered by the work roster; and 15
- (c) the work roster specifies when the employee is to work standard hours.
- (2) ~~The employee and their employer must make all reasonable efforts to agree which of the standard hours specified in the work roster the employee will take as annual leave (but see **section 30** if the parties are unable to agree).~~
- (3) ~~The employer must not unreasonably withhold their agreement to the employee's request to take the annual leave.~~ 20
- (4) The employee may, in accordance with this subpart, take as annual leave any standard hours specified in the work roster.

**29 When employee may take annual leave: standard hours specified in notional roster** 25

- (1) **Subsection ~~(2)~~ (4)** applies if—
- (a) an employee has a notional roster; and
- (b) ~~the employee makes a request to take annual leave before the employer sets a work roster for the period in which the requested annual leave falls. —~~ 30
- (i) the employee makes a request to take annual leave; or
- (ii) the employee and their employer agree that the employee may take annual leave.
- (2) ~~The employee and their employer must make all reasonable efforts to agree which of the standard hours specified in the notional roster the employee will take as annual leave (but see **section 30** if the parties are unable to agree).~~ 35
- (3) ~~The employer must not unreasonably withhold their agreement to the employee's request to take the annual leave.~~

- (4) The employee may, in accordance with this subpart, take as annual leave any standard hours specified in the notional roster.

**30 ~~When employer may require employee to take annual leave~~**

- (1) ~~This section applies if—~~
- (a) ~~an employee and their employer are unable to agree under **section 27, 28, or 29** when the employee will take annual leave (despite both parties making reasonable efforts to reach agreement); or~~ 5
  - (b) ~~an employer requires an employee to take annual leave.~~
- (2) ~~The employer—~~
- (a) ~~may require the employee to take annual leave on a standard hour that the employee and the employer could otherwise have agreed under **section 27(2), 28(2), or 29(2)** that the employee would take as annual leave; and~~ 10
  - (b) ~~must give the employee no less than 14 days' notice in writing of a requirement to take annual leave under this section.~~ 15
- (3) ~~The maximum amount of annual leave that the employer may require the employee to take under this section is the amount of the employee's annual leave entitlement in their annual leave balance as at the employee's most recent start date anniversary.~~

**31 ~~When employee takes annual leave is taken: general provisions~~** 20

- (1) ~~When an employee takes annual leave,—~~
- (a) ~~the number of standard hours that the employee may be required to work is reduced by the number of hours taken as annual leave; and~~
  - (b) ~~the number of hours that the employee takes taken as annual leave must not exceed the number of standard hours that the employee would otherwise have worked; and~~ 25
  - (c) ~~the employee must not take annual leave in an hour that the employee would not otherwise have worked.~~
- (2) If an employee's employment agreement provides for the employee to work additional hours, the employee and their employer may agree that the employee may work additional hours in a period when the employee takes annual leave. 30
- (3) However,—
- (a) an employee must not take annual leave in an hour that the employee would not otherwise have worked (see **sections 27, 28, and 29**):
  - (b) an employee is not entitled to take annual leave if the employee and their employer expect that the employee would not work on that day or on that part of the day because the employee is paid accident compensation (unless the employee and the employer have reached an agreement under **section 20A**): 35

- (c) an employer must not require an employee to work additional hours on a day on which the employee takes annual leave.

### **32 When employee takes annual leave is taken: part-year employees**

- (1) A part-year employee and their employer may agree that the employee may take any amount of annual leave during ~~the~~ a period of 7 or more consecutive days (*see **subsection (5)(b)***) when the employee is not required to work standard hours. 5
- (1A) For the purpose of agreeing when the employee may take annual leave under **subsection (1)**, the employee and the employer must, when entering into the employment agreement, agree in writing to a roster for the employee that specifies the days of the week, and the hours in each day, when the employee may take the annual leave. 10
- (2) If a part-year employee takes annual leave in accordance with **subsection (1)**, the number of hours of annual leave that the employee takes in the period must not exceed the number of ~~standard hours that the employee would otherwise have worked if the annual leave were taken in a period when the employee works standard hours~~ hours specified in the roster for that period. 15
- (3) Despite **section 23**, an employee accrues annual leave on each hour, or each part of an hour, of annual leave taken under this section.
- (4) This section applies despite anything to the contrary in **sections 27 to 29 and 31.** 20
- (5) In this section, **part-year employee** means an employee who has an employment agreement that specifies—
- (a) the employee's standard hours; and
- (b) 1 or more periods of 7 or more consecutive days during the year when the employee will not be required to work standard hours and will not be paid. 25

### *Cashing up annual leave*

### **33 Employee may request to cash up percentage of annual leave**

- (1) In each 12-month period starting on an employee's start date anniversary, the employee may request to cash up a percentage of the employee's accrued annual leave. 30
- (2) The maximum percentage of annual leave that an employee may cash up in each 12-month period is 25% of the amount of an employee's annual leave in their annual leave balance, as at the end of the day before the relevant start date anniversary. 35
- (3) A request—
- (a) must be in writing; and

- (b) may be made on 1 or more separate occasions until the maximum percentage of annual leave is paid out.
- (4) An employer that receives a request must—
- (a) consider the request within 14 days of receiving it; and
  - (b) advise the employee in writing as to whether the employer agrees to the request; and 5
  - (c) if the employer agrees to the request, comply with **section 125**; and
  - (d) ~~keep a copy of the employee's request and a copy of the employer's advice under **paragraph (b)** to demonstrate that the employer has complied with this section.~~ 10
- (5) An employer—
- (a) may decline an employee's request; and
  - (b) is not required to give the employee a reason for declining the request.

#### Examples

Employee X has an annual leave balance of 280 hours as at their start date anniversary. In the following 12-month period, they may request to cash up a maximum of 70 hours' annual leave. 15

Employee Q has an annual leave balance of 80 hours as at their start date anniversary. In the following 12-month period, they may request to cash up a maximum of 20 hours' annual leave. 20

Compare: 2003 No 129 s 28A

### 34 Requirement to request cashing up annual leave prohibited

- (1) A requirement ~~that for~~ an employee ~~must to~~ make a request under **section 33** to cash up annual leave must not be a term or condition of the employee's employment (whether contained in an employment agreement or otherwise). 25
- (2) Despite **subsection (1)**, an employment agreement may set out the process for making a request under **section 33**.

Compare: 2003 No 129 s 28C

### 35 Requirement to cash up annual leave prohibited

A requirement for an employee to cash up any of their annual leave must not be— 30

- (a) a term or condition of the employee's employment (whether contained in an employment agreement or otherwise); or
- (b) raised in negotiations between the employee and their employer about the employee's terms and conditions relating to— 35
  - (i) leave entitlements; or
  - (ii) salary and wages.

Compare: 2003 No 129 s 28D

**36 Employer may ~~adopt~~ have policy preventing payout**

- (1) An employer may adopt a policy that allows the employer not to consider a request by an employee to cash up annual leave.
- (2) A policy under **subsection (1)** may apply to—
  - (a) the whole of the employer's operations; or
  - (b) only a part or parts of the employer's operations.
- (3) If an employer has a policy under **subsection (1)**, **section 33** does not apply in relation to any part of the employer's operations to which the policy applies.

Compare: 2003 No 129 s 28E

**37 Incorrect payment for cashed-up annual leave** 10

- (1) If an employer incorrectly pays out annual leave,— the employee's entitlement to take the annual leave incorrectly paid out remains in force as if the payment had not been made.
  - (a) ~~the employee's entitlement to take the annual leave incorrectly paid out remains in force as if the payment had not been made; and~~
  - (b) ~~the employee is entitled to keep the payment.~~
- (2) For the purposes of **subsection (1)**, an employer **incorrectly pays out annual leave** if—
  - (a) the employer pays out annual leave that the employee did not request to cash up; or
  - (b) the employer pays out more annual leave than the employee requested or was entitled to request to cash up; or
  - (c) the employee requests to cash up more than the maximum percentage of annual leave permitted under **section 33(2)** and the employer pays that additional amount.

Compare: 2003 No 129 s 28B(2)

*Relationship between annual leave and other entitlements***38 Employer may allow employee taking annual leave to take sick leave**

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

Compare: 1981 No 15 s 14; 2003 No 129 s 36

- 39 Employer must allow employee taking annual leave to take bereavement leave**
- (1) This section applies to an employee who is taking annual leave under this subpart and who then suffers a bereavement as described in **section 89**.
- (2) The employer must allow the employee to take as bereavement leave any period related to a bereavement that the employee would otherwise take as annual leave. 5
- Compare: 2003 No 129 s 37
- 40 Employer must allow employee taking annual leave to take family violence leave** 10
- (1) This section applies to an employee who is taking annual leave under this subpart and who then becomes entitled to take family violence leave under **section 103**.
- (2) The employer must allow the employee to take as family violence leave any period related to the effects on the employee of family violence that the employee would otherwise take as annual leave. 15
- Compare: 2003 No 129 s 37A
- 41 Sickness, injury, bereavement, or family violence arising before scheduled annual leave**
- (1) This section applies if— 20
- (a) either—
- (i) an employee and their employer have agreed that the employee will take annual leave under this subpart; or
- (ii) an employee has been required to take annual leave under this subpart; and 25
- (b) before taking that annual leave, the employee—
- (i) becomes sick or injured; or
- (ii) has a spouse, civil union partner, de facto partner, or dependant who becomes sick or injured; or
- (iii) suffers a bereavement as described in **section 89**; or 30
- (iv) becomes entitled to take family violence leave under **section 103**.
- (2) The employer must allow the employee to take,—
- (a) as sick leave, any period of sickness or injury that the employee would otherwise take as annual leave: 35
- (b) as bereavement leave, any period related to the bereavement that the employee would otherwise take as annual leave:

- (c) as family violence leave, any period related to the effects on the employee of being a person affected by family violence that the employee would otherwise take as annual leave.

Compare: 2003 No 129 s 38

#### **42 Employer may allow employee to take annual leave if sick leave, bereavement leave, or family violence leave exhausted** 5

- (1) This section applies if—
- (a) an employee has exhausted their entitlement to sick leave under **subpart 4**, but then—
    - (i) becomes or remains sick or injured; or 10
    - (ii) has a spouse, civil union partner, de facto partner, or dependant who becomes or remains sick or injured; or
  - (b) an employee requires more leave for a bereavement than they are entitled to under **subpart 5**; or
  - (c) an employee requires more leave to assist the employee to deal with the effects on the employee of being a person affected by family violence than they are entitled to under **subpart 6**. 15
- (2) The employer—
- (a) must not require the employee to take any leave in the circumstances set out in **subsection (1)** as annual leave; but 20
  - (b) may agree, if requested by the employee, to the leave being taken as annual leave to which the employee is entitled.

Compare: 2003 No 129 s 39

#### **43 Relationship between annual leave and public holidays**

- (1) A public holiday that occurs during an employee's annual leave must be treated as a public holiday and not as part of the employee's annual leave. 25
- (2) However, this section applies only if the public holiday would be an otherwise working day for the employee.

Compare: 2003 No 129 s 40

#### *Relationship between annual leave and ACC compensation* 30

#### **44 ~~When employee receiving ACC compensation may also take annual leave~~**

- (1) ~~This section applies if an employee is receiving ACC compensation.~~
- (2) ~~If the employee does not work in a week during which they receive ACC compensation, the employee and their employer may agree that the employee may take an amount of their annual leave in that week, but the amount used must not exceed 20% of the employee's standard hours for that week.~~ 35



- (3) ~~For each period of annual leave that the employee and the employer agree the employee may take, the employer must pay the employee not less than the leave payment calculated under **section 123**.~~

*Annual closedowns*

**45 Meaning of annual closedown** 5

In this Act, **annual closedown**—

- (a) means a period for which the employer—
  - (i) closes or restricts all or part of the employer's operations; and
  - (ii) discontinues the work of 1 or more employees as a result of the closure or restriction; and 10
  - (iii) requires 1 or more employees to take all or some of their annual leave; but
- (b) excludes an agreed closure under **section 49**.

Compare: 2003 No 129 ss 29, 31

**46 Employer may have annual closedown** 15

- (1) An employer may have an annual closedown and may have different annual closedowns for different employees.—
  - (a) ~~may have different annual closedowns for different employees; but~~
  - (b) ~~must not have more than 1 annual closedown starting in each calendar year for any individual employee.~~ 20
- (2) However, an employer must not have more than 1 annual closedown starting in each calendar year for any individual employee.

**47 Employer must give notice of annual closedown**

- (1) If an employee's work will be discontinued as part of an annual closedown, the employer must notify the employee of the annual closedown at least 21 days before it starts. 25
- (2) The notice must be in writing and must specify—
  - (a) when the annual closedown will start and end; and
  - (b) any requirement under **section 48** for the employee to take annual leave or unpaid leave during the annual closedown; and 30
  - (c) if the employer allows the employee to take annual leave in advance under **section 26**, that the employee may take annual leave in advance during the annual closedown; and
  - (d) any other leave arrangements available to the employee for the annual closedown (for example, alternative leave or long-service leave). 35

Compare: 2003 No 129 s 32

**48 Employer may require employee to take annual or unpaid leave during annual closedown**

- (1) This section applies if an employer notifies an employee of an annual closedown under **section 47**.
- (2) The employer— 5
- (a) may require the employee to take annual leave during the annual closedown if it is annual leave that the employee has accrued at the time when it is taken; and
  - (b) may require the employee to take unpaid leave if the following types of leave will be insufficient to cover the annual closedown: 10
    - (i) the employee's accrued annual leave:
    - (ii) any annual leave in advance requested by the employee and agreed to by the employer:
    - (iii) any other leave arrangements available to the employee (as specified in a notice under **section 47(2)**). 15

Compare: 2003 No 129 s 32

*Agreed closures***49 Employee and employer may agree to closure**

- (1) An employee and their employer may agree—
- (a) that the employer may close, or restrict the operations of, all or part of the employer's operations for a period of time; and 20
  - (b) to discontinue, during the closure or restriction, the employee's work as a result of the closure or restriction; and
  - (c) when the closure or restriction will start and end; and
  - (d) the leave arrangements for the employee during that period. 25
- (2) An agreement under **subsection (1)**—
- (a) must be entered into in writing at least 14 days before the start of the closure or restriction; and
  - (b) may relate to any period (regardless of how often, when, or for how long the employee's work has previously been discontinued under this subpart). 30

**Subpart 2—Public holidays****50 Application of this subpart**

This subpart applies to an employee who works—

- (a) standard hours: 35
- (b) standard hours and additional hours:

- (c) casual hours.

*Days that are public holidays*

**51 Days that are public holidays**

- (1) The following 12 days are public holidays:
- (a) New Year's Day: 5
  - (b) 2 January:
  - (c) Waitangi Day:
  - (d) Good Friday:
  - (e) Easter Monday:
  - (f) Anzac Day: 10
  - (g) the birthday of the reigning Sovereign (observed on the first Monday in June):
  - (h) Te Rā Aro ki a Matariki/Matariki Observance Day (*see* Schedule 1 of Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022/the Te Kāhui o Matariki Public Holiday Act 2022): 15
  - (i) Labour Day (being the fourth Monday in October):
  - (j) Christmas Day:
  - (k) Boxing Day:
  - (l) the day of the anniversary of a province or the day locally observed as that day. 20
- (2) 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); 2003 No 129 s 44

*Entitlement to public holidays* 25

**52 Entitlement to public holidays**

- (1) An employee is entitled, in accordance with this subpart, to a public holiday specified in **section 51** if the holiday falls on a day that is an otherwise working day for the employee.
- (2) Public holidays are in addition to any other type of leave to which an employee is entitled under this Act or otherwise. 30

Compare: 1981 No 15 s 7A(1); 2003 No 129 s 46

**53 When employee required to work on public holiday**

An employer may require an employee to work on a public holiday only if—

- (a) the public holiday falls on a day that, ~~must be treated under section 12,~~ is as an otherwise working day for the employee; and
- (b) the employee's employment agreement provides that the employer may require the employee to work on the public holiday.

Compare: 2003 No 129 s 47

5

#### 54 Compliance with section 52

- (1) If a public holiday falls on a day that is not an otherwise working day for an employee, **section 52** is complied with if—
  - (a) the employee does not work on that ~~the~~ day; or
  - (b) the employee works on any part of the day and the employer pays the employee in accordance with **section 124**. 10
- (2) If a public holiday falls on a day that is ~~not~~ an otherwise working day for an employee, **section 52** is complied with—
  - (a) if—
    - (i) the employee does not work on that day; and 15
    - (ii) the employer pays the employee a leave payment under **section 122**; or
  - (b) if—
    - (i) the employee works on any part of that day; and
    - (ii) the employer pays the employee in accordance with **section 124**; and 20
    - (iii) the employee accrues alternative leave in accordance with **section 63**.

Compare: 2003 No 129 s 48

#### *Transferring public holidays* 25

#### 55 Transferring part of public holiday

*When employee and employer may agree to transfer 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 30
  - (b) 1 or both of those days ~~is a~~ are public ~~holiday~~ holidays.
- (2) ~~If the criterion in subsection (3) is met, the~~ The employee and their employer may agree in writing (in an employment agreement or otherwise) that part of 1 or both days is to be treated as not part of a public holiday and that,—
  - (a) if the agreement relates to only 1 day that is a public holiday, a period of 24 hours is to be treated as the a public holiday under this subpart if the period— 35

- 
- (i) is to start or finish during the public holiday; and
    - (ii) includes the period from when the employee is to start work to when the employee is to finish work; or
  - (b) if the agreement relates to 2 days that are public holidays, 2 separate periods of 24 hours are to be treated as the public holidays if each period—
    - (i) is to start or finish during the public holidays; and
    - (ii) includes the period from when the employee is to start work to when the employee is to finish work.
  - (3) ~~The criterion is that~~ However, an agreement under **subsection (2)** has no effect if the purpose of the transfer is ~~not~~ to avoid the employee's entitlements under **sections 63 and 124** for working on a public holiday, although the transfer may have that effect. 10
  - Effect of transfer*
  - (4) If an agreement to transfer part of a public holiday applies, the employee's entitlements under **sections 63 and 124** apply only if the employee works during the period of 24 hours, or 2 separate periods of 24 hours, to which that part of the public holiday has been transferred. 15
  - Agreement requirements*
  - (5) An agreement under **subsection (2)** must— 20
    - (a) specify—
      - (i) the part of ~~1 or both days that are~~ each day that is not to be treated as ~~not~~ part of a public holiday; and
      - (ii) the period or periods of 24 hours that are to be treated as public holidays; and 25
    - (b) set out the effect of the transfer under **subsection (4)**, unless it is set out in the employee's employment agreement or a workplace policy; ~~set out the effect of the transfer under **subsection (4)**~~.
  - (6) 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. 30
- 

#### 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 employee and their employer can agree that the period from 12 am to 6 am on Anzac Day will not be treated as a public holiday and instead agree that the period of 24 hours that starts at 10 pm on Anzac Day will be treated as the public holiday. 35

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Compare: 2003 No 129 s 44A

**56 Transferring whole public holiday**

*When employee and employer may agree to transfer public holiday*

- (1) An employee and their employer may, ~~if the criteria in **subsection (2)** are met,~~ agree in writing (whether in an employment agreement or otherwise) that the employee will observe a public holiday on another calendar day or during another period of 24 hours (a **transfer**). 5
- (2) ~~The criteria are that~~ However, an agreement under **subsection (1)** has effect only if—
  - (a) the agreement is entered into at the request of the employee and not the employer; and 10
  - (b) the public holiday is an otherwise working day for the employee; and
  - (c) the employer has not indicated an intention to require the employee to work on the public holiday under **section 53**; and
  - (d) the day or period to which the public holiday is transferred—
    - (i) is an otherwise working day for the employee; and 15
    - (ii) is not (wholly or partly) another public holiday.
- (3) For the purposes of **subsection (2)**, whether a day or period is an otherwise working day for the employee under **section 12** must be determined ~~as at the time at which the agreement is entered into (or when a new day or period is substituted under **subsection (6)**):—~~ 20
  - (a) as at the time at which the agreement is entered into; or
  - (b) when a new day or period is substituted under **subsection (6)**.

*Effect of transfer*

- (4) If a transfer applies, the effect of the transfer is that the day or period to which the public holiday is transferred must be treated as the employee's public holiday under this subpart. 25

*Agreement requirements*

- (5) An agreement under **subsection (1)** must—
  - (a) specify—
    - (i) the public holiday being transferred; and 30
    - (ii) the calendar day or period of 24 hours to which it is transferred or information from which the day or period can be identified; and
  - (b) set out the effect of the transfer under **subsection (4)**, unless it is set out in the employee's employment agreement or a workplace policy, ~~set out the effect of the transfer under **subsection (4)**.~~ 35
- (6) If, after the agreement is entered into but before the start of the day or period to which the public holiday is transferred (the **previously agreed day or period**), the previously agreed day or period ceases to be an otherwise working day for

the employee due to a change in the days on which the employee would work, or a pattern of days on which the employee would work, as specified in the employee's employment agreement,—

- (a) the employee and the employer may agree in writing to substitute a different day or period (a **new day or period**) that meets the criteria in **subsection (2)(d)** for the previously agreed day or period; and 5
- (b) the application of this section is modified accordingly.
- (7) An agreement under this section—
  - (a) may be made in relation to 1 or more public holidays; but
  - (b) must not reduce the total number of paid public holidays that the employee is otherwise entitled to in any year. 10

Compare: 2003 No 129 s 44B

#### **57 Employer must keep records**

~~An employer must keep records in sufficient detail to demonstrate that the employer has complied with the requirements of **sections 55 and 56**.~~ 15

#### **58 Employer may have policy preventing transfer**

- (1) An employer may adopt a policy that allows the employer not to enter into agreements to transfer ~~that enable all or part of a public holiday to be transferred under **section 55 or 56**.~~
- (2) A policy under **subsection (1)** may apply to— 20
  - (a) to the whole of the employer's operations; or
  - (b) ~~some only to a part or parts of the employer's operations but not to others.~~
- (3) If an employer adopts a policy under **subsection (1)**, **section 55 or 56** does not apply in relation to each part ~~any parts~~ of the employer's operations to which the policy applies. 25

Compare: 2003 No 129 s 44C

#### **59 Observance of public holidays over Christmas and New Year**

- (1) For the purposes of this subpart, if any of the public holidays listed in **section 51(1)(a), (b), (j), or (k)**— 30
  - (a) falls on a Saturday and the day is an otherwise working day for the employee, the public holiday must be treated as falling on that day:
  - (b) falls on a Saturday and the day is not an otherwise working day for the employee, the public holiday must be treated as falling on the following Monday: 35
  - (c) falls on a Sunday and the day is an otherwise working day for the employee, the public holiday must be treated as falling on that day:

- (d) falls on a Sunday and the day is not an otherwise working day for the employee, the public holiday must be treated as falling on the following Tuesday.
- (2) This section does not entitle an employee to more than 4 public holidays for the days listed in **section 51(1)(a), (b), (j), and (k)**. 5
- Compare: 2003 No 129 s 45

## **60 Observance 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 is an otherwise working day for the employee, the public holiday must be treated as falling on that day: 10
- (b) falls on a Saturday or a Sunday, and the day is not an otherwise working day for the employee, the public holiday must be treated as falling on the following Monday.
- (2) 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. 15
- Compare: 2003 No 129 s 45A

### *Relationship between public holidays and other entitlements*

## **61 Sickness, injury, bereavement, or family violence on public holiday**

- (1) This section applies to an employee who works— 20
- (a) standard hours only; or
- (b) standard hours and additional hours; or
- (c) casual hours.
- (2) However, this section applies in relation to a public holiday only if the public holiday is an otherwise working day for the employee. 25

### *When employee does not work on public holiday*

- (3) **Subsection (4)** 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— 30
- (i) becomes or remains sick or injured; or
- (ii) has a spouse, civil union partner, de facto partner, or dependant who becomes or remains sick or injured; or
- (b) ~~the employee suffers or has suffered a~~ takes bereavement leave under **subpart 5** ~~as described in section 89;~~ or
- (c) ~~the employee becomes entitled to take~~ takes family violence leave under **subpart 6 section 103**. 35
- (4) If this subsection applies,—



- 
- (a) the public holiday must continue to be treated as a public holiday and not as sick leave, bereavement leave, or family violence leave for the employee; and
  - (b) the employee—
    - (i) must be paid a leave payment for the day in accordance with **section 122** and is not entitled to be paid in accordance with **section 124**; and 5
    - (ii) is not entitled to accrue alternative leave under **section 63**.
- When employee works part day on public holiday*
- (5) **Subsection (6)** applies to an employee who is required, or has agreed, to work on a public holiday but who works a part day on the public holiday because— 10
    - (a) the employee—
      - (i) becomes or remains sick or injured; or
      - (ii) has a spouse, civil union partner, de facto partner, or dependant who becomes or remains sick or injured; or 15
    - (b) the employee ~~suffers or has suffered a~~ takes bereavement leave under subpart 5 as described in section 89; or
    - (c) the employee ~~becomes entitled to take~~ takes family violence leave under **subpart 6 section 103**. 20
  - (6) If this subsection applies,—
    - (a) in relation to the hours worked during the part day,—
      - (i) those hours must continue to be treated as a public holiday and not as sick leave, bereavement leave, or family violence leave for the employee; and 25
      - (ii) the employee—
        - (A) must be paid for the hours worked on the part day in accordance with ~~section 125~~ **section 124**; and
        - (B) is entitled to accrue alternative leave for the hours worked on the part day under **section 63**; and 30
    - (b) in relation to the hours not worked during the part day,—
      - (i) those hours must be treated as a public holiday and not as sick leave, bereavement leave, or family violence leave for the employee; and
      - (ii) the employee— 35
        - (A) must be paid for the hours not worked on the part day, in accordance with **section 122**; and

(B) is not entitled to accrue alternative leave for the hours not worked on the part day under **section 63**.

- (7) However, the maximum number of hours that an employee may be paid under **subsection (6)(b)(ii)(A)** is the number of hours calculated in accordance with **section 14**, less any hours that the employee worked during the part day. 5

Compare: 2003 No 129 s 61A

### Subpart 3—Alternative leave for working public holiday

#### 62 Application of this subpart

This subpart applies to an employee who works—

- (a) standard hours: 10
- (b) standard hours and additional hours:
- (c) casual hours.

#### *Entitlement to and accrual of alternative leave*

#### 63 Employee's entitlement to accrue alternative leave

- (1) An employee is ~~entitled to accrue~~ accrues alternative leave ~~under in accordance with~~ with this subpart if— 15
- (a) a public holiday falls on a day that is an otherwise working day for the employee; and
  - (b) ~~the employee—1~~ or both of the following apply:
    - (i) the employee works on any part of that day: 20
    - (ii) the employee is on call on any part of that day.
- (2) An employee accrues alternative leave at the following rates: 25
- (a) for each hour that the employee works on a public holiday, an hour:
  - (b) for each part of an hour that the employee works on a public holiday, that part of an hour:
  - (c) if the employee's employment agreement provides that the employer may require the employee to work on a public holiday under **section 53** and the employee is on call, the amount of alternative leave calculated under **subsections (3) and (4)**.
- (3) For the purposes of **subsection (2)(c)**, the amount of alternative leave that an employee accrues when the employee is on call is,— 30
- (a) if the employee is not called to work on the public holiday, ~~the number of hours that the employee would otherwise have worked on that day, had it not been a public holiday, according to their employment agreement:—~~ 35
    - (i) for each hour that the employee is on call, an hour:

- (ii) for each part of an hour that the employee is on call, that part of an hour:
- (b) if the employee is called to work on the public holiday, the ~~total~~ sum of the following hours:
- (i) ~~each hour, or each part of an hour, that the employee is on call but does not work; and~~ 5
- (ia) for each hour that the employee is on call but does not work, an hour; and
- (ib) for each part of an hour that the employee is on call but does not work, that part of an hour; and 10
- (ii) ~~each hour, or each part of an hour, that the employee works on that day.~~
- (iii) for each hour that the employee works on that day, an hour; and
- (iv) for each part of an hour that the employee works on that day, that part of an hour. 15
- (4) However, the maximum amount of alternative leave that the employee accrues under **subsection (3)(a) and (b)(i)(ia) and (ib)** is the number of hours that the employee would otherwise have worked on the public holiday, calculated in accordance with **section 14**.
- (5) An employee's entitlement to accrued alternative leave remains in force until— 20
- (a) the employee has taken the alternative leave; or
- (b) the employee has been paid for the alternative leave in accordance with **section 125 or 126**.

Compare: 2003 No 129 s 56

#### **64 When employee not entitled to accrue alternative leave** 25

An employee is not entitled to accrue alternative leave under this subpart if the employee works for the employer only on public holidays.

Compare: 2003 No 129 s 56(4)

#### *How employee takes alternative leave*

#### **65 How employee may take alternative leave** 30

- (1) An employee and their employer must agree ~~on~~ when the employee will take alternative leave.
- (2) The employer must not unreasonably withhold their consent to the employee taking the alternative leave.
- (3) If the employee and the employer are unable to agree under **subsection (1)** on when the employee takes alternative leave,— 35

- (a) the employee must take the leave on a day, or a part day, determined, on a reasonable basis, by the employer; and
  - (b) the employer must give the employee at least 14 days' notice of the day, or the part day, on which the employee is to take the alternative leave.
  - (4) However, the employee and the employer may only agree, or the employer may only determine, that the employee takes alternative leave on a day, or a part day, that— 5
    - (a) the employee may work under their employment agreement; and
    - (b) is not a public holiday.
- Compare: 2003 No 129 ss 57, 59 10

## **66 When employee takes alternative leave ~~is taken~~: general provisions**

- (1) This section applies to an employee who works—
  - (a) standard hours only; or
  - (b) standard hours and additional hours.
- (2) When the employee takes alternative leave during a period,— 15
  - (a) the number of standard hours that the employee may be required to work in that period is reduced by the number of hours taken as alternative leave; and
  - (b) the number of hours that the employee takes ~~taken~~ as alternative leave must not exceed the number of standard hours that the employee would 20 otherwise have worked in that period.
- (3) If an employee's employment agreement provides for the employee to work additional hours, the employee and their employer may agree that the employee may work additional hours in a period when the employee takes alternative leave. 25
- (4) However, an employer must not require an employee to work additional hours on a day on which the employee takes alternative leave.

### *Cashing up alternative leave*

## **67 Employee may request to cash up alternative leave**

- (1) An employee may request to cash up all or any of the employee's alternative leave. 30
- (2) A request—
  - (a) must be made in writing to the employee's employer; and
  - (b) may be made on 1 or more separate occasions until the alternative leave is paid out. 35
- (3) An employer that receives a request must—
  - (a) consider the request within 14 days of receiving it; 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 125**; and
    - (d) ~~keep a copy of the employee's request and a copy of the employer's advice under **paragraph (b)** to demonstrate that the employer has complied with this section.~~ 5
  - (4) An employer—
    - (a) may decline an employee's request; and
    - (b) is not required to give the employee a reason for declining the request.

Compare: 2003 No 129 s 61 10
  - 68 Requirement to request cashing up alternative leave prohibited**
    - (1) A requirement ~~that for~~ an employee ~~must to~~ make a request under **section 67** to cash up alternative leave 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 67**. 15
  - 69 Requirement to cash up alternative leave prohibited**

A requirement for an employee to cash up any or all of their alternative leave must not be—

    - (a) a term or condition of the employee's employment (whether contained in an employment agreement or otherwise); or 20
    - (b) raised in negotiations between the employee and their employer about the employee's terms and conditions relating to—
      - (i) leave entitlements; or
      - (ii) salary ~~and or~~ wages. 25
  - 70 Employer may ~~adopt~~ have policy preventing payout**
    - (1) An employer may adopt a policy that allows the employer not to consider a request by an employee to cash up alternative leave.
    - (2) A policy under **subsection (1)** may apply to—
      - (a) the whole of the employer's operations; or 30
      - (b) only a part or parts of the employer's operations.
    - (3) If an employer has a policy under **subsection (1)**, **section 67** does not apply in relation to any part of the employer's operations to which the policy applies.

**71 Incorrect payment for cashed-up alternative leave**

- (1) If an employer incorrectly pays out alternative leave,— the employee's entitlement to take alternative leave incorrectly paid out remains in force as if the payment had not been made.
- (a) ~~the employee's entitlement to take alternative leave incorrectly paid out remains in force as if the payment had not been made; and~~ 5
- (b) ~~the employee is entitled to keep the payment.~~
- (2) For the purposes of **subsection (1)**, an employer **incorrectly pays out alternative leave** if—
- (a) the employer pays out alternative leave that the employee did not request to cash up; or 10
- (b) the employer pays out more alternative leave than the employee requested or was entitled to request.

**Subpart 4—Sick leave****72 Application of this subpart** 15

- (1) This subpart applies to an employee who works—
- (a) standard hours;
- (b) standard hours and additional hours.
- (2) This subpart does not apply to any casual hours that the employee works.

*Entitlement to and accrual of sick leave* 20**73 Employee's entitlement to accrue sick leave**

- (1) An employee accrues ~~sick leave at a rate of~~ not less than 0.0385 of an hour of sick leave for each standard hour, or part of a standard hour.
- (2) For the purpose of determining the sick leave that an employee accrues when ~~they are an employee~~ is on leave under the Parental Leave and Employment Protection Act 1987, the employee's standard hours under **section 6(1)(b)(iv)** are,— 25
- (a) if, in the 3 months before the employee starts their leave under that Act, the employee and their employer agree a temporary change to the employee's standard hours, the employee's standard hours immediately before the date on which the temporary change commences; or 30
- (b) in all other cases, the employee's standard hours immediately before the employee starts their leave under that Act.
- (2A) For the purpose of determining the sick leave that an ASE accrues, the ASE accrues sick leave for each standard hour, or part of a standard hour, in the ASE's pay period and not for each standard hour, or part of a standard hour, that the ASE is paid for in a pay period. 35

- (3) In **subsection (2)(a)**, **temporary change** means a change that—
- (a) increases or decreases the employee's standard hours; and
  - (b) is in place for no more than 3 months.
- 74** **When ~~employee~~ employee's sick leave entitlement does not accrue sick leave** 5
- (1) For the purpose of calculating an employee's sick leave under **section 73**, an employee does not accrue sick leave ~~for an hour, or part of an hour,~~—
- (aaa) for an hour, or part of an hour, that the employee takes as leave or as an absence from work described in **section 6(1)(b)(iii)** if the employee and their employer agree that the employee does not accrue sick leave for that leave or absence from work; or 10
  - (a) for an hour, or part of an hour, that the employee takes as unpaid leave (other than any unpaid leave referred to in **section 6(1)(b)(iv)**); or
  - (b) during a period for which the employee is receiving ACC accident compensation. 15
- (2) However, if an employee is receiving ~~ACC accident~~ compensation, the employee accrues sick leave on any standard hours that—
- (a) the employee works while receiving that compensation; or
  - (b) the employee takes as paid leave under this Act (for example, if the employee takes paid sick leave to top up their ~~ACC accident~~ compensation). 20
- (3) **Subsections (1)(b) and (2)** apply even if the employer pays all or part of the ~~ACC accident~~ compensation.
- 75** **Maximum level of accrued sick leave**
- (1) An employee may accrue sick leave to a maximum of 160 hours. 25
- (2) If an employee accrues 160 hours of sick leave, the employee is not entitled to accrue any further sick leave until their accrued sick leave is less than 160 hours.
- (3) This section does not prevent an employee and their employer from agreeing that the employee may be entitled to accrue additional sick leave. 30
- 76** **Employer may allow employee to take sick leave in advance**
- An employer may allow an employee to take sick leave in advance of the employee accruing the sick leave under **section 73**.

**77 Sick leave need not be paid out when employment ends**

An employee is not entitled to be paid out for any sick leave that the employee has accrued, but not taken, before the date on which the employee's employment ends.

Compare: 2003 No 129 s 67

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*How employee takes sick leave***78 Purposes for which employee may take accrued sick leave**

~~An employee who has accrued sick leave is entitled to take sick leave if—~~

- ~~(a) the employee is sick or injured; or~~
- ~~(b) the employee's spouse, civil union partner, or de facto partner is sick or injured; or~~ 10
- ~~(c) a person who depends on the employee for care is sick or injured.~~

~~Compare: 2003 No 129 s 65(1)~~

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

An employee who intends to take sick leave must notify their employer of that intention— 15

- (a) as early as possible before the employee is due to start work on the day on which the employee intends to take sick leave; or
- (b) if that is not practicable, as early as possible after that time.

Compare: 2003 No 129 s 64

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**80 Proof of sickness or injury**

- (1) An employer may require an employee to provide proof of sickness or injury for sick leave taken under **sections 81 to 85** if the sickness or injury that gave rise to the leave lasts for a period of 3 or more consecutive calendar days (or parts of a calendar day), regardless of whether the employee would otherwise work on those days. 25

- (2) Despite **subsection (1)**,—

- (a) an employer may require an employee to provide proof of sickness or injury within 3 consecutive calendar days of the leave commencing if the employer— 30
  - (i) informs the employee as early as possible that the proof is required; and
  - (ii) agrees to meet the employee's reasonable expenses in obtaining the proof:
- (b) an employee and their employer may agree that the employee will provide proof of sickness or injury for sick leave provided to the employee in addition to the entitlement set out in **section 73**. 35



- (3) However,—
- (a) this section does not prevent an employer (if the employer is otherwise legally permitted to impose such a requirement) 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: 5
  - (b) **subsections (1) and (2)(a)** do not give the employer the right to require the employee to obtain the proof from a person specified by the employer.
- (4) For the purposes of this section,—
- health practitioner** has the meaning set out in section 5(1) of the Health Practitioners Competence Assurance Act 2003 10
- proof of sickness or injury** may include a certificate from a health practitioner stating that—
- (a) the employee is not fit to attend work because the employee is sick or injured; or 15
  - (b) the employee cannot attend work because—
    - (i) the employee’s spouse, civil union partner, or de facto partner is sick or injured:
    - (ii) a person who depends on the employee for care is sick or injured. 20
- Compare: 2003 No 129 s 68 20

*When employee takes sick leave*

**80A When employee may take sick leave**

An employee who has accrued sick leave is entitled to take sick leave if—

- (a) the employee is sick or injured; or
- (b) the employee’s spouse, civil union partner, or de facto partner is sick or injured; or 25
- (c) a person who depends on the employee for care is sick or injured.

Compare: 2003 No 129 s 65(1)

**81 When employee may take sick leave: standard hours specified in employment agreement** 30

- (1) **Subsection (2)** applies if an employee’s employment agreement—
- (a) specifies—
    - (i) the days on which the employee works standard hours; or
    - (ii) a pattern of days of work on which the employee works standard hours; and 35
  - (b) specifies the hours in each of those days that the employee works standard hours.

- (2) The employee may, in accordance with this subpart, take as sick leave any standard hours specified in the employment agreement.
- 82 When employee may take sick leave: standard hours specified in work roster**
- (1) **Subsection (2)** applies if— 5
- (a) an employee ~~has~~—
- (i) ~~has~~ an employment agreement described in **section 81(1)**; or
- (ii) ~~has~~ a notional roster; and
- (b) the employee ~~makes a request~~ notifies their employer of their intention to take sick leave after the employer sets a work roster for the period in which the ~~requested~~ notified leave falls; and 10
- (c) the work roster specifies when the employee is to work standard hours.
- (2) The employee may, in accordance with this subpart, take as sick leave any standard hours specified in the work roster.
- 83 When employee takes sick leave: standard hours specified in notional roster** 15
- (1) **Subsection (2)** applies if—
- (a) an employee has a notional roster; and
- (b) the employee ~~makes a request~~ notifies their employer of their intention to take sick leave before the employer sets a work roster that specifies when the employee is to work standard hours during the period in which the ~~requested~~ notified leave falls. 20
- (2) The employee may, in accordance with this subpart, take as sick leave any standard hours specified in the notional roster.
- 84 When employee takes sick leave: additional hours specified in employment agreement** 25
- (1) **Subsection (2)** applies if an employee's employment agreement provides for the employee to work additional hours ~~as defined in section 7(1)(b)~~ under an availability provision.
- (2) The employee may, in accordance with this subpart, take as sick leave any ~~additional hours specified in~~ hour that the employee would have been required to work as an additional hour under an availability provision in the employee's employment agreement. 30
- 85 When employee takes sick leave: additional hours specified in work roster**
- (1) **Subsection (2)** applies if— 35
- (a) **section 84** does not apply; and

- (b) an employee ~~makes a request~~ notifies their employer of their intention to take sick leave after their employer sets a work roster for the period in which the ~~requested~~ notified leave falls; and
  - (c) the work roster specifies when the employee and the employer have agreed the employee is to work additional hours. 5
- (2) The employee may, in accordance with this subpart, take as sick leave any additional hours specified in the work roster.
- 86 When employee not entitled to take sick leave**
- (1) Despite **sections 81 to 85**, an employee is not entitled to take sick leave if the employee and their employer expect that the employee would not work on that day or on that part of the day because the employee is— 10
- (a) on parental leave under the Parental Leave and Employment Protection Act 1987; or
  - (b) on volunteers leave under the Volunteers Employment Protection Act 1973; or 15
  - (c) paid—~~ACC~~ accident compensation (unless the employee and the employer have reached an agreement under **section 87 20A**); or
  - (d) on unpaid leave.
- (2) For the purposes of **subsection (1)(d)**, unpaid leave does not include any unpaid leave that the employee takes during an annual closedown under **section 46**. 20

*Relationship between sick leave and ACC compensation*

- 87 ~~When employee receiving ACC compensation may also take sick leave~~**
- (1) This section applies if—
- (a) ~~an employee is receiving ACC compensation; and~~ 25
  - (b) ~~the employee is entitled to sick leave under **section 73**.~~
- (2) ~~If the employee does not work in a week during which they receive ACC compensation, the employee and their employer may agree that the employee may take an amount of their sick leave in that week, but the amount used must not exceed 20% of the employee's standard hours for that week.~~ 30
- (3) ~~For each period of sick leave that the employee and the employer agree the employee may take, the employer must pay the employee not less than the leave payment calculated under **section 123**.~~

Subpart 5—Bereavement leave

- 88 Application of this subpart** 35
- This subpart applies to an employee who works—

- (a) standard hours:
- (b) standard hours and additional hours:
- (c) casual hours.

*Entitlement to bereavement leave*

- 89 Employee's entitlement to bereavement leave** 5
- (1) An employee is entitled to take bereavement leave in accordance with ~~sections 90 and 92~~ this subpart if the employee suffers a bereavement.
- (2) An employee **suffers a bereavement**—
- (a) on the death of the employee's—
    - (i) spouse, civil union partner, or de facto partner: 10
    - (ii) parent:
    - (iii) child:
    - (iv) brother or sister:
    - (v) grandparent:
    - (vi) grandchild: 15
    - (vii) spouse's, civil union partner's, or de facto partner's parent; or
  - (b) on the death of another 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; or
  - (c) on the ending of the employee's pregnancy by way of miscarriage or stillbirth; or 20
  - (d) on the ending of another person's pregnancy by way of miscarriage or stillbirth, if the employee—
    - (i) is the person's spouse, civil union partner, or de facto partner; or
    - (ii) is the person's former spouse, civil union partner, or de facto partner and would have been a biological parent of a child born as a result of the pregnancy; or 25
    - (iii) had undertaken to be the primary carer (as described in section 7(1)(c) of the Parental Leave and Employment Protection Act 1987) of a child born as a result of the pregnancy; or 30
    - (iv) is the spouse, civil union partner, or de facto partner of a person who had undertaken to be the primary carer of a child born as a result of the pregnancy.
- (3) For the purposes of **subsection (2)(b)**, **relevant factors** include—
- (a) the closeness of the association between the employee and the deceased person: 35

- (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.
- (4) In this section,—
  - miscarriage** means the end of a pregnancy in the first 20 weeks of pregnancy other than as a result of abortion services provided in accordance with the Contraception, Sterilisation, and Abortion Act 1977 5
  - stillbirth** means a stillbirth within the meaning of the Births, Deaths, Marriages, and Relationships Registration Act 2021 other than as a result of abortion services provided in accordance with the Contraception, Sterilisation, and Abortion Act 1977. 10

Compare: 2003 No 129 s 69

## 90 When entitlement to bereavement leave commences

An employee is entitled, under this subpart, to bereavement leave on and from their start date. 15

### *How employee takes bereavement leave*

## 91 Employee must notify employer of intention to take leave

An employee who intends to take bereavement leave must notify their employer of that intention—

- (a) as early as possible before the employee is due to start work on the day on which the employee intends to take bereavement leave; or 20
- (b) if that is not practicable, as early as possible after that time.

Compare: 1981 No 15 s 30A(5); 2003 No 129 s 64

## 92 Duration of bereavement leave

- (1) An employee may take— 25
  - (a) 3 days' bereavement leave for a bereavement described in **section 89(2)(a), (c), or (d)**; and
  - (b) 1 day's bereavement leave for a bereavement described in **section 89(2)(b)**.
- (2) An employee who suffers more than 1 bereavement at the same time may take the amount of bereavement leave specified in **subsection (1)** in respect of each bereavement. 30
- (3) For the purposes of this subpart, if an employee's work period begins on ~~one~~ calendar day and continues into the next consecutive day, the work period must be treated as 1 day. 35

Compare: 2003 No 129 s 70

**93 Bereavement leave may be taken in whole or part days**

- (1) An employee may take bereavement leave to which they are entitled in—  
whole or part days.

(a) ~~whole days; or~~

(b) ~~part days of any length short of a whole day.~~

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- (2) For the purposes of **subsection (1)(b)**, the part of a day taken off work must be treated as a proportion of 1 day of leave, calculated using the following formula:

$$(t - h) \div t = p$$

where—

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t is the number of hours that the employee would have worked, or taken as other paid or unpaid leave, on the relevant day had they not taken the bereavement leave

h is the number of hours that the employee works, or takes as other paid or unpaid leave, on the relevant day

15

p is the proportion of 1 day of leave.

- (3) For the purposes of item t of the formula in **subsection (2)**, the number of hours that an employee would have worked on the relevant day is—

- (a) the number of hours that the employee would have worked as determined under 1 or more of the following sections:

20

(i) **section 94:**

(ii) **section 95:**

(iii) **section 96:**

(iv) **section 97:**

(v) **section 98:**

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(vi) **section 99;** or

- (b) the number of hours specified in any agreement entered into by the employee and their employer after the latest of—

(i) the date on which the employee and the employee agree on the employment agreement; and

30

(ii) the date of the ~~the~~ a notional roster; and

(iii) the date on which the employer sets a work roster for the relevant day.

- (4) Despite **subsection (3)(b)**, an employee and their employer may agree that the employee will take a period of paid bereavement leave that does not include hours for which the employee is rostered to work.

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*When employee takes bereavement leave***94 When employee may take bereavement leave: standard hours specified in employment agreement**

- (1) **Subsection (2)** applies if an employee's employment agreement—
- (a) specifies— 5
    - (i) the days on which the employee works standard hours; or
    - (ii) a pattern of days of work on which the employee works standard hours; and
  - (b) specifies the hours in each of those days that the employee works standard hours. 10
- (2) The employee may, in accordance with this subpart, take as bereavement leave any standard hours specified in the employment agreement.

**95 When employee may take bereavement leave: standard hours specified in work roster**

- (1) **Subsection (2)** applies if— 15
- (a) an employee has—
    - (i) ~~has an~~ employment agreement described in **section 94(1)**; or
    - (ii) ~~has a~~ notional roster; and
  - (b) the employee ~~makes a request~~ notifies their employer of their intention to take bereavement leave after the employer sets a work roster for the period in which the ~~requested~~ notified leave falls; and 20
  - (c) the work roster specifies when the employee is to work standard hours.
- (2) The employee may, in accordance with this subpart, take as bereavement leave any standard hours specified in the work roster.

**96 When employee may take bereavement leave: standard hours specified in notional roster** 25

- (1) **Subsection (2)** applies if—
- (a) an employee has a notional roster; and
  - (b) the employee ~~makes a request~~ notifies their employer of their intention to take bereavement leave before the employer sets a work roster that specifies when the employee is to work standard hours during the period in which the ~~requested~~ notified leave falls. 30
- (2) The employee may, in accordance with this subpart, take as bereavement leave any standard hours specified in the notional roster.

- 97 When employee may take bereavement leave: additional hours specified in employment agreement**
- (1) **Subsection (2)** applies if an employee's employment agreement provides for the employee to work additional hours ~~as defined in **section 7(1)(b)**~~ under an availability provision. 5
- (2) The employee may, in accordance with this subpart, take as bereavement leave ~~any additional hours specified in the~~ hour that the employee would have been required to work as an additional hour under an availability provision in the employee's employment agreement.
- 98 When employee may take bereavement leave: additional hours specified in work roster** 10
- (1) **Subsection (2)** applies if—
- (a) **section 97** does not apply; and
- (b) the employee ~~makes a request~~ notifies their employer of their intention to take bereavement leave after their employer sets a work roster for the period in which the ~~requested~~ notified leave falls; and 15
- (c) the work roster specifies when the employee and the employer have agreed the employee is to work additional hours.
- (2) The employee may, in accordance with this subpart, take as bereavement leave any additional hours specified in the work roster. 20
- 99 When employee may take bereavement leave: casual hours**
- (1) **Subsection (2)** applies if an employee works casual hours and—
- (a) the employee ~~makes a request~~ notifies their employer of their intention to take bereavement leave after the employer sets a work roster that specifies when the employee is to work casual hours during the period in which the ~~requested~~ notified leave falls; and 25
- (b) the employee has agreed to work their casual hours as specified in the work roster.
- (2) The employee may, in accordance with this subpart, take as bereavement leave any casual hours specified in the work roster. 30
- 100 When employee not entitled to take bereavement leave**
- (1) Despite **sections 94 to 99**, an employee is not entitled to take bereavement leave on a day if the employee and their employer expect that the employee would not work on that day or on that part of the day because the employee is— 35
- (a) on parental leave under the Parental Leave and Employment Protection Act 1987; or



- (b) on volunteers leave under the Volunteers Employment Protection Act 1973; or
  - (c) paid ~~ACC~~ accident compensation; or
  - (d) on unpaid leave.
- (2) For the purposes of **subsection (1)(d), unpaid leave** does not include any unpaid leave that the employee takes during an annual closedown under **section 46**. 5

### Subpart 6—Family violence leave

#### 101 Application of this subpart

This subpart applies to an employee who works— 10

- (a) standard hours:
- (b) standard hours and additional hours:
- (c) casual hours.

#### 102 Meaning of person affected by family violence

- (1) In this subpart, **person affected by family violence** means a person who is 15  
either or both of the following:
- (a) a person against whom any other person is inflicting, or has inflicted, family violence:
  - (b) a person with whom there ordinarily or periodically resides a child 20  
against whom any other person is inflicting, or has inflicted, family violence.
- (2) In this section, **child** has the meaning set out in section 8 of the Family Violence Act 2018.

Compare: 2003 No 129 s 72B

### *Entitlement to family violence leave* 25

#### 103 Employee's entitlement to family violence leave

- (1) An employee is entitled to take family violence leave in accordance with ~~sections 104 and 110~~ if the employee is a person affected by family violence. this subpart—
- (a) if the employee is a person affected by family violence; and 30
  - (b) to assist the employee to deal with the effects on them of being a person affected by family violence.
- (2) The employee may take family violence leave under **subsection (1)—**
- (a) regardless of how long ago the family violence occurred; and

- (b) even if the family violence occurred before the person became an employee.

Compare: 2003 No 129 s 72C

#### **104 When entitlement to family violence leave arises**

- (1) An employee is entitled, in accordance with this subpart, to family violence leave on and from their start date. 5
- (2) An employee is entitled to family violence leave for—
- (a) the 12-month period starting on their start date; and
- (b) each subsequent 12-month period starting on their start date anniversary.

Compare: 2003 No 129 s 72D

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#### **105 Employer may allow employee to take family violence leave in advance**

An employer may allow an employee to take family violence leave in advance of the employee becoming entitled to the leave under **section 104(2)(b)**.

Compare: 2003 No 129 s 72D

#### **106 Family violence leave need not be paid out when employment ends** 15

An employee is not entitled to be paid out for any family violence leave that the employee has not taken before the date on which the employee's employment ends.

Compare: 2003 No 129 s 72F

#### *How employee takes family violence leave*

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#### **~~107 Purpose for which employee may take family violence leave~~**

~~An employee may take family violence leave—~~

- ~~(a) if the employee is a person affected by family violence; and~~
- ~~(b) to assist the employee to deal with the effects on them of being a person affected by family violence.~~

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#### **108 Employee must notify employer of intention to take leave**

An employee who intends to take family violence leave must notify their employer of that intention—

- (a) as early as possible before the employee is due to start work on the day on which the employee intends to take family violence leave; or 30
- (b) if that is not practicable, as early as possible after that time.

Compare: 2003 No 129 s 72E

**109 Proof of family violence**

An employer may require an employee who takes family violence leave under **section 103** to produce proof that they are a person affected by family violence.

Compare: 2003 No 129 s 72G

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**110 Duration of family violence leave**

(1) An employee may take up to 10 days' family violence leave in each 12-month period specified in **section 104(2)**.

(2) An employee cannot carry forward any family violence leave not taken in any of those 12-month periods.

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(3) For the purposes of this subpart, if an employee's work period begins on one calendar day and continues into the next day, the work period must be treated as one day.

Compare: 2003 No 129 s 72H

**111 Family violence leave may be taken in whole or part days**

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(1) An employee may take family violence leave to which they are entitled in—  
whole days or part days.

(a) ~~whole days; or~~

(b) ~~part days of any length short of a whole day.~~

(2) For the purposes of **subsection (1)(b)**, the part of a day taken off work must be treated as a proportion of 1 day of leave, calculated using the following formula:

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$$(t - h) \div t = p$$

where—

t is the number of hours that the employee would have worked, or taken as other paid or unpaid leave, on the relevant day had they not taken the family violence leave

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h is the number of hours that the employee works, or takes as other paid or unpaid leave, on the relevant day

p is the proportion of 1 day of leave.

30

(3) For the purposes of item t of the formula in **subsection (2)**, the number of hours that an employee would have worked on the relevant day is—

(a) the number of hours that the employee would have worked as determined under 1 or more of the following sections:

(i) **section 112:**

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(ii) **section 113:**

(iii) **section 114:**

- (iv) **section 115:**
- (v) **section 116:**
- (vi) **section 117;** or
- (b) the number of hours specified in any agreement entered into by the employee and their employer after the latest of— 5
  - (i) the date on which the employee and the employer agree on the employment agreement ~~or the notional roster~~; and
  - (ii) the date of ~~the~~ a notional roster; and
  - (iii) the date on which the employer sets a work roster for the relevant day. 10
- (4) Despite **subsection (3)(b)**, an employee and their employer may agree that the employee will take a period of paid family violence leave that does not include hours for which the employee is rostered to work.

*When employee takes family violence leave*

- 112 When employee may take family violence leave: standard hours specified in employment agreement** 15
- (1) **Subsection (2)** applies if an employee's employment agreement—
    - (a) specifies—
      - (i) the days on which the employee works standard hours; or
      - (ii) a pattern of days of work on which the employee works standard hours; and 20
    - (b) specifies the hours in each of those days that the employee works standard hours.
  - (2) The employee may, in accordance with this subpart, take as family violence leave any standard hours specified in the employment agreement. 25
- 113 When employee may take family violence leave: standard hours specified in work roster**
- (1) **Subsection (2)** applies if—
    - (a) an employee has—
      - (i) ~~has~~ an employment agreement described in **section 112(1)**; or 30
      - (ii) ~~has~~ a notional roster; and
    - (b) the employee ~~makes a request~~ notifies their employer of their intention to take family violence leave after the employer sets a work roster for the period in which the ~~requested~~ notified leave falls; and
    - (c) the work roster specifies when the employee is to work standard hours. 35

- (2) The employee may, in accordance with this subpart, take as family violence leave any standard hours specified in the work roster.
- 114 When employee may take family violence leave: standard hours specified in notional roster**
- (1) **Subsection (2)** applies if— 5
- (a) an employee has a notional roster; and
  - (b) the employee ~~makes a request~~ notifies their employer of their intention to take family violence leave before the employer sets a work roster that specifies when the employee is to work standard hours during the period in which the ~~requested~~ notified leave falls. 10
- (2) The employee may, in accordance with the subpart, take as family violence leave any standard hours specified in the notional roster.
- 115 When employee may take family violence leave: additional hours specified in employment agreement**
- (1) **Subsection (2)** applies if an employee's employment agreement provides for the employee to work additional hours ~~as defined in section 7(1)(b)~~ under an availability provision. 15
- (2) The employee may, in accordance with this subpart, take as family violence leave any ~~additional hours specified in the~~ hour that the employee would have been required to work as an additional hour under an availability provision in the employee's employment agreement. 20
- 116 When employee may take family violence leave: additional hours specified in work roster**
- (1) **Subsection (2)** applies if—
- (a) **section 115** does not apply; and 25
  - (b) the employee ~~makes a request~~ notifies their employer of their intention to take family violence leave after their employer sets a work roster for the period in which the ~~requested~~ notified leave falls; and
  - (c) the work roster specifies when the employee and the employer have agreed the employee is to work additional hours. 30
- (2) The employee may, in accordance with this subpart, take as family violence leave any additional hours specified in the work roster.
- 117 When employee may take family violence leave: casual hours**
- (1) **Subsection (2)** applies if an employee works casual hours and—
- (a) the employee ~~makes a request~~ notifies their employer of their intention to take family violence leave after the employer sets a work roster that specifies when the employee is to work casual hours during the period in which the ~~requested~~ notified leave falls; and 35

- (b) the employee has agreed to work their casual hours as specified in the work roster.
- (2) The employee may, in accordance with this subpart, take as family violence leave any casual hours specified in the work roster.
- 118 When employee not entitled to take family violence leave** 5
- (1) Despite **sections 112 to 117**, an employee is not entitled to take family violence leave if the employee and their employer expect that the employee would not work on that day or on part of the day because the employee is—
- (a) on parental leave under the Parental Leave and Employment Protection Act 1987; or 10
- (b) on volunteers leave under the Volunteers Employment Protection Act 1973; or
- (c) paid—ACC accident compensation (unless the employee and the employer have reached an agreement under **section 119 20A**); or
- (d) on unpaid leave. 15
- (2) For the purposes of **subsection (1)(d), unpaid leave** does not include any unpaid leave that the employee takes during an annual closedown under **section 46**.

*Relationship between family violence leave and ACC compensation*

- 119 When employee receiving ACC compensation may also take family violence leave** 20
- (1) This section applies if—
- (a) an employee is receiving ACC compensation; and
- (b) the employee is entitled to family violence leave under **section 103**.
- (2) If the employee does not work in a week during which the employee is entitled to receive ACC compensation, the employee and their employer may agree that the employee may take a number of hours of their family violence leave in that week. 25
- (3) The maximum number of hours of family violence leave that the employee may take in the week must be calculated using the following formula: 30
- $$(h \div w) \times 0.2 = d$$
- where—
- h is the total number of hours that the employee worked (or was on paid or unpaid leave) in the reference period
- w is the number of whole and part weeks that the employee worked (or was on paid or unpaid leave) in the reference period 35

- d is the maximum number of hours of family violence leave that the employee may take in the week.
- (4) If an employee takes a number of hours of family violence leave under this section, the employer must deduct the corresponding number of days of family violence leave taken from the employee's family leave entitlement. 5
- (5) For the purposes of **subsection (4)**, the number of days to be deducted must be calculated using the following formula:
- $$a \div (b \div c) = v$$
- where—
- a is the number of hours of family violence leave that the employee has taken, as calculated under **subclause (3)** 10
- b is the total number of hours that the employee worked (or was on paid or unpaid leave) in the weeks in the reference period
- c is the number of days that the employee worked (or was on paid or unpaid leave) in the reference period 15
- v is the number of days of family violence leave that the employer must deduct from the employee's family violence leave entitlement.
- (6) For each period of family violence leave that the employee and the employer agree the employee may take, the employer must pay the employee not less than the leave payment calculated under **section 123**. 20
- (7) In this section, **reference period** means—
- (a) each pay period starting in the 93 days before the start of the pay period in which the employee first received ACC compensation; or
- (b) if the employee has worked for the employer for less than 93 days before the start of the pay period in which the employee first received ACC compensation, each pay period starting in the period— 25
- (i) starting on the employee's start date; and
- (ii) ending on the day before the pay period in which the public holiday falls.

## Subpart 7—Leave and other payments 30

### 120 Application of this subpart

This subpart applies to an employee who works—

- (a) standard hours only; ~~or~~ 35
- (b) standard hours and additional hours; ~~or~~
- (c) casual hours.

### 121 Interpretation of this subpart

- (1) In this subpart, unless the context otherwise requires,—

average hourly rate for piece work has the meaning set out in **subsection (2)**

**day** means—

- (a) a calendar day; or
- (b) a work period that is, in accordance with **subsection (3)**, treated as 1 day 5

**fixed allowance**—

- (a) means an allowance that an employer must pay an employee under their employment agreement and that does not vary in value; but
- (b) does not include an allowance payable for an expense that the employee does not incur while on leave 10

**leave hourly rate**,—

- (a) for the purposes of calculating a leave payment under **section 123**, means,—
  - (i) for an employee who is paid a salary (other than an ASE in the circumstances set out in **subparagraph (ii)**), the amount of the employee's salary, including any compensation payable under an availability provision, that is attributable to 1 standard hour's work, including any compensation payable under an availability provision: 15 20
  - (ii) for an ASE, the portion of the ASE's salary in the pay period in which the leave is taken divided by the number of standard hours in that pay period:
  - (iii) for an employee who is paid wages,—
    - (A) for leave taken under **section 32**, the lowest hourly rate payable under the employee's employment agreement; or 25
    - (B) in all other cases, the lowest hourly rate payable under the employee's employment agreement for the day on shift during which the leave is taken:
  - (iv) for an ASE, the portion of the ASE's salary paid in the pay period in which the leave is taken divided by the number of standard hours in that pay period: 30
- (b) for the purposes of calculating payment for cashed-up annual leave or alternative leave under **section 125**, or under **section 126** if employment ends, means,— 35
  - (i) for an employee who is paid a salary, the amount of the employee's salary, including any compensation payable under an availability provision, that is attributable to 1 standard hour's work on the day that the employee makes the request, including any compensation payable under an availability provision: 40



- (ii) for an employee who is paid wages, the lowest hourly rate payable under the employee's employment agreement ~~on the day that the employee makes the request;~~ but
- (e) ~~for the purposes of calculating payment of annual leave or alternative leave under **section 126** if employment ends, means,—~~ 5
  - (i) ~~for an employee who is paid a salary, the amount of the employee's salary that is attributable to 1 standard hour's work on the day that the employee's employment ends, including any compensation payable under an availability provision;~~
  - (ii) ~~for an employee who is paid wages, the lowest hourly rate payable under the employee's employment agreement on the day that the employee's employment ends; but~~ 10
- (d) for the purposes of calculations under **paragraphs (a), and (b), and (c)**, does not include the following: 15
  - (i) LCPs:
  - (ii) allowances:
  - (iii) productivity-based or incentive payments (including commission)
- leave payment** means an amount payable to an employee ~~calculated in accordance with **section 123** under **section 122**~~
- rate of leave payment rate**, for the purposes of calculating the amount payable to an employee under **sections 123, 125, and 126**, means,— 20
  - (a) if the employee is paid partially or wholly by piece work, the greater of—
    - (i) the total of the leave hourly rate (if any) and the average hourly rate for piece work; and 25
    - (ii) the applicable minimum hourly rate of pay; or
  - (b) if the employee is paid partially or wholly by commission, the greater of—
    - (i) the leave hourly rate (if any); and
    - (ii) the applicable minimum hourly rate of pay; or 30
  - (c) in all other cases, the employee's leave hourly rate:
- shift** means a continuous period of work that—
  - (a) starts when the employee—
    - (i) starts work; or
    - (ii) would start work if they were not on leave; and 35
  - (b) ends when the employee—
    - (i) ends work; or
    - (ii) would end work if they were not on leave.

- (2) An employee's **average hourly rate for piece work** must be calculated using the following formula:

$$f \div h = p$$

where—

- f is the total amount of piece work wages that the employer has paid the employee for the pay periods starting in the 93 days before (as applicable) the start of the pay period in which—
- (a) the leave is taken or the public holiday occurs; or
  - (aa) the payment is made, if the employee and the employer agree that the employee is to be paid a leave payment before the annual leave is taken; or
  - (b) the employee made the request to cash up annual leave or alternative leave; or
  - (c) the employee's last day of employment falls
- h is the number of hours that the employee has worked (excluding hours the employee was on paid leave) for the employer in the pay periods starting in the 93 days before the start of the relevant pay period in **paragraph (a), (aa), (b), or (c) of item f**
- p is the average hourly rate for piece work.
- (3) ~~If an employee's work period begins on one calendar day and continues into the next day, the work period must be treated as 1 day.~~

### *Leave payment*

## **122 Leave payment**

- (1) This section applies if—
- (a) an employee takes—
    - (i) annual leave; or
    - (ii) sick leave; or
    - (iii) alternative leave; or
    - (iv) bereavement leave; or
    - (v) family violence leave; or
  - (b) an employee does not work on a public holiday that is an otherwise working day for the employee.
- (2) The employer must—
- (a) calculate the leave payment payable to the ~~employer~~ employee in accordance with **section 123**; and
  - (b) pay the leave payment to the employee,—

- (i) for leave listed in **subsection (1)(a)(i)**, in the pay period in which the leave is taken, unless the employee and the employer agree that the employee is to be paid before the leave is taken; or
    - (ii) for leave listed in **subsection (1)(a)(ii), (iii), (iv), to or (v)**, in the pay period in which the leave is taken; or 5
    - (iii) for a public holiday referred to in **subsection (1)(b)**, in the pay period in which the holiday occurs; and
  - (c) continue to pay the employee any fixed allowances ~~payable for the period of leave or public holiday~~; and
  - (d) identify the leave payment as a distinct component of the employee's pay in their leave record in accordance with **section 133**. 10
- (3) ~~However, if an employee is required to provide proof of sickness or injury under **section 80** and fails to do so without reasonable excuse, 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.~~ 15
- (3) However,—
- (a) if an employee is required under **section 80** to provide proof of sickness or injury and fails to do so without reasonable excuse, the employer, until the employee complies with that requirement,—
    - (i) is not required to pay the employee for any sick leave in respect of which the proof is required; and 20
    - (ii) must not deduct any sick leave hours that the employee has accrued from the employee's sick leave balance;
  - (b) if an employee is required under **section 109** to provide proof that they are a person affected by family violence and fails to do so without reasonable excuse, the employer, until the employee complies with that requirement,— 25
    - (i) is not required to pay the employee for any family violence leave in respect of which the proof is required; and
    - (ii) must not deduct any family violence leave from the employee's entitlement under **section 103**. 30
- (4) In this section, **fixed allowance**—
- (a) means an amount payable to an employee under their employment agreement that—
    - (i) is a fixed amount that must be paid in relation to a specified period or in certain circumstances (for example, an amount that must be paid for each hour worked during the night or an amount that must be paid fortnightly to recognise the employee's particular skills); and 35

- (ii) the employee is entitled to receive despite the period of leave or public holiday; but
- (b) does not include—
- (i) an amount payable to an employee under their employment agreement— 5
- (A) only if certain circumstances occur (for example, an allowance for working in the rain); but
- (B) that the employee is not entitled to receive if they do not work; or
- (ii) reimbursement of an expense that the employee would not incur if the employee did not work. 10

### **Example**

Jack is employed at a seafood factory and is required to work at least 4 hours per shift in the chiller. His employment agreement provides that he is entitled to receive a \$60-per-night fixed allowance if he works any hours between 6 pm and 6 am. His employment agreement also provides that he is entitled to receive a \$40-per-shift fixed allowance for working in the chiller, whether or not he works in the chiller. However, if he works more than 4 hours in the chiller, he receives an additional allowance of \$10 for each additional hour worked in the chiller. 15

Jack is rostered to work a 3 am-to-11 am shift but takes annual leave. He is entitled to receive the following fixed allowances: 20

- the \$60-per-night fixed allowance; and
- the \$40 chiller fixed allowance.

Jack is not entitled to receive the additional \$10-per-hour chiller allowance because it is not a fixed allowance. 25

Compare: 1981 No 15 s 30A(4), (6); 2003 No 129 ss 27, 55, 71, 72, 72I, 72J

## **123 Calculation of leave payment**

- (1) An employer must calculate, in accordance with **subsection (2)**, an employee's pay for—
- (a) a period of leave taken in a pay period, including ~~when—~~ 30
- (i) ~~it is annual leave, sick leave, or family violence leave taken in advance:~~
- (ii) ~~it is annual leave taken during an annual closedown:~~
- (iii) ~~it is annual leave taken during an agreed closure:~~
- (iv) ~~it is annual leave taken under **section 32**:~~ 35
- (b) ~~when the employee does not work on a public holiday that is an otherwise working day.—~~
- (i) is a day on which the employee does not work; and
- (ii) is an otherwise working day for the employee.

- (2) The employee's leave payment must be not less than the ~~rate of~~ leave payment ~~rate~~ for each relevant hour that—
- (a) the employee takes as a period of leave in a pay period; or
  - (b) the employee does not work on a public holiday that would be an otherwise working day for the employee. 5
- (3) In this section, **relevant hour** means,—
- (a) for an employee who works standard hours, each hour that the employee does not work ~~each day~~ because they take—
    - (i) annual leave:
    - (ii) sick leave: 10
    - (iii) alternative leave:
    - (iv) bereavement leave:
    - (v) family violence leave; or
  - (b) for an employee who works casual hours, each hour that the employee does not work ~~each day~~ because they take— 15
    - (i) alternative leave:
    - (ii) bereavement leave:
    - (iii) family violence leave; or
  - (c) for an employee who does not work on a public holiday that is an otherwise working day for the employee, each hour that the employee would have worked on the public holiday (as calculated under **section 14**). 20

Compare: 1981 No 15 s 16; 2003 No 129 ss 21, 22, 33(4)

*Payment for working on public holiday*

- 124 Payment for working on public holiday** 25
- (1) This section applies if an employee works on a public holiday, whether or not the public holiday is an otherwise working day for the employee.
- (2) For each hour that the employee works on the public holiday, the employer must pay the employee—
- (a) the amount that the employee's employment agreement requires the employer to pay the employee for the hour on the public holiday, less any identifiable amount; and 30
  - (b) the greater of the following:
    - (i) 50% of the employee's ordinary hourly rate:
    - (ii) any identifiable amount. 35
- (3) In ~~subsection (2)~~, an ~~identifiable amount~~ must be calculated using the following formula:

$$a - b = e$$

where—

- a means ~~any hourly amount that the employee and their employer have agreed that the employee will be paid for working on a particular day of the week or a public holiday~~ 5
- b means,—
- (a) ~~for an employee who is paid a salary, the amount of the employee's salary that is attributable to 1 standard hour's work, excluding the following:~~
    - (i) ~~allowances:~~ 10
    - (ii) ~~productivity-based or incentive payments (including commission):~~
    - (iii) ~~LCPs; or~~
  - (b) ~~for an employee who is paid wages, the lowest hourly rate payable under the employee's employment agreement, excluding the following:~~ 15
    - (i) ~~allowances:~~
    - (ii) ~~productivity-based or incentive payments (including commission):~~
    - (iii) ~~LCPs~~ 20
- e is the identifiable amount.
- (3A) In **subsection (2)**, identifiable amount means an amount that is payable, in addition to the employee's ordinary hourly rate, to compensate the employee for working on a particular day of the week or a public holiday.
- (4) In addition to the amount payable under **subsection (2)**, the employer must 25 pay the employee,—
- (a) at a rate not less than the employee's ~~rate of leave payment rate in paragraph (a), (b), or (c)~~ (as applicable) of the definition of ~~rate of leave payment rate~~ in **section 121**, for any hours not worked on the public holiday if— 30
    - (i) the number of hours that the employee would have worked on the day but for it being a public holiday is specified in the employee's employment agreement; and
    - (ii) the employee works fewer hours than the specified number of hours; or 35
  - (b) any LCP payable under **section 129**.
- (5) In this section,—

**ordinary hourly rate**, for the purposes of calculating the rate of pay for working on a public holiday, means,—

- (aaa) for an employee who is paid by a salary, the amount of the employee's salary, including any compensation payable under an availability provision, that is attributable to 1 standard hour's work, excluding the following: 5
  - (i) allowances:
  - (ii) productivity-based or incentive payments (including commission):
  - (iii) LCP:
- (aab) for an employee who is paid wholly by wages, an amount that is the lowest hourly rate payable under the employee's employment agreement, excluding the following: 10
  - (i) allowances:
  - (ii) productivity-based or incentive payments (including commission):
  - (iii) LCP: 15
- (a) for an employee who is paid both by piece work and by a salary or wages, the greater of—
  - (i) the ~~total sum~~ of—
    - (A) the amount that would apply under **paragraph (e) or (d) (aaa) or (aab)** (as applicable) if the employee were paid wholly by a salary or wages; and 20
    - (B) the amount of the average hourly rate for piece work; and
  - (ii) the amount of the applicable minimum hourly rate of pay:
- (b) for an employee who is paid wholly by piece work, the greater of—
  - (i) the amount of the average hourly rate for piece work; and 25
  - (ii) the amount of the applicable minimum hourly rate of pay:
- (c) for an employee who is paid both by commission and by a salary or wages, the greater of—
  - (i) the amount that would apply under **paragraph (e) or (f) (aaa) or (aab)** (as applicable) if the employee were paid wholly by a salary or wages; and 30
  - (ii) the amount of the applicable minimum hourly rate of pay:
- (d) for an employee who is paid wholly by commission, the amount of the applicable minimum hourly rate of pay, the greater of—
  - (i) ~~the amount in~~ **paragraph (e) or (f)** (as applicable); and 35
  - (ii) ~~the amount of the applicable minimum hourly rate of pay:~~

- (e) for an employee who is paid a salary, but to whom **paragraphs (a) to (d)** do not apply, the amount of the employee's salary that is attributable to 1 standard hour's work, excluding the following:
  - (i) allowances:
  - (ii) productivity-based or incentive payments (including commission): 5
  - (iii) LCP:
- (f) for an employee who is paid wages, but to whom **paragraphs (a) to (d)** do not apply, an amount that is the lowest hourly rate payable under the employee's employment agreement, excluding the following:
  - (i) allowances: 10
  - (ii) productivity-based or incentive payments (including commission):
  - (iii) LCP:

*Payment for cashed-up annual leave or alternative leave*

**125 Payment for cashed-up annual leave or alternative leave**

- (1) This section applies if an employer agrees to a request from an employee— 15
    - (a) to cash up the employee's annual leave under **section 33**; or
    - (b) to cash up the employee's alternative leave under **section 67**.
  - (2) The employer must—
    - (a) calculate the amount of leave to be paid in accordance with **subsection (3)**; and 20
    - (b) pay the amount as soon as practicable after the employer has agreed to the employee's request.
  - (3) For each hour of annual leave or alternative leave to be cashed up, the employee must be paid not less than the rate of leave payment rate. 25
- Compare: 2003 No 129 ss 27, 28B, 60, 61

*Payment for annual leave or alternative leave if employment ends*

**126 Payment for annual leave or alternative leave if employment ends**

- (1) If an employee's employment ends, this section applies if an employee's employment ends to the employee's— 30
  - (a) annual leave; and
  - (b) alternative leave.
- (2) The employer must—
  - (a) calculate the amount of leave to be paid in accordance with **subsection (3)**; and
  - (b) pay the amount in the pay that relates to the employee's final period of 35 employment.



- (3) For each hour of annual leave or alternative leave that the employee has not taken or cashed up ~~as at the day on which the employee's employment ends,~~ the employee must be paid not less than the ~~rate of leave payment~~ rate.

Compare: 2003 No 129 ss 27, 60

## Subpart 8—Leave compensation payment 5

### 127 Application of this subpart

- (1) This subpart applies to an employee who works—
- (a) standard hours and additional hours, but only in relation to the additional hours:
  - (b) casual hours. 10
- (2) This subpart does not apply to an employee's standard hours.

### 128 Interpretation of this subpart

- (1) In this subpart, unless the context otherwise requires,—
- average hourly rate for piece work** has the meaning set out in **subsection (2)** 15
- LCP employee** means an employee ~~described in section 127~~ who works—
- (a) standard hours and additional hours, but only in relation to the additional hours:
  - (b) casual hours.
- (2) An employee's **average hourly rate for piece work** must be calculated using 20 the following formula:

$$f \div h = p$$

where—

- f is the total amount of piece work wages that the employer has paid the employee for the pay periods starting in the 93 days before the start of the pay period in which the LCP is payable 25
- h is the number of hours that the employee has worked (excluding hours the employee was on paid leave) for the employer in the pay periods starting in the 93 days before the start of the pay period in which the LCP is payable 30
- p is the average hourly rate for piece work.

### 129 Employer must pay LCP to LCP employee

- (1) An employer must pay an LCP to an LCP employee in each pay period—
- (a) at a rate of not less than 12.5% of the employee's ordinary hourly rate for each relevant hour in that pay period; and 35

- (b) in addition to any other payment the employer is required to pay to the employee for the pay period.
- (2) The employer must identify the LCP as a distinct component of the LCP employee's pay in their leave record in accordance with **section 133**.
- (3) In this section,— 5
- ordinary hourly rate**, for the purposes of calculating the rate on which an LCP is payable, means,—
- (aaa) for an LCP employee who is paid by a salary, the amount of the employee's salary, including any compensation payable under an availability provision, that is attributable to 1 standard hour's work, excluding the following: 10
- (i) allowances:
- (ii) productivity-based or incentive payments (including commission):
- (aab) for an LCP employee who is paid wholly by wages, an amount that is the lowest hourly rate payable under the employee's employment agreement, excluding the following: 15
- (i) allowances:
- (ii) productivity-based or incentive payments (including commission):
- (a) for an LCP employee who is paid both by piece work and by a salary or wages, the greater of— 20
- (i) the ~~total~~ sum of—
- (A) the amount that would apply under **paragraph (c) or (d) (aaa) or (aab)** (as applicable) if the employee were paid wholly by a salary or wages; and
- (B) the amount of the average hourly rate for piece work; and 25
- (ii) the amount of the applicable minimum hourly rate of pay:
- (b) for an LCP employee who is paid wholly by piece work, the greater of—
- (i) the amount of the average hourly rate for piece work; and
- (ii) the amount of the applicable minimum hourly rate of pay:
- (c) for an LCP employee who is paid both by commission and by a salary or wages, the greater of— 30
- (i) the amount that would apply under **paragraph (e) or (f) (aaa) or (aab)** (as applicable) if the employee were paid wholly by a salary or wages; and
- (ii) the amount of the applicable minimum hourly rate of pay: 35
- (d) for an LCP employee who is paid wholly by commission, ~~the greater of—~~ the amount of the applicable minimum hourly rate of pay
- (i) ~~the amount in~~ **paragraph (e) or (f)** (as applicable); and

- 
- (ii) the amount of the applicable minimum hourly rate of pay:
- (e) for an LCP employee who is paid a salary, but to whom **paragraphs (a) to (d)** do not apply, the amount of the employee's salary that is attributable to 1 standard hour's work, excluding the following:
- (i) allowances: 5
- (ii) productivity-based or incentive payments (including commission):
- (f) for an LCP employee who is paid wages, but to whom **paragraphs (a) to (d)** do not apply, an amount that is the lowest hourly rate payable under the employee's employment agreement, excluding the following:
- (i) allowances: 10
- (ii) productivity-based or incentive payments (including commission)
- relevant hour** means,—
- (a) in relation to an LCP employee who works standard hours, each additional hour that the LCP employee—
- (i) works; or 15
- (ii) does not work because they take sick leave, alternative leave, bereavement leave, or family violence leave:
- (b) in relation to an LCP employee who works casual hours, each hour that the LCP employee—
- (i) works; or 20
- (ii) does not work because they take alternative leave, bereavement leave, or family violence leave:
- (c) in relation to any LCP employee, if the pay period includes a public holiday and the public holiday falls on a day that is an otherwise working day for the LCP employee, and the employee does not work an hour on that day,— 25
- (i) each additional hour that an employee who works standard hours would have worked on that day if it were not a public holiday, as determined under **section 14**; or
- (ii) each casual hour that an employee who works casual hours would have worked on that day if it were not a public holiday, as determined under **section 14**. 30
- (4) See **subpart 2A of Part 3**, which applies if an employer fails to apply, or incorrectly applies, this section.
- 

#### Examples

35

An LCP employee's employment agreement provides that the employee works casual hours. The employee's ordinary hourly rate of pay is \$30 and their penal rate is \$40 per hour. For each hour worked, the employee is entitled to be paid an LCP at 12.5% of their ordinary hourly rate ( $\$30 \times 12.5\% = \$3.75$  per hour). If

~~the employee works 3 hours at their ordinary hourly rate of pay and 3 hours at their penal rate, the employee is entitled to be paid an LCP for the 6 hours worked amounting to \$22.50 (\$3.75 × 6 hours = \$22.50).~~

An LCP employee's employment agreement provides that an employee works standard hours and that they may work additional hours. The employee's ordinary hourly rate of pay is \$30. For each additional hour worked, the employee is entitled to be paid an LCP at 12.5% of their ordinary hourly rate (\$30 × 12.5% = \$3.75 per hour). If the employee works 3 additional hours, the employee is entitled to be paid an LCP for those 3 hours amounting to \$11.25 (\$3.75 × 3 = \$11.25). The employee is entitled to be paid the LCP in addition to the hourly rate payable for working the additional hours. The employee is not entitled to be paid an LCP for working any of their standard hours.

An LCP employee's employment agreement provides that the employee works casual hours. The employee's ordinary hourly rate of pay is \$30 and their penal rate is \$40 per hour. For each hour worked, the employee is entitled to be paid an LCP at 12.5% of their ordinary hourly rate (\$30 × 12.5% = \$3.75 per hour). If the employee works 3 hours at their ordinary hourly rate of pay and 3 hours at their penal rate, the employee is entitled to be paid an LCP for the 6 hours worked amounting to \$22.50 (\$3.75 × 6 hours = \$22.50).

### **130 Employer's liability if leave accrued instead of LCP employee receiving LCP**

(1) ~~This section applies if an employer does not pay an LCP employee an LCP under **section 129** and—~~

(a) ~~purports to accrue annual leave under **section 23** for the employee; or~~

(b) ~~purports to accrue sick leave under **section 73** for the employee.~~

*Purported annual leave*

(2) ~~An LCP employee who works casual hours may do either or both of the following in relation to any purported annual leave (PAL):~~

(a) ~~take the PAL on any hours that the employee and their employer agree:~~

(b) ~~request to cash up all or any of the PAL in accordance with **subsection (7)**.~~

(3) ~~The employer must not unreasonably withhold their agreement to the LCP employee taking the PAL under **subsection (2)(a)**.~~

(4) ~~An LCP employee who works additional hours may do either or both of the following in relation to any PAL:~~

(a) ~~take the PAL in accordance with **section 27, 28, or 29** as if the PAL were accrued annual leave:~~

(b) ~~request to cash up all or any of the PAL in accordance with **subsection (7)**.~~

*Cashing up purported annual leave*

(5) ~~The employer of an LCP employee with PAL must notify the LCP employee of the following:~~

- 
- (a) ~~that the employee may decide to request to cash up all or any of the PAL; and~~
  - (b) ~~that the employee's decision must be in writing and is final; and~~
  - (c) ~~that any PAL that has not been cashed up will become accrued annual leave; and~~ 5
  - (d) ~~the number of hours of the PAL, as at the date of the notice, that the employee may cash up; and~~
  - (e) ~~that, if the employee works any casual hours or additional hours in the period starting on the date of the notice and ending on the date by which the employee must make the decision, the number of hours of PAL that the employee may cash up may increase; and~~ 10
  - (f) ~~the date by which the employee must decide whether to request to cash up the PAL; and~~
  - (g) ~~that, if the employee decides not to request to cash up the PAL by the date under **paragraph (f)**, or the employer does not agree to the request to cash up the PAL, the PAL will be treated as accrued annual leave.~~ 15
  - (6) ~~The employer of an LCP employee with PAL must provide the notice in **subsection (5)**—~~
    - (a) ~~in writing; and~~
    - (b) ~~at least 14 days—~~ 20
      - (i) ~~before the date specified in **subsection (14)(a)(i)**; or~~
      - (ii) ~~before the date specified in **subsection (14)(a)(ii)**.~~
  - (7) ~~A request to cash up PAL under **subsection (2)(b) or (4)(b)**—~~
    - (a) ~~must be in writing; and~~
    - (b) ~~must be made no later than the date specified in **subsection (14)(a)**.~~ 25
  - (8) ~~For the purposes of a request to cash up PAL, **section 33(4) and (5)** applies as if the request were a request to cash up PAL.~~
  - (9) ~~If the LCP employee's employment ends, **section 126** applies to any PAL that the employee has not taken or cashed up under this section as if it were annual leave.~~ 30
  - (10) ~~Except as provided in this section and in **section 133**, the PAL of an LCP employee who works additional hours must be treated as accrued annual leave under this Act.~~
  - Purported sick leave*
  - (11) ~~An LCP employee who works casual hours may take any purported sick leave on any hours specified in the employee's work roster.~~ 35
  - (12) ~~An LCP employee who works additional hours may take any purported sick leave in accordance with **section 81, 82, 83, 84, or 85**.~~

- (13) ~~Except as provided in this section, an LCP employee's purported sick leave must be treated as accrued sick leave under this Act.~~

*Compliance with section 129*

- (14) The employer—
- (a) must comply with **section 129** by— 5
    - (i) the date that is 8 weeks after the earlier of—
      - (A) the date on which the LCP employee notifies the employer in writing of the unpaid LCP; and
      - (B) the date on which a Labour Inspector notifies the employer in writing of the unpaid LCP; or 10
    - (ii) an earlier date agreed by the employee and the employer; and
  - (b) must continue to purport to accrue annual leave or sick leave for the employee until the date set out in **paragraph (a)**; and
  - (c) is not required to pay an LCP to the employee until the date set out in **paragraph (a)**. 15

### **131 Employer's liability if LCP not paid to LCP employee**

- (1) This section applies if an employer of an LCP employee does not—
- (a) pay an LCP to the employee as required under **section 129**; and
  - (b) purport to accrue— 20
    - (i) annual leave under **section 23** for the employee; or
    - (ii) sick leave under **section 73** for the employee.
- (2) The employer must pay the unpaid amount of the LCP by the date that is 8 weeks after the earlier of—
- (a) the date on which the employee notifies the employer in writing of the unpaid LCP; or 25
  - (b) the date on which a Labour Inspector notifies the employer in writing of the unpaid LCP.

### **132 Employer's liability if LCP paid to employee entitled to accrue leave**

- (1) This section applies if an employer pays an LCP to an employee who is entitled to accrue annual leave or sick leave. 30
- (2) The employer must ensure that the employee accrues annual leave and sick leave in accordance with **sections 23 and 73** and stop paying an LCP to the employee.
- (3) The employer must comply with **subsection (2)** by— 35
- (a) the date that is 8 weeks after the earlier of—

- (i) ~~the date on which the employee notifies the employer in writing that the employee is entitled to accrue annual leave and sick leave; and~~
- (ii) ~~the date on which a Labour Inspector notifies the employer in writing that the employee is entitled to accrue annual leave and sick leave; or~~ 5
- (b) an earlier date agreed by the employee and the employer.
- (4) ~~The employee is entitled to keep the LCP that they have been paid up to the date on which the employer must comply with **subsection (2)**.~~

### Part 3

10

## Leave records, enforcement, and other matters

### Subpart 1—Leave records

#### 133 Leave records: content

- (1) An employer must at all times keep a leave record showing the following information for each employee: 15
  - (1) the employee's name:
  - (2) the employee's start date:
  - (3) the number of hours the employee has worked each day in each pay period:
  - (4) the amount paid to the employee in each pay period itemised by category (for example, ordinary rate, overtime rate, piece work rate, penal rate, commission, or allowances): 20
  - (5) the number of hours on which any LCP is paid to the employee in each pay period and the LCP paid for those hours:
    - Annual leave information* 25
  - (6) the employee's—
    - (a) current annual leave balance; and
    - (b) annual leave balance as at the employee's most recent start date anniversary:
  - (7) for each pay period, the number of hours of annual leave the employee has accrued: 30
  - (8) for each pay period,—
    - (a) the dates on which the employee has taken annual leave; and
    - (b) the number of hours the employee has taken as annual leave on each of those dates: 35
    - (c) the amount paid to the employee for annual leave:

- (9) in relation to a request to cash up annual leave under **section 33**, a copy of the employee's request and a copy of the employer's advice ~~that the employer is required to keep under **section 33(4)(d)**:~~
- (10) details of any annual leave the employee has cashed up under **section 33**, including— 5
- (a) the number of hours of annual leave cashed up; and
  - (b) the percentage of accrued annual leave (as at the employee's most recent start date anniversary) that the employee has cashed up; and
  - (c) the date and amount of the payment: 10
- (11) the notice of an annual closedown required under **section 47(2)**:
- (12) the agreement to a closure under **section 49**:  
*Public holiday information*
- (13) the date of, the number of hours on, and details of payments for, any public holiday or transferred public holiday on which the employee did not work but for which the employee ~~had an entitlement to public holiday pay~~ is entitled to be paid: 15
- (14) the date of any public holiday on which the employee ~~was required to work~~ worked and the number of hours the employee worked:
- (15) ~~the date of any public holiday on which the employee was on call and the number of hours the employee was on call:~~ 20
- (15) if the employee's employment agreement provides that the employer may require the employee to work on a public holiday under **section 53** and the employer requires the employee to be on call on a public holiday,— 25
- (i) the date of that public holiday; and
  - (ii) the number of hours that the employee was on call on that public holiday:
- (16) the day or part of ~~any public holiday~~ a day that the employee and their employer agreed to transfer under **sections 55 and or 56** and the calendar day or period of 24 hours to which it has been transferred: 30
- (16A) a copy of records that demonstrate that the employer has complied with the requirements of **sections 55 and 56**:
- (17) the amount of payment for any public holiday on which the employee worked: 35
- Alternative leave information*
- (18) the employee's alternative leave balance:
- (19) the date on which the employee accrued alternative leave and the number of hours accrued on that date:



- (20) for each pay period,—
- (a) the dates on which the employee has taken alternative leave; and
  - (b) for each of those dates, the number of hours the employee has taken as alternative leave:
  - (c) the amount paid to the employee for alternative leave: 5
- (21) in relation to a request to cash up alternative leave under **section 67**, ~~the record that the employer is required to keep to comply with **section 67(3)(d)**~~ a copy of the employee's request and a copy of the employer's advice:
- (22) details of any alternative leave the employee has cashed up under **section 67**, including— 10
- (a) the number of hours of alternative leave cashed up; and
  - (b) the date and amount of the payment:
- Sick leave information*
- (23) the employee's sick leave balance: 15
- (24) for each pay period, the number of hours of sick leave the employee has accrued:
- (25) for each pay period,—
- (a) the dates on which the employee has taken sick leave; and
  - (b) for each of those dates, the number of hours the employee has taken as sick leave:; and 20
  - (c) the amount paid to the employee for sick leave:
- Bereavement leave information*
- (26) for each pay period,—
- (a) the dates on which the employee has taken bereavement leave: 25
  - (b) ~~for each of those dates, the number of whole days or part days the employee has taken as bereavement leave, calculated in accordance with **section 93**:—~~
    - (i) the number of whole days or part days the employee has taken as bereavement leave, calculated in accordance with **section 93**; and 30
    - (ii) the number of hours the employee has taken as bereavement leave on each of those days, calculated in accordance with **section 123**:
  - (c) the amount paid to the employee for bereavement leave: 35
- Family violence leave information*
- (27) for each pay period,—
- (a) the dates on which the employee has taken family violence leave:

- (b) for each of those dates, ~~the number of whole days or part days the employee has taken as family violence leave, calculated in accordance with **section 111**:~~—
- (i) the number of whole days or part days the employee has taken as family violence leave, calculated in accordance with **section 111**; and 5
- (ii) the number of hours the employee has taken as family violence leave on each of those days, calculated in accordance with **section 123**:
- (c) the amount paid to the employee for family violence leave: 10
- Other leave information*
- (28) the periods of any other paid or unpaid leave that the employee has taken under any other legislation or otherwise and the type of leave:
- (29) in relation to a request to cash up purported annual leave under ~~**section 130 section 151A(2)(b) or (4)(b)**~~, a copy of the employee's request and a copy of the employer's advice ~~that the employer is required to keep under **section 33(4)(d)**~~: 15
- (30) details of any purported annual leave the LCP employee has cashed up under ~~**section 130 section 151A**~~, including—
- (a) the number of hours of purported annual leave cashed up; and 20
- (b) the date and amount of the payment:
- (31) any notice provided by an employer to an LCP employee under ~~**section 130(5) section 151A(7)**~~: 25
- Termination of employment*
- (32) if the employee ceases employment with the employer,— 25
- (a) the final date on which the employee is employed:
- (b) any amount paid to the employee as annual leave or alternative leave under **section 126**.
- (2) If the number of hours an employee is to work 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 (1)(4) subsection (1)(3) and (4)**~~ if those usual hours and pay are stated in— 30
- (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 35
- (c) a work roster or any other document or record used in the normal course of the employee's employment.

- (3) In **subsection (2)**, the **usual hours** of an employee who is remunerated by way of salary include any extra hours worked by the employee in accordance with the employee's employment agreement.—
- (a) ~~include any hours the employee works under an availability provision;~~  
and 5
- (b) ~~do not include any extra hours, other than hours worked under the availability provision, worked by the employee in accordance with the employee's employment agreement.~~
- (4) Despite **subsection (3)**, the employer must record any hours ~~the employee works under an availability provision~~ 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. 10
- (5) In this section,—
- (a) an employee's **annual leave balance** means the balance of the employee's accrued annual leave ~~entitlement~~ calculated using the following formula: 15
- $$e - l = a$$
- where—
- e is the ~~total sum~~ of the following:
- (i) the number of hours of annual leave that the employee has accrued under **section 23** since the later of,— 20
- (A) ~~if the employee has a start date on or after the date on which this section comes into force, since the employee's start date; or and~~
- (B) ~~if the employee has a start date before the date on which this section comes into force, since the date on which this section comes into force; and~~ 25
- (ii) the number of hours of purported annual leave that the employee has accrued under ~~section 130~~ **section 151A**; and 30
- (iii) the number of hours of annual holidays that the employee was entitled to under the Holidays Act 2003 (after the employee's previous annual holidays were converted under **clause 9 of Schedule 1**)
- l is the total number of hours of annual leave or purported annual leave that the employee has taken or cashed up since the later of,— 35
- (i) ~~if the employee has a start date on or after the date on which this section comes into force, since the employee's start date; or and~~ 40

- (ii) ~~if the employee has a start date before the date on which this section comes into force, since the date on which this section comes into force~~
- a is the employee's annual leave balance in hours:
- (b) an employee's **sick leave balance** means the balance of the employee's sick leave ~~entitlement~~ calculated using the following formula: 5
- $$e - l = s$$
- where—
- e is the ~~total number~~ sum of the following:
- (i) the number of hours of sick leave that the employee has accrued under **section 73** since the later of— 10
- (A) ~~if the employee has a start date on or after the date on which this section comes into force, since the employee's start date; or and~~
- (B) ~~if the employee has a start date before the date on which this section comes into force, since the date on which this section comes into force; and~~ 15
- (ii) the number of hours of purported sick leave that the employee has accrued under ~~section 130~~ **section 151A**; 20
- and
- (iii) the number of hours of sick leave that the employee was entitled to under the Holidays Act 2003 (after the employee's previous sick leave was converted under **clause 15 of Schedule 1**)
- l is the total number of hours of sick leave the employee has taken since the later of— 25
- (i) ~~if the employee has a start date on or after the date on which this section comes into force, since the employee's start date; or and~~
- (ii) ~~if the employee has a start date before the date on which this section comes into force, since the date on which this section comes into force~~ 30
- s is the employee's sick leave balance in hours;
- (c) an employee's **alternative leave balance** means the balance of the employee's alternative leave entitlement calculated using the following formula: 35

$$e - l = al$$

where—

e is the ~~total number~~ sum of the following:

- (i) the number of hours of alternative leave that the employee has accrued under **section 63** ~~since the later of,—~~
    - (A) ~~if the employee has a start date on or after the date on which this section comes into force, since the employee's start date; or and~~ 5
    - (B) ~~if the employee has a start date before the date on which this section comes into force, since the date on which this section comes into force; and~~
  - (ii) the number of hours of alternative leave that the employee was entitled to under the Holidays Act 2003 (after the employee's previous alternative leave was converted under **clause 19 of Schedule 1**) 10
- 1 is the total number of hours of alternative leave the employee has taken ~~since the later of,—~~
- (i) ~~if the employee has a start date on or after the date on which this section comes into force, since the employee's start date; or and~~ 15
  - (ii) ~~if the employee has a start date before the date on which this section comes into force, since the date on which this section comes into force~~ 20
- al is the employee's alternative leave balance in hours.

Compare: 1981 No 15 s 31; 2003 No 129 s 81

#### 134 Leave records: form

- (1) The leave record must be kept—
  - (a) in written form; or 25
  - (b) in a form or in a manner that allows the information in the record to be easily accessed and converted into written form.
- (2) The 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.

#### 135 Leave records: retention

- (1) An employer must keep information that is in a leave record for not less than 6 years after the date on which the information is entered. 30
- (2) However, after the expiry of the period specified in **subsection (1)**,—
  - (a) if any of the information is relevant to any proceeding before the Authority or the court under this Act or the Employment Relations Act 2000, the employer must keep the relevant information for the duration of those proceedings, unless the Authority or the court waives this requirement; or 35

- (b) if any of the information is specified in a notice given by a Labour Inspector under **section 229(1)(da)** of the Employment Relations Act 2000, the employer must keep the information for the period specified in the notice.

### **136 Requests for access to leave record** 5

- (1) The following persons may request an employer to provide access to, or a copy of, or a certified extract from, information in the leave record relating to an employee:
  - (a) the employee:
  - (b) an authorised representative of the employee: 10
  - (c) an authorised 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 with the request as soon as practicable by— 15
  - (a) allowing the employee, authorised representative of the employee, authorised representative of the union, or Labour Inspector to view the record; or
  - (b) providing a copy of, or a certified extract from, the information concerned. 20
- (3) However, an employer must not provide access to, or a copy of, or a certified extract from, any information in the employee's leave record relating to the employee's family violence leave unless—
  - (a) a request made under **subsection (1)** is specifically for that information; and 25
  - (b) the employer receives the employee's written consent for the employer to provide the information to the person making the request.
- (4) For the purposes of **subsection (3)(b)**, a representative referred to in **subsection (1)(b) or (c)** must not consent on behalf of the employee.
- (4A) Despite **subsection (3)**, nothing in this section limits an employer's obligation to disclose information under the Criminal Disclosure Act 2008. 30
- (5) **Subsections (3) and (4)** do not apply to a request made by a Labour Inspector ~~made~~ under this section.

Compare: 2003 No 129 s 82

### **137 Failure to keep or provide access to leave record** 35

- (1) Evidence that an employer has failed to comply with **section 133, 134, 135, or 136** may be given in an action before the Authority— for 1 or more of the following purposes:

- (a) to recover a leave payment ~~from an employer; or;~~
- (b) to recover a payment for cashed-up annual leave or alternative leave; ~~or;~~
- (c) to recover a payment for annual leave or alternative leave if employment ends; ~~or;~~
- (ca) to recover a payment for working on a public holiday: 5
- (cb) to recover an LCP:
- (d) to enforce an entitlement to annual leave, public holidays, alternative leave, sick leave, bereavement leave, or family violence leave against an employer.
- (2) For the purposes of **subsection (1)**, an action before the Authority includes the determination of an objection to— 10
  - (a) an improvement notice issued under section 223D of the Employment Relations Act 2000 ~~that relates to the leave payment;~~ or
  - (b) a demand notice served under section 224 of the Employment Relations Act 2000 ~~that relates to the leave payment.~~ 15
- (3) If, after hearing the evidence, the Authority is satisfied that the employer failed to comply with **section 133, 134, 135, or 136** and that the failure prevented the claimant from bringing an accurate claim, the Authority may make a finding to that effect.
- (4) If the Authority makes a finding under **subsection (3)**, ~~then it may accept as proved, in the absence of evidence to the contrary, statements made by the employee about—~~ 20
  - (a) ~~a the leave payment paid to the employee:~~
  - (b) ~~a the payment for cashed-up annual leave or alternative leave paid to the employee:~~ 25
  - (c) ~~a the payment for annual leave or alternative leave paid to the employee if employment ends:~~
  - (d) ~~an LCP paid to the employee:~~
  - (e) ~~a the payment for working on a public holiday:~~
  - (ea) the LCP paid to the employee: 30
  - (f) the entitlement to annual leave, public holidays, alternative leave, sick leave, bereavement leave, or family violence leave ~~taken by the employee.~~

Compare: 2003 No 129 s 83

## Subpart 2—Enforcement

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### 138 Employee and employer obligations under this Act

- (1) When dealing with each other under this Act, an employee and their employer must do so 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 their entitlements under this Act; and
  - (b) that the employee can obtain further information about their entitlements under this Act from—
    - (i) ~~the~~a union of which the employee is a member (if applicable);
    - (ii) the department; and
  - (c) if the employee is an ASE, about how their leave payments are calculated.

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Compare: 2003 No 129 s 73

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### 139 Who can enforce this Act

- (1) The provisions of this Act may be enforced in accordance with this Act by—
- (a) an employee;
  - (b) an authorised representative of an employee;
  - (c) an authorised representative of a union of which an employee is a member: 15
  - (d) an employer;
  - (e) a Labour Inspector.
- (2) An employee's entitlement to any of the following that is in addition to the entitlements under this Act may be enforced only by a person listed in **subsection (1)(a) to (c)**: 20
- (a) annual leave;
  - (b) public holidays;
  - (c) alternative leave;
  - (d) sick leave: 25
  - (e) bereavement leave;
  - (f) family violence leave;
  - (g) LCP.

Compare: 2003 No 129 s 74

### 140 Penalties for non-compliance

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- (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 or the person who is involved in the failure to comply is an individual, to a penalty not exceeding \$10,000;
  - (b) if the employer or the person who is involved in the failure to comply is a company or other body corporate, to a penalty not exceeding \$20,000. 35



(2) The provisions are—

*Notional rosters*

- (1) **section 9(2), (4), and (5)** (which relates to the requirement for an employee to have a notional roster):

*Otherwise working day*

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- (2) **section 15(1) and (2)** (which relates to the requirement for an employer to notify an employee whether a day is an otherwise working day):

*Relationship between accident compensation and other types of leave*

- (2A) **section 20A(3) to (8)** (which relates to when an employee who is receiving accident compensation may take leave under this Act):

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*Annual leave*

- (3) **sections 23, 25(1), 27(3), 28(3), 29(3), 30(2)(b) and (3), 26A(2), 26B(1) and (2)(b), 26C(2)(b) and (3), 27(4), 28(4), 29(4), 31, and 32(1A), (2), and (3)** (which relate to an employee accruing and taking annual leave):

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- (4) **sections 33(2) and (4), 34(1), 35, and 37(1)** (which relate to an employee cashing up accrued annual leave):

- (5) **sections 39(2), 40(2), and 41(2)** (which relate to circumstances in which an employer must allow an employee to change the type of leave they are taking):

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- (6) **section 42(2)(a)** (which relates to when an employee may take annual leave if other types of leave are exhausted):

- (7) **section 43** (which relates to when an employer must treat a public holiday that occurs during an employee's annual leave as a public holiday and not as part of the employee's annual leave):

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- (8) ~~**section 44(2) and (3)**~~ (which relates to when an employee who is receiving ACC compensation may take annual leave):

- (9) **section 46(b)(2)** (which limits the frequency of annual closedowns):

- (10) **section 47** (which relates to notice of an annual closedown):

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*Public holidays*

- (11) **section 52** (which relates to an employee's entitlement to a public holiday):

- (12) **section 53** (which relates to when an employee may be required to work on a public holiday):

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- (13) **sections 55(5) and (6), and 56(4), (5), and (7)(b), and 57** (which relate to transferring part or all of a public holiday that an employee has worked to another day):

- 
- (14) **sections 59 and 60** (which relate to observing public holidays over Christmas and New Year and to observing Waitangi Day and Anzac Day public holidays):
- (15) **section 61(4) and (6)** (which relates to an employee taking sick leave, bereavement leave, or family violence leave on a public holiday): 5  
*Alternative leave*
- (16) **section 63** (which relates to an employee's accrual of alternative leave):
- (17) **sections 65 and 66(2)** (which relate to when an employee may take alternative leave): 10
- (18) **sections 67(3), 68(1), 69, and 71(1)** (which relate to an employee cashing up accrued alternative leave):  
*Sick leave*
- (19) **sections 73 and 75(1)** (which relate to an employee's accrual of sick leave): 15
- (20) **section 80(1) and (2)(a)** (which relates to an employer requiring an employee to provide proof of sickness or injury):
- (21) **sections 80A, 81(2), 82(2), 83(2), 84(2), and 85(2)** (which relate to when an employee may take sick leave):
- (22) ~~**section 87**~~ (which relates to when an employee who is receiving ACC compensation may take sick leave): 20  
*Bereavement leave*
- (23) **sections 89, 90, 92, and 93** (which relate to an employee's entitlement to bereavement leave):
- (24) **sections 94(2), 95(2), 96(2), 97(2), 98(2), and 99(2)** (which relate to when an employee may take bereavement leave): 25  
*Family violence leave*
- (25) **sections 103, 104, ~~107~~, 110(1) and (3), and 111** (which relate to an employee's entitlement to family violence leave):
- (26) **sections 112(2), 113(2), 114(2), 115(2), 116(2), and 117(2)** (which relate to when an employee may take family violence leave): 30
- (27) ~~**section 119(3), (4), (5), and (6)**~~ (which relates to when an employee who is receiving ACC compensation may take family violence leave):  
*Leave payments*
- (28) **section 122(2) and (3)(a)(ii) and (b)(ii)** (which relates to calculating and making a leave payment): 35
- (29) **section 124** (which relates to payment for working on a public holiday):

- (30) **section 125(2) and ~~3 (3)~~** (which relates to payment for cashed-up annual leave or alternative leave):
- (31) **section 126(2) and (3)** (which relates to payment when an employee's employment ends):
- LCP* 5
- (32) **section 129(1) and (2)** (which relates to the requirement for an employer to pay an LCP to an employee):
- (33) ~~**section 130(3), (5), (6), (10), (13), and (14)(a) and (b)**~~ (which relates to an employer's liability if leave is accrued instead of the employee receiving an LCP): 10
- (34) ~~**section 131(2)**~~ (which relates to an employer's liability if an LCP is not paid to an employee):
- (35) ~~**section 132**~~ (which relates to an employer's liability if LCP is paid to an employee entitled to accrue leave):
- Leave records* 15
- (36) **sections 133 to 136** (which relate to the requirements for an employer to keep a leave record for each employee and to provide access to that leave record):
- Enforcement*
- (37) **section 138(2)** (which relates to an employer informing an employee about their entitlements under this Act): 20
- (38) **section 150** (which relates to the presumption that an employee's employment is continuous if the employee is dismissed and re-employed within 1 month):
- Employer liability if LCP paid incorrectly* 25
- (38A) **section 151A(3), (5), (7), (8), (11), (12), (15), and (16)(a) and (b)** (which relates to an employer's liability if leave is purportedly accrued instead of the employee receiving an LCP):
- (38B) **section 151B(2)** (which relates to an employer's liability if an LCP is not paid to an employee): 30
- (38C) **section 151C** (which relates to an employer's liability if LCP is paid to an employee entitled to accrue leave):
- Schedule 1*
- (39) **clauses ~~5 to 11, 13 to 15, 17, 18, 21, and 22~~ 3, 5 to 12, and 14 to 23 of Schedule 1**: 35
- Schedule 3*
- (40) **clauses 3, 5, 6, 10, 11, 12, and 14 of Schedule 3**.

- (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); 2003 No 129 s 75
- 141 Proceedings by Labour Inspector or employee concerned for penalty** 5
- (1) A Labour Inspector and the employee concerned are the only persons who may bring an action before the Authority against an employer to recover a penalty under **section 140**.
- (2) 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 140**. 10
- (3) A claim for 2 or more penalties against the same employer may be joined in the same action.
- (4) A claim for a penalty may be heard in conjunction with any proceedings for the recovery of any— 15
- (a) leave payment:
  - (b) payment for cashed-up annual leave or alternative leave:
  - (c) payment for annual leave or alternative leave if employment ends:
  - (d) payment for working on a public holiday:
  - (e) LCP. 20
- (5) 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.
- (6) An action for the recovery of a penalty must be commenced within 12 months 25 after the earlier of the following:
- (a) the date on which the cause of action became known to the Labour Inspector or employee concerned:
  - (b) the date on which the cause of action should reasonably have become known to the Labour Inspector or employee concerned. 30
- (7) Despite **subsection (6)**, 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.
- (8) A penalty that is recovered must be paid,— 35
- (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.

Compare: 2003 No 129 s 76

#### **142 Matters Authority to have regard to in determining amount of penalty**

In determining an appropriate penalty under **section 141**, the Authority or the court must have regard to all relevant matters, including—

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- (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.

Compare: 2003 No 129 s 76A

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#### **143 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 141** to be paid to the Crown.

Compare: 2003 No 129 s 76B

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#### **144 Proceedings by Labour Inspector to recover arrears of pay from employer**

- (1) A Labour Inspector may take proceedings on behalf of an employee to recover from the employee's employer any of the following payments that the employee has not received but is entitled to under this Act:

- (a) leave payment:
- (b) payment for cashed-up annual leave or alternative leave:
- (c) payment for annual leave or alternative leave if employment ends:
- (d) payment for working on a public holiday:
- (e) LCP.

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- (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.

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- (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.

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Compare: 1981 No 15 s 35; 2003 No 129 s 77

#### **145 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 of the following payments if the payment is due to

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non-compliance with this Act and the person from whom the pay is sought to be recovered is involved in the non-compliance:

- (a) leave payment:
- (b) payment for cashed-up annual leave or alternative leave:
- (c) payment for annual leave or alternative leave if employment ends: 5
- (d) payment for working on a public holiday:
- (e) LCP.
- (2) However, the unpaid payment 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 10
  - (b) to the extent that the employee's employer is unable to pay the payment.
- (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. 15

Compare: 2003 No 129 s 77A

#### 146 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. 20

Compare: 1981 No 15 s 32; 2003 No 129 s 78

#### 147 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 or 150(2)** is binding on the employee and their employer. 25

Compare: 2003 No 129 s 79

#### 148 Labour Inspector must consult employee and employer

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

- (a) discuss the matter with the employee and their employer; and 30
- (b) give the employee and the employer the opportunity to comment on what the Labour Inspector proposes to consider in making the determination.

Compare: 2003 No 129 s 80

#### 149 Power to award interest on unpaid leave payment 35

- (1) **Subsection (2)** applies if—
  - (a) the Authority gives judgment for an employee in an action to recover—

- (i) a leave payment:
    - (ii) a payment for cashed-up annual leave or alternative leave:
    - (iii) a payment for annual leave or alternative leave if employment ends:
    - (iv) a payment for working on a public holiday: 5
    - (v) an LCP; 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 starting on the date when the cause of action arose and ending on the date of payment in accordance with the judgment or determination. 10
  - (3) Interest included in a judgment or determination must not exceed interest calculated under clause 11 of Schedule 2 of the Employment Relations Act 2000 in accordance with Schedule 2 of the Interest on Money Claims Act 2016. 15
- Compare: 2003 No 129 s 84

#### **150 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 purposes of the employee's entitlements under this Act, including,— 20
  - (a) for an employee who works standard hours, in relation to annual leave and sick leave; or
  - (b) for all employees, in relation to family violence leave. 25
- (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 their obligations under this Act. 30

Compare: 1981 No 15 s 20; 2003 No 129 s 85

#### **151 Payments treated as salary or wages**

- (1) The following payments payable by an employer to an employee must be treated as salary or wages earned by the employee: 35
  - (a) leave payments:
  - (b) payments for cashed-up annual leave or alternative leave:
  - (c) payments for annual leave or alternative leave if employment ends:
  - (d) payments for working on a public holiday:

(e) LCPs.

- (2) Without limiting **subsection (1)**, the payments are subject to any deductions that the employer is required or entitled to make from salary or wages for the purposes of income tax or any other purpose.

Compare: 1981 No 15 s 22; 2003 No 129 s 86

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### Subpart 2A—Employer liability if LCP paid incorrectly

#### **151A Employer’s liability if leave accrued instead of LCP employee receiving LCP**

- (1) This section applies if an employer does not pay an LCP employee an LCP under **section 129** and—

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(a) purports that the employee accrues annual leave under **section 23**; or

(b) purports that the employee accrues sick leave under **section 73**.

#### *Purported annual leave*

- (2) An LCP employee who works casual hours may do either or both of the following in relation to any purported annual leave (PAL):

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(a) take the PAL during any hours that the employee and their employer agree;

(b) request to cash up all or any of the PAL in accordance with **subsection (9)**.

- (3) The employer must not unreasonably withhold their agreement to the LCP employee taking the PAL under **subsection (2)(a)**.

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- (4) An LCP employee who works additional hours may do either or both of the following in relation to any PAL:

(a) take the PAL in accordance with **section 26A** and **section 27, 28, or 29** as if the PAL were accrued annual leave;

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(b) request to cash up all or any of the PAL in accordance with **subsection (9)**.

- (5) Except as provided in this section and for the purposes of **section 133**, the PAL of an LCP employee who works additional hours must be treated as accrued annual leave under this Act.

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- (6) If the LCP employee’s employment ends, **section 126** applies to any PAL that the employee has not taken or cashed up under this section as if it were accrued annual leave.

#### *Cashing up purported annual leave*

- (7) The employer of an LCP employee with PAL must notify the LCP employee of the following:

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(a) that the employee may request to cash up all or any of the PAL; and



- (b) that the employee's request must be in writing and may not be withdrawn; and
- (c) the number of hours of the PAL, as at the date of the notice, that the employee may cash up; and
- (d) the date by which the employee must make the request; and 5
- (e) that the number of hours of PAL that the employee may cash up may increase if the employee works any casual hours or additional hours in the period starting on the date of the notice and ending on the date by which the employee makes the request; and
- (f) that any PAL that is not cashed up will be treated as accrued annual leave. 10
- (8) The employer of an LCP employee with PAL must provide the notice in **subsection (7)**—
- (a) in writing; and
- (b) at least 14 days before the earlier of— 15
- (i) the date specified in **subsection (16)(a)(i)**; and
- (ii) the date specified in **subsection (16)(a)(ii)**.
- (9) A request to cash up PAL under **subsection (2)(b) or (4)(b)**—
- (a) must be in writing; and
- (b) must be made no later than the date specified in **subsection (16)(a)**. 20
- (10) For the purposes of a request to cash up PAL, **section 33(4) and (5)** applies as if the request were a request to cash up accrued annual leave.
- (11) An employer who agrees to a request to cash up PAL must—
- (a) comply with **section 125** as if the request were a request to cash up accrued annual leave; and 25
- (b) pay the employee an additional amount calculated using the following formula:
- $$(p \div 0.0769) \times r \times 0.0092 = a$$
- where—
- p is the total number of hours of annual leave that the employer has purported to accrue under **section 23** for the employee 30
- r is the rate calculated in accordance with **paragraph (b)** of the definition of leave hourly rate in **section 121(1)**
- a is the additional amount.
- (12) However, the maximum number of hours of PAL that an employee may cash up under this section is the number of the employee's hours of PAL after deducting any outstanding annual leave taken in advance. 35

*Purported sick leave*

- (13) An LCP employee who works casual hours may take any purported sick leave on any hours specified in the employee's work roster.
- (14) An LCP employee who works additional hours may take any purported sick leave in accordance with **section 81, 82, 83, 84, or 85.** 5
- (15) Except as provided in this section, an LCP employee's purported sick leave must be treated as accrued sick leave under this Act.

*Compliance with section 129*

- (16) The employer—
- (a) must comply with **section 129** on and from— 10
- (i) the date that is 8 weeks after the earlier of—
- (A) the date on which the LCP employee notifies the employer in writing of the unpaid LCP; and
- (B) the date on which a Labour Inspector notifies the employer in writing of the unpaid LCP; or 15
- (ii) an earlier date agreed by the employee and the employer; and
- (b) must continue to purport to accrue annual leave or sick leave for the employee until the date set out in **paragraph (a)**; and
- (c) is not required to pay an LCP to the employee until the date set out in **paragraph (a)**. 20

**151B Employer's liability if LCP not paid to LCP employee**

- (1) This section applies if an employer of an LCP employee—
- (a) does not pay an LCP to the employee as required under **section 129**; and
- (b) does not purport that the employee accrues— 25
- (i) annual leave under **section 23**; or
- (ii) sick leave under **section 73**.
- (2) The employer must pay the unpaid amount of the LCP by the date that is 8 weeks after the earlier of—
- (a) the date on which the employee notifies the employer in writing of the unpaid LCP; or 30
- (b) the date on which a Labour Inspector notifies the employer in writing of the unpaid LCP.

**151C Employer's liability if LCP paid to employee entitled to accrue leave**

- (1) This section applies if an employer pays an LCP to an employee who is entitled to accrue annual leave or sick leave. 35

- (2) The employer must ensure that the employee accrues annual leave and sick leave in accordance with **sections 23 and 73** and stop paying an LCP to the employee.
- (3) The employer must comply with **subsection (2)** on and from—
- (a) the date that is 8 weeks after the earlier of— 5
- (i) the date on which the employee notifies the employer in writing that the employee is entitled to accrue annual leave and sick leave; and
- (ii) the date on which a Labour Inspector notifies the employer in writing that the employee is entitled to accrue annual leave and sick leave; or 10
- (b) an earlier date agreed by the employee and the employer.
- (4) The employee is entitled to—
- (a) continue to receive the LCP up to the date specified in **subsection (3)**; and 15
- (b) keep the LCP.

### Subpart 3—Regulations and repeal

#### 152 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for 1 or more of the following purposes: 20
- (a) prescribing forms for the purposes of this Act;
- (b) prescribing the procedure in relation to proceedings under this Act;
- (c) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.

- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 25

Compare: 2003 No 129 s 87

#### 153 Repeal of Holidays Act 2003

The Holidays Act 2003 (2003 No 129) is repealed.

### Subpart 4—Remediation process 30

#### 154 Meaning of remediation process

In this subpart, **remediation process** and **process** mean—

- (a) the process set out in **Schedule 3**; and
- (b) the process specified in regulations made under **section 156**.

**155 Employer may elect to follow remediation process**

- (1) An employer may elect to follow the remediation process if—
  - (a) they were an employer before the date on which this section comes into force; and
  - (b) they wish to resolve, to the extent specified in **Schedule 3**, their outstanding liability under the Holidays Act 2003 to their employees. 5
- (2) However, the remediation process is not the only means by which an employer may resolve their outstanding liability to their employees under the Holidays Act 2003.

**156 Regulations for remediation process** 10

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that specify the remediation process for the purposes of **section 155**.
- (2) Before making a recommendation, the Minister must—
  - (a) be satisfied that the remediation process will require employers to pay reasonable compensation to employees to settle— 15
    - (i) any underpayment of an amount payable by the employer under the Holidays Act 2003; or
    - (ii) any failure to provide an entitlement under the Holidays Act 2003; and 20
  - (b) have regard to—
    - (i) any data that is provided to the Minister and that relates to the scale of remediation payable by employers under the Holidays Act 2003; and
    - (ii) any data that relates to the reasons for any underpayment of an amount payable by employers under the Holidays Act 2003 in various circumstances; and 25
    - (iii) the desirability of quickly and efficiently resolving any underpayment or failure to pay an entitlement; and
    - (iv) the need for employees and employers (including employers who have very few employees) to easily understand and use the remediation process; and 30
  - (c) consult representatives of employees and employers that the Minister considers appropriate.
- (3) Regulations made under this section must— 35
  - (a) come into force on or after the second anniversary of Royal assent to this Act; and
  - (b) provide a remediation process that addresses any underpayment or failure to pay under the Holidays Act 2003 in relation to a period—

- (i) starting no later than the date that is 4 years before Royal assent to this Act; and
  - (ii) ending on the second anniversary of Royal assent to this Act.
- (4) ~~Regulations made under this Act may prescribe the minimum amount that an employer who elects to follow the remediation process is required to pay under the process (the **minimum amount payable**).~~ 5
- (5) ~~If regulations made under this section specify a minimum amount payable,—~~
  - (a) ~~an employer is not required to make a payment to an employee under the remediation process if the application of the process determines that the employee is entitled to receive less than the minimum amount payable; but~~ 10
  - (b) ~~despite not making a payment, the employer is deemed to have resolved their outstanding liability under the Holidays Act 2003 in relation to the employee.~~
- (6) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 15

#### 157 **Revocation of regulations for remediation process**

All regulations made under **section 156** are revoked on the date that is 11 years after the date on which this section comes into force.

#### 158 **Repeal of this subpart and Schedule 3** 20

This subpart and **Schedule 3** are repealed on the date that is 11 years after the date on which this section comes into force.

### Subpart 5—Consequential and related amendments

#### *Amendments to Employment Relations Act 2000*

#### 159 **Principal Act** 25

**Sections 160 to 174** amend the Employment Relations Act 2000.

#### 160 **Section 67D amended (Availability provision)**

In section 67D(1), replace “section and section 67E” with “section, section 67E, and section 130”.

#### 161 **New section 67DA inserted (Relationship between availability provisions and Employment Leave Act 2026)** 30

After section 67D, insert:

**67DA Relationship between availability provisions and Employment Leave Act 2026**

- (1) Despite section 67D, an employer must not require an employee to accept work under an availability provision during an annual leave period.
- (2) For the purposes of this section, **annual leave period** means a period—
- (a) starting immediately after the last hour that the employee works before the employee takes annual leave; and
  - (b) ending immediately before the first hour that the employee works after taking annual leave.

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**Example**

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The hours of work specified in Employee A's employment agreement are to be performed on Mondays, Tuesdays, Wednesdays, and Thursdays between 9 am and 5 pm. The employment agreement also contains an availability provision that requires Employee A to be available to accept any work that the employer makes available on Fridays or Saturdays.

15

If Employee A takes annual leave on a Thursday, the employer must not require Employee A to be available to accept work that the employer makes available on the following Friday or Saturday. This is because Employee A's annual leave period starts at 5 pm on Wednesday and ends at 9 am on the following Monday.

**162 Section 67G amended (Cancellation of shifts)**

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Repeal section 67G(7).

**163 Section 69OB amended (Interpretation)**

In section 69OB(1), definition of **individualised employee information**, paragraph (a)(iv)(C), replace “holiday and leave record” with “leave record under the Employment Leave Act **2026**”.

25

**164 Section 69OI amended (Interpretation)**

- (1) In section 69OI(1), replace the definition of **employee protection provision** with:

**employee protection provision** means a provision that protects the employment of employees affected by a restructuring

30

- (2) After section 69OI(3), insert:

- (4) In this subpart, unless the context otherwise requires, any term or expression that is used but not defined in this Act, but that is defined in the Employment Leave Act **2026**, has the meaning set out in that Act.

**165 Section 69OJ replaced (Collective agreements and individual employment agreements must contain employee protection provision)**

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Replace section 69OJ with:

**69OJ Collective agreements and individual employment agreements must contain employee protection provision**

- (1) A collective agreement or an individual employment agreement, to the extent that it binds an employee to whom this subpart applies, must contain an employment protection provision. 5
- (2) The employee protection provision must specify—
  - (a) a process that the employer must follow in negotiating with a new employer about the restructuring to the extent that it relates to an affected employee; and
  - (b) the matters relating to the affected employee's employment that the employer must negotiate with the new employer, including the matters specified in **subsection (3)**; and 10
  - (c) the process to be followed at the time of the restructuring to determine what entitlements, if any, are available for an employee who does not transfer to the new employer. 15
- (3) ~~The following matters relating to the affected employee's employment must be included in the employee protection provision as matters that the employer must negotiate with the new employer:~~ For the purposes of **subsection (2)(b)**, the matters that must be negotiated include—
  - (a) whether the affected employee will transfer to the new employer: 20
  - (b) if the affected employee is to transfer to the new employer,—
    - (i) whether the employee will transfer on the same terms and conditions of employment:
    - (ii) whether the new employer will treat the employee's employment as continuous, including for the purposes of determining the employee's— 25
      - (A) entitlement to annual leave, sick leave, or family violence leave:
      - (B) entitlement to any other service-related entitlements (whether legislative or otherwise): 30
    - (iii) the extent to which the new employer will recognise the employee's entitlement, as at the end of their employment with the employer, to—
      - (A) any annual leave that the employee has accrued and not taken or cashed up: 35
      - (B) any sick leave that the employee has accrued and not taken:
      - (C) any alternative leave that the employee has accrued and not taken or cashed up:

- (D) any family violence leave (whether whole days or part days) that the employee has become entitled to and not taken;
- (E) any other service-related entitlements (whether legislative or otherwise) that the employee has become entitled to and not taken (or, if applicable, not cashed up or exchanged for payment): 5
- (iv) if the new employer agrees to recognise some or all of the entitlements specified in **subparagraph (iii)(A) or (C)**, whether an employee who chooses to transfer to the new employer will be given the option of— 10
- (A) the new employer recognising the entitlement (to the extent that the new employer has agreed to recognise the entitlement); or
- (B) the employer paying out the entitlement. 15
- (4) If the new employer agrees to treat, under **subsection (3)(b)(ii)**, the affected employee's employment as continuous for the purposes of determining the affected employee's entitlement to family violence leave, the new employer must recognise any family violence leave entitlement—
- (a) to which the affected employee has become entitled; but 20
- (b) that the employee has not taken as at the end of their employment with the employer.
- 69OJA Employer and new employer must determine liability for cost of entitlements recognised by new employer**
- (1) This section applies if the new employer agrees, as part of negotiations with the employer, to recognise some or all of a specified entitlement that an affected employee has accrued or become entitled to and has not taken (or, if applicable, not cashed out) as at the end of their employment with the employer. 25
- (2) The employer and new employer must determine how liability for the cost of the specified entitlement is to be apportioned between them. 30
- (3) In this section, **specified entitlement** means any of the following:
- (a) accrued annual leave;
- (b) accrued sick leave;
- (c) accrued alternative leave;
- (d) an entitlement to family violence leave: 35
- (e) any other service-related entitlement (whether legislative or otherwise).

**166 New sections 69OKA to ~~69OKE~~ 69OKH inserted**

After section 69OK, insert:



**69OKA Sections ~~69OKB to 69OKE~~ 69OKH apply if affected employee chooses to transfer to new employer**

**Sections ~~69OKB to 69OKE~~ 69OKH** apply if, in relation to a restructuring, an affected employee chooses to transfer to the new employer.

**69OKB Employer must provide new employer with information required to determine entitlements** 5

- (1) The employer must provide the new employer with any information that the new employer requires or may require—
  - (a) to determine the employee's entitlement to a service-related entitlement (whether legislative or otherwise): 10
  - (b) to calculate the amount that the employee is to be paid for a service-related entitlement (whether legislative or otherwise).
- (2) However, the new employer may keep, use, or disclose information provided under this section only in accordance with the Privacy Act 2020.

**69OKC Employer need not pay annual leave recognised by new employer** 15

- (1) This section applies if the new employer agrees, as part of negotiations with the employer, to recognise some or all of an affected employee's accrued annual leave that the employee has not taken or cashed up as at the end of their employment with the employer.
- (2) Despite **section ~~23~~ 126** of the Employment Leave Act **2026**, the employer is not required to pay the employee for accrued annual leave that the new employer agrees to recognise. 20

**69OKD Employer need not pay alternative leave recognised by new employer**

- (1) This section applies if the new employer agrees, as part of negotiations with the employer, to recognise some or all of an affected employee's accrued alternative leave that the employee has not taken or cashed up as at the end of their employment with the employer. 25
- (2) Despite **section ~~63~~ 126** of the Employment Leave Act **2026**, the employer is not required to pay the employee for accrued alternative leave that the new employer agrees to recognise. 30

**69OKE Employment of employee treated as continuous under Parental Leave and Employment Protection Act 1987**

For the purposes of determining an employee's rights and benefits to parental leave and parental leave payments under the Parental Leave and Employment Protection Act 1987,—

- (a) the employee's period of employment with the employer that ends with the transfer must be treated as a period of employment with the new employer; and 35

- (b) the new employer must treat any notice given to or by the employer under that Act as if it had been given to or by the new employer.

#### **69OKF Employer and new employer must keep records**

- (1) An employer and a new employer must each keep a record of—
- (a) whether the new employer will treat an affected employee's employment as continuous (see **section 690J(3)(b)(ii)**); and 5
  - (b) the extent to which the new employer will recognise the affected employee's entitlement, as at the end of their employment with the employer, to leave, and any other service-related entitlements, listed in **section 690J(3)(b)(iii)** (recognised entitlements); and 10
  - (c) whether an affected employee was given the choice—
    - (i) to transfer a recognised entitlement to the new employer; or
    - (ii) to have the employer pay out the recognised entitlement; and
  - (d) the employee's choice to transfer the recognised entitlement or to have it paid out; and 15
  - (e) how liability for the cost of the affected employee's recognised entitlement is apportioned between the employer and the new employer under **section 690JA**.
- (2) The record must be kept—
- (a) in written form; or 20
  - (b) in a form or in a manner that allows the information in the record to be accessed easily and converted into written form.
- (3) The employer and the new employer must each keep the information that is in a record for not less than 6 years after the date on which the information is entered. 25
- (4) However, after the expiry of the period specified in **subsection (3)**,—
- (a) if any of the information is relevant to any proceeding before the Authority or the court under this Act or the Employment Leave Act **2026**, the employer must keep the relevant information for the duration of those proceedings, unless the Authority or the court waives this requirement; or 30
  - (b) if any of the information is specified in a notice given by a Labour Inspector under **section 229(1)(da)**, the employer must keep the information for the period specified in the notice.

#### **69OKG Requests for access to record**

- (1) The following persons may request that an employer or a new employer provide access to, or a copy of, or a certified extract from, information in the record relating to an employee: 35

- (a) the employee:
- (b) an authorised representative of the employee:
- (c) an authorised representative of a union of which the employee is a member:
- (d) a Labour Inspector. 5
- (2) An employer or a new employer who receives a request under **subsection (1)** must comply with the request as soon as practicable by—
  - (a) allowing the employee, authorised representative of the employee, authorised representative of the union, or Labour Inspector to view the record; or 10
  - (b) providing a copy of, or a certified extract from, the information concerned.
- (3) However, an employer or a new employer must not provide access to, or a copy of, or a certified extract from, any information in the employee's record relating to the employee's family violence leave unless— 15
  - (a) a request made under **subsection (1)** is specifically for that information; and
  - (b) the employer or the new employer receives the employee's written consent for the employer or the new employer to provide the information to the person making the request. 20
- (4) For the purposes of **subsection (3)(b)**, a representative referred to in **subsection (1)(b) or (c)** must not consent on behalf of the employee.
- (5) Despite **subsection (3)**, nothing in this section limits an employer's or a new employer's obligation to disclose information under the Criminal Disclosure Act 2008. 25
- (6) **Subsections (3) and (4)** do not apply to a request made by a Labour Inspector under this section.

#### **69OKH Failure to keep or provide access to record**

- (1) Evidence that an employer or a new employer has failed to comply with **section 69OKF or 69OKG** may be given in an action before the Authority for 1 or more of the following purposes: 30
  - (a) to recover a leave payment:
  - (b) to recover a payment for cashed-up annual leave or alternative leave:
  - (c) to recover a payment for annual leave or alternative leave if employment ends: 35
  - (d) to recover a payment for working on a public holiday:
  - (e) to recover an LCP:

- (f) to enforce an entitlement to annual leave, public holidays, alternative leave, sick leave, bereavement leave, or family violence leave against an employer.
- (2) For the purposes of **subsection (1)**, an action before the Authority includes the determination of an objection to— 5
- (a) an improvement notice issued under section 223D; or
- (b) a demand notice served under section 224.
- (3) If, after hearing the evidence, the Authority is satisfied that the employer or the new employer failed to comply with **section 69OKF or 69OKG** and that the failure prevented the claimant from bringing an accurate claim, the Authority may make a finding to that effect. 10
- (4) If the Authority makes a finding under **subsection (3)**, the Authority may accept as proved, in the absence of evidence to the contrary, statements made by the employee about—
- (a) the leave payment: 15
- (b) the payment for cashed-up annual leave or alternative leave:
- (c) the payment for annual leave or alternative leave paid to the employee if employment ends:
- (d) the payment for working on a public holiday:
- (e) the LCP paid to the employee: 20
- (f) the entitlement to annual leave, public holidays, alternative leave, sick leave, bereavement leave, or family violence leave.

Compare: 2003 No 129 s 83

**167 Section 79 replaced (Eligible employee taking employment relations education leave entitled to ordinary pay)** 25

Replace section 79 with:

- 79 Eligible employee's entitlement to pay when taking employment relations education leave**
- (1) This section applies to an eligible employee who takes a day or part of a day as employment relations education leave. 30
- (2) The employer must pay an eligible employee who is paid wages or salary (but who is not paid by piece work)—
- (a) for the greater of—
- (i) the number of hours that the employee would otherwise have worked, as specified in their employment agreement; and 35
- (ii) the number of hours that the employee was on leave; or
- (b) if the employer is unable to determine the number of hours under **paragraph (a)(i)**, for the number of hours that the employee was on leave.

- (3) The employer must pay an eligible employee who is paid by piece work and by a salary or wages the greater of—
- (a) the ~~total sum~~ of—
    - (i) the payment for the number of hours determined under **subsection (2)** as if the employee were paid wholly by a salary or wages; and
    - (ii) for each hour determined under **subsection (2)**, the average hourly rate for piece work; and
  - (b) for each hour determined under **subsection (2)**, the applicable minimum hourly rate of pay.
- (4) The employer must pay an eligible employee who is paid wholly by piece work, for each hour determined under **subsection (2)(a) or (b)**, the greater of—
- (a) the average hourly rate for piece work; and
  - (b) the applicable minimum hourly rate of pay.
- (5) In addition to the amounts payable under **subsections (2) to (4)**, the employer must pay the eligible employee any allowances payable for the period of leave.
- (6) However, an employer is not required to comply with **subsections (2) to (5)** in respect of any day for which the eligible employee is paid first week compensation or weekly compensation under the Accident Compensation Act 2001.
- (7) An employee's **average hourly rate for piece work** must be calculated using the following formula:
- $$f \div h = p$$
- where—
- f is the total amount of piece work wages that the employer has paid the employee for the pay periods starting in the 93 days before the start of the pay period in which the employment relations education leave is taken
  - h is the number of hours that the employee has worked (excluding hours the employee was on paid leave) for the employer in the pay periods starting in the 93 days before the start of the pay period in which the employment relations education leave is taken
  - p is the average hourly rate for piece work.
- (8) In this section, **applicable minimum hourly rate** means the hourly rate of the applicable minimum rate of wages prescribed under section 4, 4A, or 4B of the Minimum Wage Act 1983.

**168 Cross-heading above section 130 replaced**

Replace the cross-heading above section 130 with:

*Wages and time record and pay statements*

**169 Section 130 amended (Wages and time record)**

- (1) Replace section 130(1)(g) with: 5
- (g) the number of hours the employee has worked each day in each pay period:
  - (ga) the amount paid to the employee in each pay period itemised by category (for example, ordinary rate, overtime rate, piece work rate, penal rate, commission, or allowances): 10
  - (gb) the number of hours for which any leave compensation payment (as defined in the Employment Leave Act **2026**) is paid to the employee in each pay period and the leave compensation payment paid for those hours:
- (2) Replace section 130(1C), (1D), and (2) with: 15
- (1C) In subsection (1B), the **usual hours** of an employee who is remunerated by way of salary include any extra hours worked by the employee in accordance with the employee's employment agreement.—
- (a) ~~include any hours the employee works under an availability provision; and~~ 20
  - (b) ~~do not include any extra hours, other than hours worked under the availability provision, worked by the employee in accordance with the employee's employment agreement.~~
- (1D) Despite **subsection (1C)**, the employer must record in the wages and time record any hours the employee works under an availability provision that need to be recorded to enable the employer to comply with the employer's general obligation under section 4B(1). 25
- (2) An employer must keep the information that is in the wages and time record for not less than 6 years after the date on which the information is entered.
- (2A) However, after the expiry of the period specified in **subsection (2)**,— 30
- (a) if any of the information is relevant to any proceeding before the Authority or the court under this Act or the Employment Leave Act **2026**, the employer must keep the relevant information for the duration of those proceedings, unless the Authority or the court waives this requirement; or 35
  - (b) if any of the information is specified in a notice given by a Labour Inspector under **section 229(1)(da)** of this Act, the employer must keep the information for the period specified in the notice.

- (2B) An employee or a person authorised under section 236 to represent an employee may request access to, or a copy of, or a certified extract from, information in the wages and time record relating to the employee.
- (2C) An employer who receives a request under **subsection (2B)** must comply with the request as soon as practicable by (as applicable)— 5
- (a) allowing the employee or the person authorised under section 236 to view the information; or
  - (b) providing a copy of, or a certified extract from, ~~of~~ the information concerned.
- (2D) However, an employer must not provide access to, or a copy of, or a certified extract from, any information in the wages and time record relating to ~~an~~ the employee's family violence leave unless— 10
- (a) a request made under **subsection (2B)** is specifically for that information; and
  - (b) in the case of a request from a person authorised under section 236, the employer receives the employee's written consent for the employer to provide the information to that person. 15
- (2E) For the purposes of **subsection (2D)(b)**, a representative referred to in **subsection (2B)** must not consent on behalf of the employee.
- (2F) **Subsections (2D) and (2E)** do not apply to a request made by a Labour Inspector ~~made~~ under section 229(1)(d). 20
- (3) After section 130(5), insert:
- (6) In this section, **availability provision** has the meaning given to it in section 67D(1).

**170 New section 130A and cross-heading inserted** 25

After section 130, insert:

**130A Employer must provide employee with pay statement for each pay period**

- (1) An employer must provide a pay statement to an employee for each pay period during which the employee worked for the employer or was on paid leave.
- (2) The pay statement must specify— 30
- (a) the employee's name:
  - (b) the employee's IRD number:
  - (c) the pay period to which the pay statement relates:
- Payments*
- (d) the amount paid to the employee in each pay period itemised by category (for example, ordinary rate, leave compensation payment (as defined in the Employment Leave Act **2026**), overtime rate, piece work rate, penal rate, commission, or allowances): 35

|       |                                                                                                                                                                              |    |
|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (e)   | the net amount of the payment:                                                                                                                                               |    |
|       | <i>Deductions</i>                                                                                                                                                            |    |
| (f)   | any deductions that the employer is required or entitled to make from the employee's pay for the purposes of income tax or any other purpose, including—                     | 5  |
| (i)   | the amount of any deduction made under Part 10 of the Child Support Act 1991:                                                                                                |    |
| (ii)  | the amount of any deduction made under section 36 of the Student Loan Scheme Act 2011:                                                                                       |    |
| (iii) | the amount of any deduction made under the KiwiSaver Act 2006:                                                                                                               | 10 |
| (g)   | the amount of any payroll donation:                                                                                                                                          |    |
|       | <i>Employer contributions</i>                                                                                                                                                |    |
| (h)   | the amount of any employer contribution under any other legislation, including, for example, any employer contribution as defined in section 4(1) of the KiwiSaver Act 2006: | 15 |
|       | <i>Leave information</i>                                                                                                                                                     |    |
| (i)   | the following leave information for the pay period (as applicable):                                                                                                          |    |
| (i)   | the annual leave information specified in <b>section 133(1)(6) to (8) and (10)</b> of the Employment Leave Act <b>2026</b> :                                                 |    |
| (ii)  | the public holiday information specified in <b>section 133(1)(13) to (17)</b> of the Employment Leave Act <b>2026</b> :                                                      | 20 |
| (iii) | the alternative leave information specified in <b>section 133(1)(18) to (20) and (22)</b> of the Employment Leave Act <b>2026</b> :                                          |    |
| (iv)  | the sick leave information specified in <b>section 133(1)(23) to (25)</b> of the Employment Leave Act <b>2026</b> :                                                          | 25 |
| (v)   | the bereavement leave information specified in <b>section 133(1)(26)</b> of the Employment Leave Act <b>2026</b> :                                                           |    |
|       | <i>Termination of employment information</i>                                                                                                                                 |    |
| (j)   | if the employee ceases employment with the employer,—                                                                                                                        |    |
| (i)   | the final date on which the employee is employed; and                                                                                                                        | 30 |
| (ii)  | any amount paid to the employee for annual leave or alternative leave under <b>section 126</b> of the Employment Leave Act <b>2026</b> .                                     |    |
| (3)   | A pay statement may include any other information determined by the employer.                                                                                                |    |
| (4)   | However,—                                                                                                                                                                    | 35 |
| (a)   | an employer must not include the following information in a pay statement:                                                                                                   |    |



|       |                                                                                                                                     |    |
|-------|-------------------------------------------------------------------------------------------------------------------------------------|----|
| (i)   | a statement that an amount paid to an employee is a payment in respect of the employee's entitlement to paid family violence leave: |    |
| (ii)  | a statement that a period of leave taken by the employee has been taken as a period of paid family violence leave:                  | 5  |
| (iii) | the balance of an employee's entitlement to paid family violence leave; and                                                         |    |
| (b)   | an amount paid to an employee for taking a period of paid family violence leave—                                                    |    |
| (i)   | must not be recorded on a pay statement as an amount paid to the employee for taking a period of leave; and                         | 10 |
| (ii)  | must instead be recorded on a pay statement as a non-identifiable component of the employee's pay.                                  |    |
| (5)   | In this section, <b>IRD number</b> means a tax file number as defined in section 3(1) of the Tax Administration Act 1994.           | 15 |
|       | <i>Recovery of wages</i>                                                                                                            |    |

**171 Section 226 amended (Authority to determine objection)**

|     |                                                                                                                                                                         |    |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (1) | In section 226(1) and (2), replace “holiday pay” with “leave payment”.                                                                                                  |    |
| (2) | After section 226(2), insert:                                                                                                                                           |    |
| (3) | In this section, <b>leave payment</b> means an amount payable to an employee calculated in accordance with <b>section 123</b> of the Employment Leave Act <b>2026</b> . | 20 |

**172 Section 229 amended (Powers of Labour Inspectors)**

|       |                                                                                                                                                                                                                                                                                                                                                                                            |    |
|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (1)   | In section 229(1)(c)(i) delete “holiday and”.                                                                                                                                                                                                                                                                                                                                              |    |
| (2)   | Replace section 229(1)(d) with:                                                                                                                                                                                                                                                                                                                                                            | 25 |
| (d)   | the power to require an employer to supply to the Labour Inspector a copy of 1 or more of the following in relation to an employee of the employer:                                                                                                                                                                                                                                        |    |
| (i)   | the wages and time record:                                                                                                                                                                                                                                                                                                                                                                 |    |
| (ii)  | the leave record:                                                                                                                                                                                                                                                                                                                                                                          | 30 |
| (iii) | the employee's employment agreement:                                                                                                                                                                                                                                                                                                                                                       |    |
| (da)  | the power to require an employer to keep an employee's information in a wages and time record or a leave record, if the Labour Inspector considers it necessary for that information to be kept after the expiry of the period specified in <b>section 130(2A)(b)</b> of this Act or <b>section 135(2)(b)</b> of the Employment Leave Act <b>2026</b> , by giving notice to the employer,— | 35 |

- (i) before the expiry of the period specified in **section 130(2A)(b)** of this Act or **section 135(2)(b)** of the Employment Leave Act **2026**, requiring the employer to keep the information for a further period of up to 1 year after the expiry of that period; or
  - (ii) before the expiry of any previous notice given under this subsection, requiring the employer to keep the information for a further period of up to 1 year after the expiry of the previous notice: 5
- (3) In section 229(3), replace “subsection (1)(c) or (d)” with “subsection (1)(c), (d), or **(da)**”. 10
- (4) After section 229(7), insert:
- (8) In this section, **leave record** means a record required to be kept under **section 133** of the Employment Leave Act **2026**. 10

### 173 Section 232 amended (Compilation of wages and time record)

~~In section 232(5), delete “holiday and”.~~

In section 232(5), replace “holiday and leave record kept under section 81 of the Holidays Act 2003” with “leave record required to be kept under **section 133** of the Employment Leave Act **2026**”. 15

### 174 Section 235A amended (Interpretation)

- (1) In section 235A, definition of **infringement offence**, paragraph (a), replace “or 130(1) of this Act or section 81(2) of the Holidays Act 2003” with “130(1), or **130A** of this Act or **sections 133 to 135** of the Employment Leave Act **2026**”. 20
- (2) In section 235A, definition of **infringement offence**, replace paragraph (c) with:
  - (c) a failure by an employer to comply with— 25
    - (i) a requirement imposed under section 229(1)(d) within the time period required by section 229(2A); or
    - (ii) a notice given under **section 229(1)(da)**; or
  - (d) a failure by an employer to comply with the requirements of ~~section 130, 131, or 132~~ **section 151A, 151B, or 151C** of the Employment Leave Act **2026**. 30

### *Amendments to Health and Safety at Work Act 2015*

### 175 Principal Act

**Section 176** amends the Health and Safety at Work Act 2015.

### 176 Schedule 2 amended

- (1) In Schedule 2, replace clause 12(3)(a) with:

- (a) in the case of a health and safety representative who is an employee of the PCBU, the amount determined under **clause 12A**:

- (2) In Schedule 2, after clause 12, insert:

**12A Health and safety representative's entitlement to pay when attending training**

- (1) This clause sets out how to determine the amount payable under **clause 12(3)(a)**.

- (2) The employer must pay a health and safety representative who is paid wages or salary (but who is not paid by piece work)—

- (a) for the greater of—

- (i) the number of hours that the representative would otherwise have worked, as specified in their employment agreement; and

- (ii) the number of hours that the representative was on leave; or

- (b) if the employer is unable to determine the number of hours under **paragraph (a)(i)**, for the number of hours that the representative was on leave.

- (3) The employer must pay a health and safety representative who is paid by piece work and by a salary or wages, the greater of—

- (a) the total sum of—

- (i) the payment for the number of hours determined under **subclause (2)** as if the representative were paid wholly by a salary or wages as—; and

- (ii) for each hour determined under subsection (2), the average hourly rate for piece work; and

- (b) for each hour determined under subsection (2), the applicable minimum hourly rate of pay.

- (4) The employer must pay a health and safety representative who is paid wholly by piece work, for each hour determined under subsection (2), the greater of—

- (a) the average hourly rate for piece work; and

- (b) the applicable minimum hourly rate of pay.

- (5) In addition to the amounts payable under **subclauses (2) to (4)**, the employer must pay the representative any allowances payable for the period of leave.

- (6) A representative's **average hourly rate for piece work** must be calculated using the following formula:

$$f \div h = p$$

where—

- f is the total amount of piece work wages that the employer has paid the representative for the pay periods starting in the 93 days before the start of the pay period in which the representative attends the training
- h is the number of hours that the representative has worked (excluding hours the representative was on paid leave) for the employer in the pay periods starting in the 93 days before the start of the pay period in which the representative attends the training 5
- p is the average hourly rate for piece work.
- (7) In this section, **applicable minimum hourly rate** means the hourly rate of the applicable minimum rate of wages prescribed under section 4, 4A, or 4B of the Minimum Wage Act 1983. 10

*Amendment to KiwiSaver Act 2006*

**177 Principal Act**

**Section 178** amends the KiwiSaver Act 2006.

**178 Section 12 amended (Temporary employment) 15**

Repeal section 12(1)(c).

*Amendment to Legal Services Act 2011*

**179 Principal Act**

**Section 180** amends the Legal Services Act 2011.

**180 Section 41H replaced (Protected earnings) 20**

Replace section 41H with:

**41H Protected net earnings rate**

- (1) Despite anything in sections 41B to 41G, if a deduction notice is issued to an employer of an aided person, the employer must not, in making deductions under the deduction notice, reduce the aided person's net earnings in respect of any pay period (within the meaning of section YA 1 of the Income Tax Act 2007) to an amount that is less than 60% of the amount calculated as being the aided person's net earnings in respect of a pay period. 25
- (2) For the purposes of this section, the aided person's net earnings in respect of a pay period is the balance left after deducting from the PAYE income payment the amount of any tax withheld or deducted under the PAYE rules of the Income Tax Act 2007. 30
- (3) For the purposes of this section, if deductions are required to be made from a payment of a kind described in any of paragraphs (b) to (d) of the definition of payment in section 41A,— 35
- (a) the payment is deemed to be salary or wages; and

- (b) the person required to make the payment is deemed to be the employer of the aided person.
- (4) In this section, **PAYE income payment** has the meaning given to it in section RD 3 of the Income Tax Act 2007

*Amendment to Minimum Wage Act 1983*

5

**181 Principal Act**

**Section 182** amends the Minimum Wage Act 1983.

**182 Section 6 amended (Payment of minimum wages)**

In section 6, insert as subsection (2):

- (2) For the purposes of determining whether an employer has complied with **sub-section (1)**, any leave compensation payment as defined in **section 5(1)** of the Employment Leave Act **2026** must be disregarded.

10

*Amendments to Parental Leave and Employment Protection Act 1987*

**183 Principal Act**

**Sections 184 to 188** amend the Parental Leave and Employment Protection Act 1987.

15

**184 Section 42 amended (Employer's obligations in respect of remuneration and holiday pay)**

- (1) In the heading to section 42, delete "**and holiday pay**".
- (2) In section 42(1), replace "Subject to subsections (2) and (3), the" with "The".
- (3) Repeal section 42(2).

20

**185 Section 71C amended (Interpretation of this Part)**

In section 71C, repeal the definition of **ordinary weekly pay**.

**185A Section 71K amended (Start of parental leave payment)**

After section 71K(3), insert:

25

- (4) Subsection (3) applies despite anything to the contrary in the Employment Leave Act **2026**.

**186 Section 71M amended (Amount of parental leave payment)**

- (1) Replace section 71M(1)(b)(i) with:
  - (i) 100% of the average of the employee's gross weekly earnings, from all employments, for the relevant pay periods as at the relevant date; and
- (2) After section 71M(1B), insert:

30

(2) In this section,—

**relevant date** means,—

- (a) in relation to an employee's entitlement to a parental leave payment,—
  - (i) the date on which the employee or their employer provides further information relating to the employee's entitlement to a parental leave payment, whether on the employee's own initiative or following a request under section 71W, if that information is provided—
    - (A) after the date specified in **subparagraph (ii)(A)**; but
    - (B) before the date specified in **subparagraph (ii)(B)**; or
  - (ii) in all other cases, the earlier of—
    - (A) the date on which the employee applies for a parental leave payment under section 71I, if the application is made before the date on which the employee commences parental leave; and
    - (B) the date on which a parental leave payment is payable to the employee under section 71K; or
- (b) if an employee's entitlement to a parental leave payment is transferred to their spouse or partner (the **transferee**) under section 71E,—
  - (i) the date on which the employee or the transferee provides further information relating to the transfer, whether that information is provided after the date specified in **subparagraph (ii)(A)** but before the date specified in **subparagraph (ii)(B)** and that information is provided—
    - (A) on the initiative of the employee or the transferee; or
    - (B) following a request under section 71W; or
  - (ii) in all other cases, the earlier of—
    - (A) the date on which the transferee applies to accept the application to transfer; and
    - (B) the date on which the entitlement becomes payable under section 71K to the transferee

**relevant pay periods** means,—

- (a) for an employee who is paid weekly, the 4 most recent regular pay periods; or
- (b) for an employee who is paid fortnightly or half-monthly, the 2 most recent regular pay periods; or
- (c) for an employee who is paid monthly or once every 4 weeks, the most recent regular pay period; or

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |    |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
|            | (d) for an employee who is paid in any other way, the most recent regular pay periods comprising approximately 4 weeks.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |    |
| <b>187</b> | <b>Section 72 repealed (Contracting out: holiday pay while on parental leave)</b><br>Repeal section 72.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |    |
| <b>188</b> | <b>Schedule 1AA amended</b><br>In Schedule 1AA,—<br>(a) insert the Part set out in <b>Schedule 4</b> of this Act as the last Part; and<br>(b) make all necessary consequential amendments.                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 5  |
|            | <i>Amendment to Parental Leave and Employment Protection Regulations 2016</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |    |
| <b>189</b> | <b>Principal regulations</b><br><b>Section 190</b> amends the Parental Leave and Employment Protection Regulations 2016.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 10 |
| <b>190</b> | <b>Regulation 11 amended (Information relating to employees that must be provided)</b><br>Replace regulation 11(3)(b) with:<br>(b) details of the employee's average gross weekly earnings for the relevant pay period, as at the relevant date ( <i>see</i> section 71M of the Act) or average weekly income from work (calculated in accordance with section 71CAA of the Act), whichever is the greater; and                                                                                                                                                                                                                                    | 15 |
|            | <i>Amendment to Public and Community Housing Management Act 1992</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 20 |
| <b>191</b> | <b>Principal Act</b><br><b>Section 192</b> amends the Public and Community Housing Management Act 1992.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |    |
| <b>192</b> | <b>Section 153 replaced (Protected earnings)</b><br>Replace section 153 with:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 25 |
| <b>153</b> | <b>Protected net earnings rate</b><br>(1) Despite anything in sections 146 to 151, if a deduction notice is issued to an employer of a tenant, the employer must not, in making deductions under the deduction notice, reduce the tenant's net earnings in respect of any pay period (within the meaning of section YA 1 of the Income Tax Act 2007) to an amount that is less than 60% of the amount calculated as being the tenant's net earnings in respect of a pay period.<br>(2) For the purposes of this section, the tenant's net earnings in respect of a pay period is the balance left after deducting from the PAYE income payment the | 30 |

amount of any tax withheld or deducted under the PAYE rules of the Income Tax Act 2007.

- (3) In this section, **PAYE income payment** has the meaning given to it in section RD 3 of the Income Tax Act 2007.

*Amendment Amendments to Social Security Act 2018*

5

**193 Principal Act**

**Section 194** amends **Sections 194 to 194B** amend the Social Security Act 2018.

**194 Section 445 amended (Regulations: further provisions on deductions)**

Replace section 445(1)(j) with:

10

- (j) provide for protected earnings, if a deduction notice is issued to an employer of a debtor, by prohibiting the employer, in making deductions under the deduction notice, from reducing the amount paid to the debtor by way of net earnings in respect of any pay period (within the meaning of section YA 1 of the Income Tax Act 2007) to an amount that is less than a proportion (prescribed by the regulations) of the amount calculated as being the debtor's net earnings in respect of the pay period:

15

**194A Schedule 2 amended**

In Schedule 2, definition of **specified termination payments**, replace paragraph (b) with:

20

- (b) a payment for annual leave or alternative leave, including a payment in accordance with **section 126** of the Employment Leave Act **2026**:

**194B Schedule 3 amended**

- (1) In Schedule 3, clause 6(d), replace “holiday pay” with “a payment for annual leave or alternative leave, which includes a payment in accordance with **section 126** of the Employment Leave Act **2026**”.

25

- (2) In Schedule 3, clause 13, cross-heading above subclause (1A), replace “*annual holiday pay income*” with “*annual leave income*”.

- (3) In Schedule 3, clause 13(1A), replace “annual holiday pay income” with “annual leave income”.

30

- (4) In Schedule 3, clause 13, cross-heading above subclause (3A), replace “*annual holiday pay income*” with “*annual leave income*”.

- (5) In Schedule 3, clause 13(3A), replace “annual holiday pay income” with “annual leave income”.

- (6) In Schedule 3, clause 13(3B),—

35

- (a) replace “annual holidays” with “annual leave”; and



- (b) replace “the annual holiday pay income” with “any annual leave income described in **subclause (3F)(a)**”.
- (7) In Schedule 3, clause 13(3C),—
- (a) replace “the annual holiday pay income” with “annual leave income” in each place; and 5
- (b) paragraph (a), replace “annual holidays” with “annual leave”.
- (8) In Schedule 3, clause 13(3D),—
- (a) replace “annual holidays” with “annual leave” in each place; and
- (b) paragraph (b), replace “annual holiday pay income” with “annual leave income”. 10
- (9) In Schedule 3, after clause 13(3E), insert:
- (3F) For the purposes of this clause, **annual leave income** means the following:
- (a) a leave payment for annual leave, including a leave payment in accordance with **section 122(1)(a)(i)** of the Employment Leave Act **2026**;
- (b) a payment for cashed-up annual leave, including a payment in accordance with **section 125(1)(a)** of the Employment Leave Act **2026**; 15
- (c) a payment for annual leave if employment ends, including a payment in accordance with **section 126(1)(a)** of the Employment Leave Act **2026**.
- Amendment—Amendments to Social Security Regulations 2018* 20
- 195 Principal regulations**
- ~~Section 196~~ amends Sections 195A and 196 amend the Social Security Regulations 2018.**
- 195A Regulation 182 amended (Period of benefit stand down: interpretation)**
- In regulation 182, definition of **specified excluded payment**, paragraph (d), replace “holiday pay” with “a payment for annual leave or alternative leave, which includes a payment in accordance with **section 126** of the Employment Leave Act **2026**”. 25
- 196 Regulation 224 replaced (Protected earnings)**
- Replace regulation 224 with: 30
- 224 Protected net earnings rate**
- (1) If a deduction notice is issued to an employer of a debtor, the employer must not, in making deductions under the deduction notice, reduce the debtor’s net earnings in respect of any pay period (within the meaning of section YA 1 of the Income Tax Act 2007) to an amount that is less than 60% of the amount calculated as being the debtor’s net earnings in respect of a pay period. 35

(2) This regulation overrides anything to the contrary in regulations 216 to 223, 225, and 226.

(3) In this regulation,—

**net earnings in respect of a pay period** means, in relation to the debtor, the balance left after deducting from the PAYE income payment the amount of any tax withheld or deducted under the PAYE rules of the Income Tax Act 2007

**PAYE income payment** has the meaning given to it in section RD 3 of the Income Tax Act 2007.

### *Amendments to Volunteers Employment Protection Act 1973*

#### **197 Principal Act** 10

**Sections 198 and 199** amend the Volunteers Employment Protection Act 1973.

#### **198 Section 14P amended (Employer’s obligations in respect of remuneration and holiday pay)**

(1) In the heading to section 14P, delete “**and holiday pay**”. 15

(2) In section 14P(1), replace “Subject to subsection (2), the” with “The”.

(3) Repeal section 14P(2).

#### **199 Section 14Q repealed (Power to increase entitlement to holiday pay)**

Repeal section 14Q.

### *Other consequential amendments* 20

#### **200 Consequential amendments**

Amend the Acts specified in **Schedule 2** as set out in that schedule.

## Schedule 1

### Transitional, savings, and related provisions

s ~~8A49~~

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##### Savings provisions

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## Part 1

### Savings provisions

- 1 ~~Application to certain Holidays Act saved for specified State school employees and employers~~**
- (1) Despite the repeal of the Holidays Act 2003 by **section 153**, that Act, as in force immediately before ~~this Act came into force~~its repeal, continues to apply to a person—
- (a) ~~who is employed by the board of a State school; and~~
  - (b) ~~who is paid by a payroll service established under section 578 of the Education and Training Act 2020.~~
  - (a) a person who is—
    - (i) employed by the board of a State school; and

- (ii) paid by a payroll service established under section 578 of the Education and Training Act 2020; and
- (b) a person who is the employer of a person described in **paragraph (a)**.
- (2) **Subclause (1)** ~~applies only until a date or dates set by Order in Council made under **section 4(1)(b)**.~~ 5
- (2) **Subclause (1)** applies to a person described in **subclause (1)**—
- (a) only until the day before a date set by an Order in Council made under **section 4(1)(b)**; and
- (b) only if the Order in Council relates to that person.
- (3) In this clause, **board** and **State school** have the meanings set out in section 10(1) of the Education and Training Act 2020. 10
- 1A Holidays Act saved in specified circumstances**
- (1) Despite the repeal of the Holidays Act 2003 by **section 153**, that Act, as in force immediately before its repeal, continues to apply to an employer who, under **clause 3**, is not required to comply with provisions of this Act that relate to an employee's entitlements and payments. 15
- (2) **Subclause (1)** applies only until the day before the start of the employee's first pay period that starts on or after the commencement date.
- 1B Other legislation saved for specified State school employees and employers**
- (1) Despite the amendments to legislation under **subpart 5 of Part 3** and **Schedule 2**, that legislation, as in force immediately before this Act came into force, continues to apply to— 20
- (a) a person who is—
- (i) employed by the board of a State school; and
- (ii) paid by a payroll service established under section 578 of the Education and Training Act 2020; and 25
- (b) a person who is the employer of a person described in **paragraph (a)**.
- (2) **Subclause (1)** applies only until a date or dates set by Order in Council made under **section 4(1)(b)**.
- (3) However, **subclause (1)** does not apply to the amendments made by the following provisions: 30
- (a) **section 183** (in so far as it relates to **sections 185, 186, and 188 to 190**);
- (b) **section 185**;
- (c) **section 186**; 35
- (d) **sections 188 to 190.**

## Part 2

### Transitional provisions

#### 1C **Application of this Part**

Except as provided in **Part 3**, this Part does not apply to a person described in **clause 25**.

5

#### 2 **Interpretation**

In this schedule, unless the context otherwise requires,—

~~**alternative holidays** means the alternative holidays to which an employee would have been entitled under the Holidays Act (but that the employee had not cashed up or taken before the commencement date)~~

10

**commencement date** means the date on which this ~~schedule~~ clause comes into force

**Holidays Act** means the Holidays Act 2003

~~**previous alternative holidays** means the alternative holidays to which an employee would have been entitled under the Holidays Act (but that the employee had not cashed up or taken before the commencement date)~~

15

**previous annual holidays** means the total of the following types of annual holidays to which an employee would have been entitled under the Holidays Act (but that the employee had not cashed up or taken before the commencement date):

20

(a) the annual holidays to which the employee was entitled after the end of the most recently completed 12 months of continuous employment under section 16 of that Act (**type A previous annual holidays**); and

(b) any other annual holidays to which the employee would have been entitled if they had ceased employment on the date immediately before the commencement date (**type B previous annual holidays**)

25

**previous sick leave** means the total of the following types of sick leave to which an employee would have been entitled under the Holidays Act (but that the employee had not taken before the commencement date):

(a) the sick leave to which the employee was entitled at the end of the applicable period of employment under section 63 of that Act (**type A previous sick leave**); and

30

~~(b) any other sick leave to which the employee would have been entitled on the date immediately before the commencement date (**type B previous sick leave**).~~

35

(b) the sick leave—

(i) to which the employee would have become entitled, under section 63(1) or (2) of that Act, after the commencement date; but

(ii) that is reduced to be proportionate to the length of time between,—

(A) if the employee has been employed for less than 6 months on the commencement date, the employee's start date and the commencement date; or 5

(B) in all other cases, the end of the employee's previous 12-month period of employment under section 63 of that Act and the commencement date (type B previous sick leave).

*Existing employers must comply with Act by employee's first pay period*

### **3 Existing employers must comply with Act by employee's first pay period** 10

- (1) This clause applies to an employer who employed an employee immediately before the commencement date.
- (2) The employer is not required to comply with provisions ~~in~~of this Act that relate to the employee's entitlements and payments until the start of the employee's first pay period that starts on or after the commencement date. 15

*Transition of employment agreements*

### **4 Application of clauses 5 and 6**

**Clauses 5 and 6** apply to an employment agreement that—is entered into before the commencement date.

- (a) ~~is entered into before the commencement date; and~~ 20
- (b) ~~provides for any of the matters addressed in **clause 6**.~~

### **5 Employer must comply with requirements from commencement date**

- (1) This clause applies during the period—
  - (a) starting on the commencement date; and
  - (b) ending on the day before the first anniversary of the commencement date. 25
- (2) The employer must—
  - (a) comply with the ~~requirements set out in the~~ employment agreement; and
  - (b) comply with this Act.
- (2A) However, a term of the employment agreement prevails if it is more favourable to the employee than an equivalent term under this Act. 30
- (3) This clause does not apply to an employment agreement on and from the date on which it is amended or replaced if the amended or new agreement complies with **clause 6**.

**6 ~~Certain provisions of employment~~ Employment agreement must comply with this Act 1 year after commencement date**

- (1) This clause applies on and from the first anniversary of the commencement date.
- (2) ~~An~~The employer of an employee must ensure that the employee's employment agreement for an employee who works standard hours must comply with this Act and, in particular, must ensure that,—
  - (a) ~~if it specifies the employee's level of entitlement to annual leave, specify that level of entitlement in the same manner as an entitlement to annual leave is specified in~~ **subpart 1 of Part 2** (for example, it must be specified as a rate of an hour for each standard hour worked):
  - (b) ~~if it provides that the employer may have an annual closedown, comply with~~ **sections 45 to 48:**
  - (c) ~~if it provides for the amount of annual leave that an employee may request to cash up, provide that the maximum percentage of annual leave that the employee may cash up is as specified in~~ **section 33(2):**
  - (d) ~~if it specifies the payments to be made for annual leave when an employee cashes up annual leave or ceases employment, specify that the payments are no less than the payments would be if they were made under~~ **subpart 7 of Part 2:**
  - (e) ~~if it specifies the employee's level of entitlement to sick leave, specify that level of entitlement in the same manner as an entitlement to sick leave is specified in~~ **subpart 4 of Part 2** (for example, it must be specified as a rate of an hour for each standard hour worked):
  - (f) ~~if it specifies the payments to be made when an employee takes annual leave or sick leave, specify that the payments are no less than the payments would be if they were made under~~ **subpart 7 of Part 2:**
  - (g) ~~if it includes an employee protection provision under section 69OJ of the Employment Relations Act 2000, comply with the requirements of that section, as amended by this Act.~~
  - (h) if the employment agreement specifies the employee's level of entitlement to annual leave, the level of entitlement is specified in accordance with **subpart 1 of Part 2** as a proportion of an hour for each standard hour worked:
  - (i) if the employment agreement specifies the employee's entitlement to public holidays, the entitlement is specified in accordance with **subpart 2 of Part 2:**
  - (j) if the employment agreement specifies the employee's level of entitlement to alternative leave, the level of entitlement is specified in accordance with **subpart 3 of Part 2** as a proportion of an hour for each hour worked:



- 
- (k) if the employment agreement specifies the employee's level of entitlement to sick leave, the level of entitlement is specified in accordance with **subpart 4 of Part 2** as a proportion of an hour for each standard hour worked:
- (l) if the employment agreement provides for the employee's leave payments, the leave payment is specified in accordance with **subpart 7 of Part 2**: 5
- (m) the employment agreement specifies payments for working on public holidays in accordance with **subpart 7 of Part 2**:
- (n) in relation to an employee who works casual hours or additional hours, the employment agreement provides for the employer to pay a leave compensation payment in accordance with **subpart 8 of Part 2**. 10
- (3) ~~An employment agreement for an employee who works casual hours or additional hours must provide for the employer to pay a leave compensation payment in accordance with **subpart 8 of Part 2**.~~ 15
- (4) ~~In addition to complying with **subclause (2)**, or **subclause (3)**, or both those subclauses (as applicable), an employment agreement for any employee must,—~~
- (a) ~~if it specifies the employee's entitlement to or payment for public holidays, specify the entitlement to public holidays and payment for those holidays in accordance with **subparts 2 and 7 of Part 2**:~~ 20
- (b) ~~if it specifies the employee's level of entitlement to alternative leave, specify that level of entitlement in the same manner as an entitlement to alternative leave in **subpart 3 of Part 2** (for example, it must be specified as a rate of an hour for each hour worked):~~ 25
- (c) ~~if it specifies the payments to be made for alternative leave when an employee cashes up alternative leave or ceases employment, specify that the payments are no less than the payments would be if they were made under **subpart 7 of Part 2**:~~
- (d) ~~if it specifies the employee's entitlement to bereavement leave, specify that entitlement in accordance with **subpart 5 of Part 2**:~~ 30
- (e) ~~if it specifies the employee's entitlement to family violence leave, specify that entitlement in accordance with **subpart 6 of Part 2**:~~
- (f) ~~if it specifies the payments to be made when an employee takes alternative leave, bereavement leave, or family violence leave, specify that the payments are no less than the payments would be if they were made under **subpart 7 of Part 2**.~~ 35
- (5) ~~If~~ However, if an employment agreement does not comply with **subclause (2) subclauses (2), (3), and (4)** (as applicable), the minimum entitlements provided under this Act apply prevail. 40

*Transition of previous annual holidays: employees who work casual hours***7 Previous annual holidays: employees who work casual hours**

- (1) This clause applies to an employee who, on the commencement date,—
- (a) is an employee who works casual hours; and
  - (b) has previous annual holidays. 5
- (2) The employer of the employee must, on the commencement date, pay the employee ~~for their previous annual holidays in accordance with the Holidays Act, as in force immediately before the commencement date.~~
- (a) for their type A previous annual holidays in accordance with section 24 of the Holidays Act as in force immediately before the commencement date: 10
  - (b) for their type B previous annual holidays in accordance with section 25 of the Holidays Act as in force immediately before the commencement date.

*Transition of previous annual holidays: employees who work standard hours* 15**8 Previous annual holidays: employees who work standard hours**

On the commencement date, an employer of an employee who works standard hours and who has previous annual holidays must convert those previous annual holidays to annual leave hours under **clause 9**.

**9 Converting previous annual holidays to annual leave hours** 20

- (1) This clause applies to previous annual holidays for the purposes of **clause 8**.
- (2) The employer of an employee with type A previous annual holidays must convert those previous annual holidays to annual leave hours using the following formula:

$$w \times owh = a \quad 25$$

where—

w is the number of whole or part weeks of the employee's relevant previous annual holidays

owh is the employee's ordinary weekly hours (*see subclause (4)*)

a is the number of the employee's annual leave hours. 30

- (3) The employer of an employee with type B previous annual holidays must convert those previous annual holidays to annual leave hours using the following formula:

$$owh \times [(a - \underline{ah} \times d) \div y] = b$$

where— 35

owh is the employee's ordinary weekly hours (*see subclause (4)*)

- al is the employee's annual leave entitlement
- ah is the employee's annual holidays entitlement under section 16 of the Holidays Act
- d is the number of days since,—
- (a) if the employee's employment started less than 12 months before the commencement date, the employee's start date; or 5
- (b) in all other cases, the employee's last start date anniversary before the commencement date
- d is—
- (a) the number of days since,— 10
- (i) if the employee's employment started less than 12 months before the commencement date, the employee's start date; or
- (ii) in all other cases, the last date, before the commencement date, on which the employee became entitled to annual holidays under section 16(1) of the Holidays Act; but 15
- (b) does not include, unless the employee and their employer agree otherwise, any days of unpaid leave except—
- (i) unpaid sick leave, unpaid bereavement leave, or unpaid family violence leave; or 20
- (ii) any other unpaid leave for a period of no more than 1 week
- y 365 or, if the current year is a leap year, 366 days
- b is the number of the employee's annual leave hours.
- (4) For the purposes of item owh in **subclauses (2) and (3)**, an employee's **ordinary weekly hours** means,— 25
- (a) if the employee's employment agreement specifies the number of standard hours that the employee works in a week, that number; or
- (b) if the employee's employment agreement specifies the number of standard hours but the employee does not work the same number of standard hours each week, the number of hours calculated under **subclause (5)**; or 30
- (c) if neither **paragraph (a) nor paragraph (b)** applies, the following number of hours: the number of hours calculated under **subclause (6)**.
- (i) the number of standard hours in the employee's notional roster; or
- (ii) if the notional roster does not include the number of standard hours, the number of hours calculated under **subclause (6)**. 35
- (5) For the purposes of **subclause (4)(b)**, the number of ordinary weekly hours must be calculated using the following formula:

$$(tsh \div td) \times 7 = o$$

where—

- tsh is the total number of standard hours in the employee's work cycle  
 td is the total number of days in the employee's work cycle, including any days within the work cycle on which the employee does not work 5  
 o is the number of the employee's ordinary weekly hours.

- (6) For the purposes of **subclause (4)(c)(ii)**, the number of ordinary weekly hours must be calculated using the following formula:

$$thw \div x = o$$

where— 10

- thw is the total number of hours that the employee worked (or was on paid or unpaid leave) during—  
 (a) the pay periods starting in the 93 days before the first day of the first pay period that starts after the commencement date; or  
 (b) in relation to converting type B previous ~~sick~~ annual leave, if the employee has worked for the employer for fewer ~~less than~~ 93 days before the first day of the first pay period that starts after the commencement date, the pay periods starting in the period— 15  
 (i) starting on the employee's start date; and  
 (ii) ending on the day before the start of the first pay period that starts after the commencement date 20

x is the number of whole or part weeks used for the purposes of item thw

o is the number of the employee's ordinary weekly hours.

## **10 Employee taking previous annual holidays before first start date anniversary** 25

- (1) This clause applies to an employee who works standard hours and who,—  
 (a) immediately before the commencement date, has an employment agreement with an employer; and  
 (b) has previous annual holidays.  
 (2) During the period starting on the commencement date and ending before the employee's first start date anniversary after the commencement date,— 30  
 (a) the employee may request to take their previous annual holidays; and  
 (b) an employer may require the employee to take only their type A previous annual holidays.  
 (3) An employer— 35  
 (a) must, if an employee makes a request to take any type A previous annual holidays before the employee's first start date anniversary after

the commencement date, allow the employee to take those holidays in that period; and

- (b) must not unreasonably withhold consent to an employee's request under **subclause (2)(a)**.

- (4) For the purposes of the employee taking their previous annual holidays, the provisions of this Act apply. 5

# **11 Employee cashing up type A previous annual holidays before first start date anniversary**

- (1) This clause applies to an employee who works standard hours and who,—  
(a) immediately before the commencement date, has an employment agreement with an employer; and 10

- (b) has previous annual holidays; and

- (c) ~~after the commencement date, accrues annual leave under this Act.~~

- (2) During the period starting on the commencement date and ending on the employee's first start date anniversary after the commencement date, the employee may cash up their type A previous annual holidays. 15

- (3) The maximum amount of type A previous annual holidays that an employee may cash up must be determined, as at the commencement date, using the following formula:

$$(cdw \times owh) \times 0.25 - (cw \times owh) = \max \quad 20$$

where—

cdw is the number of whole or part weeks of the employee's type A previous annual holidays

owh is the employee's ordinary weekly hours determined in accordance with **subclause (5) (4)** 25

cw is the number of weeks of annual holidays that the employee cashed up under the Holidays Act in the period—

- (a) starting on the date after the end of the employee's most recently completed 12 months of continuous employment under section 16 of the Holidays Act (as that section applied immediately before the commencement date); and 30

- (b) ending on the commencement date

max is the maximum number of hours of type A previous annual holidays that the employee may apply to cash up.

- (4) For the purposes of item owh in **subclause (3)**, an employee's **ordinary weekly hours** means,— 35

- (a) if the employee's employment agreement specifies the number of standard hours that the employee works in a week, that number; or

- (b) if the employee's employment agreement specifies the number of standard hours but the employee does not work the same number of standard hours each week, the number of hours calculated under **subclause (6) (5)**; or
- (c) if neither **paragraph (a) nor paragraph (b)** applies, ~~the following number of hours:~~ the number of hours calculated under **subclause (6)**. 5
- (i) ~~the number of standard hours in the employee's notional roster; or~~
- (ii) ~~if the notional roster does not include the number of standard hours, the number of hours calculated under subclause (6).~~
- (5) For the purposes of **subclause (4)(b)**, the number of ordinary weekly hours must be calculated using the following formula: 10
- $$(tsh \div td) \times 7 = \theta\text{-owh}$$
- where—
- tsh is the total number of standard hours in the employee's work cycle
- td is the total number of days in the employee's work cycle, including any days within the work cycle on which the employee does not work 15
- $\theta\text{-owh}$  is the number of the employee's ordinary weekly hours.
- (6) For the purposes of **subclause (4)(c)(ii)**, the number of ordinary weekly hours must be calculated using the following formula: 20
- $$thw \div x = \theta\text{-owh}$$
- where—
- thw is the total number of hours that the employee worked (or was on paid or unpaid leave) during—
- (a) the pay periods starting in the 93 days before the first day of the first pay period that starts after the commencement date; or 25
- (b) if the employee has worked for the employer for fewer ~~less~~ than 93 days before the first day of the first pay period that starts after the commencement date, the pay periods starting in the period—
- (i) starting on the employee's start date; and
- (ii) ending on the day before the pay period that starts after the commencement date 30
- x is the number of weeks used for the purposes of item thw
- $\theta\text{-owh}$  is the number of the employee's ordinary weekly hours.
- (7) However, an employee must not apply to cash up type A previous annual holidays under this clause if the employee's maximum amount of annual leave hours calculated under this clause is 0 or less. 35

**12 Record-keeping: previous annual holidays and annual leave**

- (1) An employer of an employee described in **clause 10(1)** must record the following amounts separately:
- (a) the amount of the employee's type A previous annual holidays that the employer has converted to annual leave hours under **clause 9**: 5
  - (b) the amount of the employee's type B previous annual holidays that the employer has converted to annual leave hours under **clause 9**:
  - (c) the total amount of the employee's previous annual holidays that the employer has converted to annual leave hours under **clause 9**:
  - (d) the amount of the employee's previous annual holidays that the employer has converted to annual leave hours under **clause 9** and that the employee may cash up under **clause 11**. 10
- (2) The employer must keep the records under **subclause (1)** in the leave record required under **section 133**.

*Transition of previous sick leave: employees who work casual hours* 15

**13 Previous sick leave: employees who work casual hours**

- (1) This clause applies to an employee who, on the commencement date,—
- (a) is an employee who works casual hours; and
  - (b) has previous sick leave.
- (2) The employer of the employee is not required to pay the employee for their previous sick leave and the employee no longer has any previous sick leave. 20

*Transition of previous sick leave: employees who work standard hours*

**14 Previous sick leave: employees who work standard hours**

On the commencement date, an employer of an employee who works standard hours and who has previous sick leave must convert that previous sick leave to sick leave hours under **clause 15**. 25

**15 Converting previous sick leave to sick leave hours**

- (1) This clause applies to previous sick leave for the purposes of **clause 14**.
- (2) The employer of an employee with type A previous sick leave must convert that previous sick leave to sick leave hours using the following formula: 30

$$d \times odh = s$$

where—

d is the number of days of the employee's previous sick leave

odh is the employee's ordinary daily hours (*see subclause (4)*)

s is the number of the employee's sick leave hours. 35

- (3) The employer of an employee with the type B previous sick leave must convert that previous sick leave to sick leave hours using the following formula:

$$\text{odh} \times [(s \times d) \div y] = b$$

where—

- odh is the employee's ordinary daily hours (*see subclause (4)*) 5
- s is the employee's annual sick leave entitlement under section 65(2) of the Holidays Act
- d is the number of days since,—
- (a) if the employee's employment started less than 6 months before the commencement date, the employee's start date; or 10
  - (b) in all other cases, the employee last became entitled to sick leave before the commencement date
- y 365 or, if the current year is a leap year, 366 days
- b is the number of the employee's sick leave hours.

- (4) For the purposes of item odh in **subclauses (2) and (3)**, the number of ordinary daily hours must be calculated using the following formula: 15

$$\text{th} \div d = \text{odh}$$

where—

- th is the total number of hours that the employee worked (or was on paid or unpaid leave) during— 20
- (a) the pay periods starting in the 93 days before the first day of the first pay period that starts after the commencement date; or
  - (b) in relation to converting type B previous sick leave, if the employee has worked for the employer for less than 93 days before the first day of the first pay period that starts after the commencement date, the pay periods starting in the period— 25
    - (i) starting on the employee's start date; and
    - (ii) ending on the day before the start of the first pay period that starts after the commencement date
- d is the total number of days that the employee worked (or was on paid or unpaid leave) during— 30
- (a) the pay periods starting in the 93 days before the first day of the first pay period that starts after the commencement date; or
  - (b) if the employee has worked for the employer for less than 93 days before the first day of the first pay period that starts after the commencement date, the pay periods starting in the period— 35
    - (i) starting on the employee's start date; and



- (ii) ending on the day before the pay period that starts after the commencement date

odh is the employee's ordinary daily hours.

## **16 Employee taking previous sick leave**

- (1) This clause applies to an employee who works standard hours and who— 5
- (a) immediately before the commencement date, has an employment agreement with an employer; and
- (b) has previous sick leave.
- (2) For the purposes of the employee taking their previous sick leave, the provisions of this Act apply. 10

## **17 Record-keeping: previous sick leave**

- (1) An employer of an employee described in **clause 16(1)** must record the following amounts separately:
- (a) the amount of the employee's type A previous sick leave that the employer has converted under **clause 15**: 15
- (b) the amount of the employee's type B previous sick leave that the employer has converted under **clause 15**:
- (c) the total amount of the employee's previous sick leave that the employer has converted under **clause 15**.
- (2) The employer must keep the records under **subclause (1)** in the leave record required under **section 133**. 20

### *Transition of previous alternative holidays*

## **18 Previous alternative holidays**

On the commencement date, an employer of an employee who has previous alternative holidays must convert those previous alternative holidays to alternative leave hours under **clause 19**. 25

## **19 Converting previous alternative holidays to alternative leave hours**

- (1) This clause applies to previous alternative holidays for the purposes of **clause 18**.
- (2) The employer of an employee with previous alternative holidays must convert those previous alternative holidays to alternative leave hours using the following formula: 30

$$d \times \text{odh} = \text{ah}$$

where—

- d is the number of days of the employee's previous alternative holidays 35
- odh is the employee's ordinary daily hours (*see subclause (3)*)

ah is the number of the employee's alternative leave hours.

- (3) For the purposes of item odh in **subclause (2)**, the number of ordinary daily hours must be calculated using the following formula:

$$th \div d = odh$$

where—

5

th is the total number of hours that the employee worked (or was on paid or unpaid leave) during—

(a) the pay periods starting in the 93 days before the first day of the first pay period that starts after the commencement date; or

(b) if the employee has worked for the employer for ~~fewer~~ less than 93 days before the first day of the first pay period that starts after the commencement date, the pay periods starting in the period—

10

(i) starting on the employee's start date; and

(ii) ending on the day before the start of the first pay period that starts after the commencement date

15

d is the total number of days that the employee worked (or was on paid or unpaid leave) during—

(a) the pay periods starting in the 93 days before the first day of the first pay period that starts after the commencement date; or

(b) if the employee has worked for the employer for ~~fewer~~ less than 93 days before the first day of the first pay period that starts after the commencement date, the pay periods starting in the period—

20

(i) starting on the employee's start date; and

(ii) ending on the day before the pay period that starts after the commencement date

25

odh is the employee's ordinary daily hours.

## 20 Employee taking previous alternative holidays

- (1) This clause applies to an employee who,—

(a) immediately before the commencement date, has an employment agreement with an employer; and

30

(b) has previous alternative holidays.

- (2) For the purposes of taking their previous alternative holidays, the provisions of this Act apply.

## 21 Record-keeping: previous alternative holidays and alternative leave

- (1) An employer of an employee described in **clause 20(1)** must record the amount of the employee's previous alternative holidays that the employer has converted to alternative leave hours under **clause 19**.

35

- (2) The employer must keep the records under **subclause (1)** in the leave record required under **section 133**.

*Transition to bereavement leave under this Act*

**22 Entitlement to bereavement leave**

An employee who is not yet entitled to bereavement leave under the Holidays Act is entitled to bereavement leave on and from the commencement date ~~on which this clause comes into force~~. 5

*Transition to family violence leave under this Act*

**23 Entitlement to family violence leave**

An employee who is not yet entitled to family violence leave under the Holidays Act is entitled to family violence leave under this Act— 10

- (a) on and from the commencement date ~~on which this clause comes into force~~; and
- (b) for each subsequent 12-month period starting on the employee's start date anniversary. 15

*Consultation for remediation process regulations*

**24 Pre-commencement consultation: remediation process regulations**

Consultation for the purpose of making regulations under **section 156** that is carried out at any time before the commencement date is treated as consultation for the purposes of **section 156(2)(c)**. 20

**Part 3**

**Transitional provisions for certain State school employees**

**25 Application of this Part**

- (1) This Part applies to—

- (a) a person who is— 25
  - (i) employed by the board of a State school; and
  - (ii) paid by a payroll service established under section 578 of the Education and Training Act 2020 (see **clause 1 of this schedule**); and
- (b) a person who is the employer of a person described in **paragraph (a)**. 30

- (2) In this clause, **board** and **State school** have the meanings set out in section 10(1) of the Education and Training Act 2020.

**26**    **Transitional provisions**

(1)    On and from a date or dates set by Order in Council made under **section 4(1)(b)**,—

(a)    **clauses 2, 3, and 7 to 23** of this schedule apply to a person described in **clause 25(1)**; and

5

(b)    if the date set by the Order in Council is the same date as the commencement date in **clause 2, clauses 4, 5, and 6** of this schedule apply to that person.

(2)    However, for the purpose of applying **clauses 2, 3, and 7 to 23** to a person described in **clause 25(1)**, the commencement date is the date or dates set by Order in Council made under **section 4(1)(b)** if the Order in Council relates to that person.

10

## Schedule 2

### Consequential amendments

s 200

#### Part 1

#### Amendments to Acts

5

**Accident Compensation Act 2001 (2001 No 49)**

Before section 286(5)(b), insert:

(aa) Employment Leave Act **2026**:

Repeal section 286(5)(f).

In section 306(1), replace “subpart 4 of Part 2 of the Holidays Act 2003” with **“subpart 4 of Part 2 of the Employment Leave Act 2026”**. 10

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

In the heading to section 5A, replace “**Holidays Act 2003**” with “**Employment Leave Act 2026**”.

In section 5A, replace—

15

- (a) “section 45A of the Holidays Act 2003” with “**section 60** of the Employment Leave Act **2026**”; and
- (b) “Part 2, subpart 3 of that Act” with “**subpart 2 of Part 2** of that Act”.

**Companies Act 1993 (1993 No 105)**

In Schedule 7, clause 1(2)(b), replace “any holiday pay” with “any employment leave pay”. 20

In Schedule 7, after clause 1(2)(b), insert:

- (ba) subject to clause 3(1), any leave compensation payment payable under the Employment Leave Act **2026** to an employee before, or because of, the commencement of the liquidation: 25

In Schedule 7, replace clause 3(4)(a) with:

- (a) remuneration in respect of a period of employment leave under the Employment Leave Act **2026** (including annual leave, alternative leave, sick leave, bereavement leave, and family violence leave), a public holiday, or a period of absence from work for other good cause is to be treated as wages in respect of services rendered to the company during that period: 30
- (aa) remuneration in respect of any leave compensation payment payable to a person under **subpart 8 of Part 2** of the Employment Leave Act **2026** is to be treated as wages in respect of services rendered to the company during that period: 35

**Companies Act 1993 (1993 No 105)—continued**

In Schedule 7, clause 3(4)(c), replace “subpart 1 of Part 2 of the Holidays Act 2003” with “**subpart 1 of Part 2** of the Employment Leave Act **2026**”.

In Schedule 7, replace clause 3(4)(c) with:

- (c) employment leave pay, in relation to a person, means—
- (i) all sums payable for annual leave or alternative leave to that person by the company under **section 126** of the Employment Leave Act **2026**; and 5
  - (ii) all sums that by or under any other enactment or any award, agreement, or contract of service are payable to that person by the company as annual leave or alternative leave: 10

**Credit Contracts and Consumer Finance Act 2003 (2003 No 52)**

In section 5, definition of **public holiday**, replace “section 44(1) of the Holidays Act 2003” with “**section 51(1)** of the Employment Leave Act **2026**”.

**Crimes Act 1961 (1961 No 43)**

In section 220AA(1)(b)(ii), replace “Holidays Act 2003” with “Employment Leave Act **2026**”. 15

**Education and Training Act 2020 (2020 No 38)**

In Schedule 1, clause 119(4)(a), after “Holidays Act 2003”, insert “, the Employment Leave Act **2026**,”.

In Schedule 1, replace clause 122(1) and (2) with: 20

- (1) This clause applies in relation to any of the following taken by a transferred employee before the conversion date:
- (a) a holiday, sick leave, bereavement leave, or family violence leave provided under the Holidays Act 2003:
  - (b) annual leave, a public holiday, alternative leave, sick leave, bereavement leave, or family violence leave provided under the Employment Leave Act **2026**. 25
- (2) On and after the conversion date, any liabilities of the board of the converted school for the following vest in the Minister on behalf of the Crown:
- (a) holiday pay or leave pay in relation to the holidays and leave referred to in **subclause (1)(a)**: 30
  - (b) in relation to any leave or public holiday referred to in **subclause (1)(b)**,—
    - (i) any leave payment; or
    - (ii) any payment for working on a public holiday. 35

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

In section 5, definition of **employment standards**,—

- (a) paragraph (c), replace “Holidays Act 2003” with “Employment Leave Act **2026**”; and
- (b) paragraph (d), replace “sections 81 and 82 of the Holidays Act 2003” with “**sections 133 to 136** of the Employment Leave Act **2026**”. 5

In section 5, definition of **minimum entitlement provisions**, paragraph (a), replace “Holidays Act 2003” with “Employment Leave Act **2026**”.

In section 66(3)(c), replace “Holidays Act 2003” with “Employment Leave Act **2026**”. 10

In section 69J(2)(a),—

- (a) replace “Holidays Act 2003” with “Employment Leave Act **2026**”; and
- (b) replace “holidays” with “leave” in each place.

Replace section 69J(2)(a)(iii)(A) with:

- (A) any sick leave not taken before the date of transfer; and 15

In section 69J(2)(a)(iii)(C), replace “section 61” with “section 67”.

In section 69LA(3)(a), replace “holidays” with “leave” in each place.

In the heading to section 142K, replace “**section 83 of Holidays Act 2003**” with “**section 137 of Employment Leave Act 2026**”.

In section 142K, replace “section 83 of the Holidays Act 2003” with “**section 137** 20  
of the Employment Leave Act **2026**”.

In section 142ZB(a), replace “section 77A of the Holidays Act 2003” with “**section 145** of the Employment Leave Act **2026**”.

In section 142ZB(b), replace “section 76 of the Holidays Act 2003” with “**section 141** of the Employment Leave Act **2026**”. 25

In section 148A(3), delete “or holiday pay”.

In section 148A(3), replace “Holidays Act 2003” with “Employment Leave Act **2026**”.

In section 161(1)(m)(iii), replace “section 76 of the Holidays Act 2003” with “**section 141** of the Employment Leave Act **2026**”. 30

In section 223(1)(c), replace “Holidays Act 2003” with “Employment Leave Act **2026**”.

In section 224(1)(a), delete “or holiday pay”.

In section 224(1)(a), replace “Holidays Act 2003” with “Employment Leave Act **2026**”. 35

In section 224(1)(c), delete “or holiday pay”.

In section 224(1)(d), delete “or holiday pay”.

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

In section 224(4), delete “or holiday pay”.

In section 225(4)(b), delete “or holiday pay”.

In section 226(1) and (2), delete “or holiday pay”.

In the cross-heading above section 228, delete “*or holiday pay*”.

In section 228(1), delete “or holiday pay”.

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In section 228(1), replace “Holidays Act 2003” with “Employment Leave Act **2026**”.

In section 228(2), delete “or holiday pay”.

~~In section 232(5), replace “section 81 of the Holidays Act 2003” with “sections 133 to 135 of the Employment Leave Act 2026”.~~

After section 236(4)(ba), insert:

10

(bb) the Employment Leave Act **2026**:

Repeal section 236(4)(d).

**Immigration Act 2009 (2009 No 51)**

In section 286(3), definition of **out of hours**, paragraph (c), replace “section 44(1) of the Holidays Act 2003” with “**section 51(1)** of the Employment Leave Act **2026**”.

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After section 294AAA(b)(i), insert:

(ia) the Employment Leave Act **2026**:

Repeal section 294AAA(b)(iv).

In section 351(1)(a)(i) and (2)(a), replace “Holidays Act 2003” with “Employment Leave Act **2026**”.

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**Income Tax Act 2007 (2007 No 97)**

In section RD 7(3), replace “Holidays Act 2003” with “Employment Leave Act **2026**” in each place.

In section RD 13(1)(b), replace “an amount of holiday pay” with “a leave payment for annual leave under the Employment Leave Act **2026**”.

25

In section RD 13(1)(b)(i), replace “holiday” with “annual leave”.

**Insolvency Act 2006 (2006 No 55)**

In section 274(2)(b), replace “any holiday pay” with “any employment leave pay”.

After section 274(2)(b), insert:

(ba) subject to section 276(1), any leave compensation payment payable under the Employment Leave Act **2026** to an employee before, or because of, the commencement of the adjudication:

30

Replace section 276(4)(a) with:



**Insolvency Act 2006 (2006 No 55)—continued**

- (a) remuneration in respect of a period of employment leave under the Employment Leave Act **2026** (including annual leave, alternative leave, sick leave, bereavement leave, and family violence leave), a public holiday, or a period of absence from work for other good cause is to be treated as wages in respect of services rendered to the bankrupt during that period: 5
- (aa) remuneration in respect of any leave compensation payment payable to a person under **subpart 8 of Part 2** of the Employment Leave Act **2026** is to be treated as wages in respect of services rendered to the bankrupt during that period: 10

In section 276(4)(c), replace “subpart 1 of Part 2 of the Holidays Act 2003” with “**subpart 1 of Part 2** of the Employment Leave Act **2026**”.

Replace section 276(4)(c) with:

- (c) **employment leave pay**, in relation to a person, means—
  - (i) all sums payable for annual leave or alternative leave to that person by the bankrupt under **section 126** of the Employment Leave Act **2026**; and 15
  - (ii) all sums that by or under any other enactment or any award, agreement, or contract of service are payable to that person by the bankrupt as annual leave or alternative leave: 20

**Local Government Act 2002 (2002 No 84)**

In Schedule 10, replace clause 33(2)(b) with:

- (b) any annual leave or alternative leave payable, including a payment in accordance with **section 126** of the Employment Leave Act **2026**; or
- (ba) any leave compensation payment payable under **subpart 8 of Part 2** of the Employment Leave Act **2026**; or 25

**Parliament Act 2025 (2025 No 62)**

In Schedule 5, replace clause 15(1)(a) with:

- (a) entitlements under the following provisions in **Part 2** of the Employment Leave Act **2026**: 30
  - (i) **subpart 1** (annual leave); and
  - (ii) **subpart 2** (public holidays); and
  - (iii) **subpart 3** (alternative leave for working public holiday); and
  - (iv) **subpart 4** (sick leave); and
  - (v) **subpart 5** (bereavement leave); and 35
  - (vi) **subpart 6** (family violence leave); and

**Parliament Act 2025 (2025 No 62)—continued**

In Schedule 5, clause 15(2), replace “annual holidays” with “annual leave” in each place.

In Schedule 5, clause 15(2), replace “alternative holidays” with “alternative leave” in each place.

In Schedule 5, clause 15(2)(c)(i), replace “section 66 of the Holidays Act 2003” with “**section 75** of the Employment Leave Act **2026**”. 5

In Schedule 5, clause 15(2)(c)(iii), replace “section 61 of that Act” with “**section 67** of that Act”.

In Schedule 5, clause 15(2)(c)(iv), replace “holidays” with “leave”.

In Schedule 5, clause 15(2)(c)(iv), replace “section 44A or 44B of that Act” with “**section 55 or 56** of that Act”. 10

**Public Service Act 2020 (2020 No 40)**

Replace section 91(1)(a) with:

- (a) entitlements under the following provisions in **Part 2** of the Employment Leave Act **2026**: 15
- (i) **subpart 1** (annual leave); and
  - (ii) **subpart 2** (public holidays); and
  - (iii) **subpart 3** (alternative leave for working public holiday); and
  - (iv) **subpart 4** (sick leave); and
  - (v) **subpart 5** (bereavement leave); and 20
  - (vi) **subpart 6** (family violence leave); and

In section 91(2), replace “annual holidays” with “annual leave” in each place.

In section 91(2)(c)(i), replace “section 66 of the Holidays Act 2003” with “**section 75** of the Employment Leave Act **2026**”.

In section 91(2)(c)(iii), replace “section 61 of that Act” with “**section 67** of that Act”. 25

In section 91(2)(c)(iv),—

- (a) replace “holidays” with “leave”; and
- (b) replace “section 44A or 44B of that Act” with “**section 55 or 56** of that Act”.

In section 92(1)(b), replace “holiday pay or leave pay” with “pay for the entitlements referred to in **section 91(1)(a)**”. 30

In the heading to section 93, replace “**annual holidays**” with “**annual leave**”.

In section 93(2), replace “Holidays Act 2003” with “Employment Leave Act **2026**”.

In section 93(2), replace “annual holiday” with “annual leave”.

In section 93(3), replace the definition of **annual holiday** with: 35

**Public Service Act 2020 (2020 No 40)—continued**

**annual leave** means annual leave provided under **subpart 1 of Part 2** of the Employment Leave Act **2026**

In section 94(1)(b), replace “annual holidays” with “annual leave”.

Replace section 94(4) with:

- (4) In this section, **annual leave** means annual leave provided under **subpart 1 of Part 2** of the Employment Leave Act **2026**. 5

**Road User Charges Act 2012 (2012 No 1)**

In section 5(1), definition of **working day**, replace “Holidays Act 2003” with “Employment Leave Act **2026**”.

**Screen Industry Workers Act 2022 (2022 No 52)** 10

In section 32(6), replace “section 44(1) of the Holidays Act 2003” with “**section 51(1)** of the Employment Leave Act **2026**”.

**Support Workers (Pay Equity) Settlements Act 2017 (2017 No 24)**

In section 5, definition of **continuous employment**, paragraph (a)(i), replace “Holidays Act 2003” with “Employment Leave Act **2026**”. 15

**Tax Administration Act 1994 (1994 No 166)**

In section 3(1), definition of **workplace legislation**, after paragraph (a), insert:

(aaab) Employment Leave Act **2026**:

In section 3(1), definition of **workplace legislation**, repeal paragraph (h).

**Volunteers Employment Protection Act 1973 (1973 No 25)** 20

In section 4(2), after “holidays”, insert “or leave”.

In the heading to section 8, replace “**holidays**” with “**leave, or periodical holidays, or leave with pay**”.

In section 8(1), after “to annual”, insert “leave”.

In section 8(1), replace “annual or periodical holidays or leave with pay” with “annual leave, periodical holidays, or leave with pay”. 25

In section 8(1), replace “Holidays Act 2003” with “Employment Leave Act **2026**”.

In section 8(2), after “to allow annual”, insert “leave”.

In section 8(2), replace “annual or periodical holidays or leave” with “annual leave, periodical holidays, or leave with pay”. 30

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

In the heading to section 6A, replace “**Holidays Act 2003**” with “**Employment Leave Act 2026**”.

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

In section 6A,—

- (a) replace “section 45A of the Holidays Act 2003” with “**section 60** of the Employment Leave Act **2026**”; and
- (b) replace “Part 2, subpart 3 of that Act” with “**subpart 2 of Part 2** of that Act the Employment Leave Act **2026**”.

5

**Part 2****Amendments to secondary legislation****Animal Products (Dairy Industry Fees, Charges, and Levies) Regulations 2015 (LI 2015/95)**

In the Schedule, Part 7, clause 3, definition of **public holiday**, replace “section 44 of the Holidays Act 2003” with “**section 5(1)** of the Employment Leave Act **2026**”. 10

**Animal Products (Fees, Charges, and Levies) Regulations 2007 (SR 2007/130)**

In Schedule 1, Part 7, clause 3, definition of **public holiday**, replace “section 44 of the Holidays Act 2003” with “**section 5(1)** of the Employment Leave Act **2026**”.

In Schedule 1, Part 8, clause 3, definition of **public holiday**, replace “section 44 of the Holidays Act 2003” with “**section 5(1)** of the Employment Leave Act **2026**”. 15

**Animal Welfare (Cost Recovery) Regulations 2015 (LI 2015/89)**

In regulation 3, definition of **public holiday**, replace “Holidays Act 2003” with “Employment Leave Act **2026**”.

**Biosecurity (Costs) Regulations 2010 (SR 2010/135)**

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In regulation 3(1), replace the definition of **public holiday** with:

**public holiday** has the meaning set out in **section 5(1)** of the Employment Leave Act **2026**

**Court of Appeal (Civil) Rules 2005 (SR 2005/69)**

In rule 4A(3), replace “Holidays Act 2003” with “Employment Leave Act **2026**”. 25

**District Court Rules 2014 (LI 2014/179)**

In rule 2.1(2), replace “Holidays Act 2003” with “Employment Leave Act **2026**”.

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

In the Schedule, form 4, paragraph 2, replace “Holidays Act 2003” with “Employment Leave Act **2026**” in each place. 30

In the Schedule, form 4, paragraph 3, replace “*Holidays Act 2003*” with “*Employment Leave Act **2026***”.

**High Court Rules 2016 (LI 2016/225)**

In rule 3.2(2), replace “Holidays Act 2003” with “Employment Leave Act **2026**”.

**Industrial and Provident Societies Regulations 1952 (SR 1952/221)**

Replace regulation 5A(2)(a) with:

- (a) has the meaning set out in **section 5(1)** of the Employment Leave Act **2026**; and 5

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

In regulation 2, replace the definition of **public holiday** with:

**public holiday** has the meaning set out in **section 5(1)** of the Employment Leave Act **2026** 10

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

In regulation 2, replace the definition of **public holiday** with:

**public holiday** has the meaning set out in **section 5(1)** of the Employment Leave Act **2026** 15

**Land Transport (Towage Fees) Notice 2024 (SL 2024/180)**

In clause 3, replace the definition of **public holiday** with:

**public holiday** has the meaning set out in **section 5(1)** of the Employment Leave Act **2026** 20

**Māori Land Court Rules 2011 (SR 2011/374)**

In rule 3.2A(2), replace “Holidays Act 2003” with “Employment Leave Act **2026**”.

## Schedule 3

### Remediation process

ss 154, 155

### Part 1

#### Preliminary provisions

5

#### 1 Application of this schedule

- (1) This schedule applies to an employer who elects to follow the remediation process to resolve any liability of the employer under the Holidays Act to their employees.
- (2) ~~However, an~~ An employer is not required to gain any employees' consent to the employer following the remediation process. 10

#### 2 Interpretation in this schedule

In this schedule,—

**commencement date** means the date on which this schedule comes into force

**current employee**, in relation to an employer, means a person who— 15

(a) ~~means a person who is employed by the employer on the date on which the employer elects to follow the remediation process; but~~

(b) ~~excludes a previous employee~~

(a) was employed by the employer at any time in the 4 years before the date of Royal assent to this Act; and 20

(b) is employed by the employer on the date on which the employer elects to follow the remediation process

**Holidays Act** means the Holidays Act 2003

**previous employee** in relation to an employer, ~~means a person who was employed by the employer in the period—~~ 25

(a) ~~starting on the date that is 4 years before the date of Royal assent to this Act; and~~

(b) ~~ending on the second anniversary of Royal assent to this Act~~

(a) was employed by the employer at any time in the period—

(i) starting on the date that is 4 years before the date of Royal assent to this Act; and 30

(ii) ending on the day before the second anniversary of Royal assent to this Act; but

(b) is not employed by the employer on the date on which the employer elects to follow the remediation process 35

**remediation process** and **process** have the meaning set out in **section 154**

**remediation regulations** means regulations made under **section 156**.

## Part 2

### Remediation process requirements

- 3 Employer must notify employees that employer is following remediation process** 5
- (1) An employer who elects to follow the remediation process must—
- (a) do so by notifying all the employer's current employees, in writing, that the employer elects to follow the process; and
  - (b) no later than 6 months after electing to follow the process, use all reasonable efforts to notify previous employees that the employer elects to follow the process. 10
- (2) An employer uses **all reasonable efforts** to notify previous employees if the employer—
- (a) attempts to contact each previous employee by using all of the employee's last known contact details (for example, the phone numbers and email addresses last known to the employer); and 15
  - (b) publishes a copy of a notice—in or on 2 or more of the following:
    - (i) ~~on~~ a publicly accessible internet site that is maintained by, or on behalf of, the employer; ~~or~~;
    - (ii) ~~on~~ a publicly accessible social media site that is run by, or on behalf of, the employer; ~~or~~; 20
    - (iii) ~~in~~ 1 or more newspapers circulating in the area in which the employer operates.
- (3) The notice provided to previous employees under **subclause (2)(b) (1)(b)** must also ~~state~~— 25
- (a) state that,—
    - (i) if the previous employee wants to receive compensation, they must notify the employer of that fact; and
    - (ii) if the previous employee does not contact the employer within 2 years after the date of the notice,— 30
      - (A) the employee will not receive any compensation under the remediation process; and
      - (B) **clause 7** will apply; and
  - (b) state how to contact the employer for the purposes of notifying the employer under **paragraph (a)(i)**; and 35
  - (c) require the previous employee, if they notify the employer under **paragraph (a)(i)**, to provide—

- (i) their contact details to the employer and any updated contact details; and
  - (ii) their bank account details (for the purpose of the employer paying the employee's compensation) and any updated bank account details. 5
- (4) However, if a previous employee notifies the employer, within 2 years of the date of the notice under **subclause (2)(b) (1)(b)**, that they want to receive compensation under the remediation process,—
  - (a) the employer must be treated as having ~~used all reasonable efforts to notify~~ complied with subclause (2)(a) in relation to the employee; and 10
  - (b) the employer is not required to use any further effort to notify the employee.

### **3A Date on which employer makes election**

For the purposes of this schedule, an employer must be treated as having elected to follow the remediation process on the date on which the employer notifies their current employees under **clause 3(1)(a)**. 15

### **4 Process ceases if employer does not complete remediation process**

An employer who elects to follow the remediation process must be treated as having ceased following the process without having completed the process—

- (a) in relation to all current employees, if the employer notifies the employer's current employees, in writing, that the employer elects to cease following the process; or 20
- (b) in relation to all previous employees, if the employer uses all reasonable efforts (as defined in **clause 3(2)**) to notify previous employees, in writing, that the employer elects to cease following the process; or 25
- (c) in relation to an individual current employee or previous employee, if the period permitted in **clause 6** for paying compensation under the process ends without the employer paying the compensation to the employee.

*Payment of compensation* 30

### **5 Employer must notify employees of compensation**

- (1) This clause applies to an employer who—
  - (a) elects to follow the remediation process; and
  - (b) determines under the remediation regulations that the employer must pay compensation to ~~an~~ a current employee or a previous employee. 35
- (2) The employer must—



- 
- (a) notify all current employees, in writing, that the employer has completed the remediation process; and
  - (b) ensure that the notification specifies the following information:
    - (i) the outcome of completing the remediation process:
    - (ii) the method by which the employer will pay the compensation (if any) to the employee: 5
    - (iii) the date by which the employer will pay the compensation to the employee:
    - (iv) the amount of the compensation that the employer will pay the employee: 10
    - (v) any other information that the remediation regulations require to be included in the notice.
  - (3) The employer must—
    - (a) notify each previous employee (if the employee has notified the employer that they want to receive compensation), in writing if practicable, that the employer has completed the remediation process; and 15
    - (b) ensure that the notification specifies the information listed in **subclause (2)(b)**.—
      - (i) ~~includes the information listed in **subclause (2)(b)**; and~~
      - (ii) ~~requires the employee to provide contact details to the employer and to provide any updated contact details; and~~ 20
      - (iii) ~~requires the employee to provide their bank account details, for the purpose of the employer paying the employee's compensation, and to provide any updated bank account details.~~
  - (4) However,— 25
    - (a) an employer may include some or all of the information required under **subclause (3)(b)(i)**, ~~or the requirements under **subclause (3)(b)(ii) and (iii)**~~, in the notice that the employer provides under **clause 3**; and
    - (b) if the employer has provided some or all of the information in the notice under **clause 3**, the employer must notify each previous employee, in writing if practicable, of— 30
      - (i) any information required under **subclause (3)(b)(i)**, ~~or the requirements under **subclause (3)(b)(ii) and (iii)**~~, that the employer did not include in the notice provided under **clause 3**; and 35
      - (ii) any changes to the information required under **subclause (3)(b)(i)**, ~~or the requirements under **subclause (3)(b)(ii) and (iii)**~~, that the employer provided in the notice under **clause 3**.

**6 Payment of compensation to current and previous employees**

- (1) An employer who elects to follow the remediation process must pay any compensation payable under the process to—
  - (a) the employer's current employees; and
  - (b) any of the employer's previous employees who have notified the employer that they wish to receive compensation. 5
- (2) ~~The employer must, in accordance with the remediation regulations, determine the amount of compensation payable to each employee must be determined in accordance with the remediation regulations.~~
- (3) The employer must pay the compensation,— 10
  - (a) in relation to current employees, no later than the second anniversary of the date on which this clause comes into force; or
  - (b) in relation to previous employees, no later than ~~the second anniversary of the date on which the employer notified previous employees under clause 3.~~ the date that is the later of— 15
    - (i) the second anniversary of the date on which this clause comes into force; and
    - (ii) 2 months after the date on which the employee provides their contact details and bank account details to the employer.
- (4) Despite **subclause (3)(a)**, if the employer notifies, in accordance with **clause 5**, all the employer's current employees by the second anniversary of the date on which this clause comes into force,— 20
  - (a) **subclause (3)(a)** does not apply; and
  - (b) the employer must pay the compensation by the date that is 2 months after the second anniversary of the date on which this clause comes into force. 25
- (5) ~~Despite **subclause (3)(b)**, if the employer notifies, in accordance with clause 5, all the employer's previous employees by the second anniversary of the date on which the employer notified the previous employees under clause 3,—~~ 30
  - (a) **subclause (3)(b)** does not apply; and
  - (b) ~~the employer must pay the compensation by the date that is 2 months after the second anniversary of the date on which the employer notified the previous employees under clause 3.~~
- (6) An employer who does not pay the compensation by the deadline specified in **subclause (3), or (4), or (5)** (as applicable) must be treated as having not completed the remediation process. 35
- (7) However, **subclause (6)** does not apply if the failure to pay the compensation results from an administrative error (see **clause 12**).

### Part 3

#### Consequences of remediation process

#### 7 Employer's obligations under Holidays Act suspended

- (1) On and from the date on which an employer elects to follow the remediation process ~~by complying with clause 3(1),—~~ 5
  - (a) no person may commence any proceedings, whether under the Holidays Act or ~~under~~ any other legislation, in relation to the employer's obligations under the Holidays Act; and
  - (b) any liabilities of the employer, other than under the remediation process, in relation to the employer's obligations under the Holidays Act are suspended; and 10
  - (c) the limitation periods specified in section 76(5) and (5A) of the Holidays Act are suspended; and
  - (d) any proceedings, whether under the Holidays Act or ~~under~~ any other legislation, in relation to the employer's obligations under the Holidays Act that were commenced before the employer elected to follow the process are suspended. 15
- (2) However, proceedings are not suspended under **subclause (1)(d)** if,—
  - (a) in relation to the proceedings, the Authority has—
    - (i) required the parties or any other person to attend an investigation meeting under section 160(1)(b) of the Employment Relations Act 2000; or 20
    - (ii) decided not to hold an investigation meeting and has received the last evidence or information from the parties or any other person (*see* section 174D(2) of that Act); or 25
    - (iii) referred a question of law to the court and delayed an investigation until it receives the court's opinion (*see* section 177(1) of that Act); or
    - (iv) ordered the removal of the proceedings, or any part of the proceedings, to the court under section 178 or 178AA of that Act; or 30
  - (b) the proceedings are before the court and—
    - (i) the proceedings are a challenge to a determination of the Authority under section 179 of the Employment Relations Act 2000; or
    - (ii) the proceedings have been referred by, or have been removed from, the Authority; or 35
    - (iii) on or before the date on which the employer elects to follow the process, the court has held a hearing or has received all information it requires to make a determination on the papers; or

- 
- (c) the proceedings are an appeal against or a challenge to a determination of the Authority or an appeal against a judgment of the court in relation to the Holidays Act (for example, under section 179 of the Employment Relations Act 2000), whether the appeal or challenge commenced before, on, or after the date on which the employer elected to follow the process; or 5
    - (d) they relate to the enforcement (for example, under section 76B of the Holidays Act) of a penalty relating to compliance with the Holidays Act if the penalty was ordered before the date on which the employer elected to follow the process; or 10
    - (e) they relate to an improvement notice, an enforceable undertaking, a demand notice, or other exercise of a Labour Inspector's powers in relation to the Holidays Act or the Employment Relations Act 2000.
  - (3) **Subclause (1)** ceases to apply in relation to a previous employee if—
    - (a) the employer does not use all reasonable efforts to contact previous employees under **clause 3**; ~~and~~ or 15
    - (b) the employer—
      - (i) fails to pay the previous employee's compensation within the specified time frame; or
      - (ii) ceases to follow the remediation process without having completed the process. 20
  - (4) However,—
    - (a) if a person has commenced proceedings against the employer in relation to the employer's obligations under the Holidays Act and any other legislation, the proceedings in relation to the other legislation are not suspended by this clause; and 25
    - (b) the prohibition in **subclause (1)(a)** against commencing proceedings applies—
      - (i) to current employees, only if the employer correctly followed the remediation process; and 30
      - (ii) to previous employees, only if the employer correctly followed the remediation process (including using all reasonable efforts to contact previous employees under **clause 3**), whether or not the previous employee responded to the employer within the specified time frame. 35
  - (5) **Subclause (1)** is subject to **clause 9**.
  - (6) Nothing in this clause prohibits an employee from seeking to recover costs and expenses relating to any proceedings, whether under the Holidays Act or any other legislation, in relation to the employer's obligations under the Holidays Act. 40

**8 Consequences of employer completing process**

- (1) This clause applies to ~~an~~ a current employee or a previous employee if—
- (a) the employee's employer—
    - (i) elects to follow the remediation process; and
    - (ii) completes the process in accordance with this schedule and the remediation regulations; and
  - (b) in accordance with the process,—
    - (i) the employee's employer pays any compensation payable to each employee who is entitled to receive compensation; or
    - (ii) if the employee is a previous employee, the employee fails to notify the employer within the ~~required 2-year~~ period (~~see clause 3(5)(a)~~ **in clause 3(4)**) that the employee wants to receive any compensation payable under the process.
- (2) When this clause applies, the prohibition and suspensions in **clause 7** become permanent in relation to the employee.

**9 Consequences of process ending before completed: limitation periods**

- (1) This clause applies if—
- (a) an employer elects to follow the remediation process; but
  - (b) the employer ceases following the process without having completed the process.
- (2) On the date on which the employer ceases following the process, **clause 7** ceases to apply.
- (3) **Subclause (4)** applies in relation to a limitation period—
- (a) specified in section 76(5) or (5A) of the Holidays Act;
  - (b) specified in section 142, 135, or 142I of the Employment Relations Act 2002;
  - (c) ~~specified in section 11 of the Limitation Act 2010.~~
- (4) If an employer ceases following the remediation process before completing the process, a limitation period in relation to a matter that is prohibited or suspended under **clause 7** is extended by a period equivalent to the period—
- (a) starting on the date on which the employer elected to follow the remediation process; and
  - (b) ending on the date on which the employer ceased to follow the process.

**10 Consequences if employer follows process incorrectly: current employees**

- (1) Despite **clause 7**, this clause applies if—
- (a) an employer elects to follow the remediation process; and

- (b) the employer fails, in relation to a current employee, to follow the process correctly; and
    - (c) as a result of that failure, the employee receives less compensation than they would have received if the employer had followed the process correctly. 5
  - (2) The current employee is entitled to receive the following additional amounts:
    - (a) the difference between—
      - (i) the amount of compensation (if any) that the employee has received; and
      - (ii) the amount of compensation that the employee would have received if the employer had correctly followed the process; and 10
    - (b) interest, calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016, on the amount in **paragraph (a)**.
  - (3) However, **subclause (2)** does not apply if the employer's only failure is a failure to pay the compensation within the period specified in **clause 6(3) or (4)** (in which case, ~~clause 4(c)~~ applies the employer must be treated as not having completed the remediation process). 15
- 11 Consequences if employer follows process incorrectly: previous employees**
- (1) Despite **clause 7**, this clause applies if—
    - (a) an employer elects to follow the remediation process; ~~but and~~ 20
    - (aa) a previous employee has notified the employer that they want to receive compensation; and
    - (b) the employer fails, in relation to ~~a previous~~ the employee, to follow the remediation process correctly; and
    - (c) as a result of that failure, the employee receives less compensation than they would have received if the employer had followed the process correctly. 25
  - (2) ~~If the previous employee notified the employer that they wanted to receive compensation, the~~ The previous employee is entitled to receive the following additional amounts: 30
    - (a) the difference between—
      - (i) the amount of compensation (if any) that the employee has received; and
      - (ii) the amount of compensation that the employee would have received if the employer had correctly followed the process; and 35
    - (b) interest, calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016, on the amount in **paragraph (a)**.
  - (3) However, **subclause (2)** does not apply if the employer's only failure is a failure to pay the compensation within the period specified in **clause 6(3) or**

**(4)** (in which case, the employer must be treated as not having completed the remediation process).

## **12 Consequences if employer makes administrative error**

- (1) Despite anything to the contrary in this schedule, an employer who fails to complete the remediation process as the result of an administrative error must correct the error and complete the process within a reasonable period after becoming aware of having made the error. 5
- (2) However, if the employer fails to correct the error and complete the process within a reasonable period, an employee who has received less compensation than they would have received if the employer had not made the error and had completed the process, is entitled to receive the following additional amounts: 10
  - (a) the difference between—
    - (i) the amount of compensation (if any) that the employee has received; and
    - (ii) the amount of compensation that the employee would have received if the employer had not made the error; and 15
  - (b) interest, calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016, on the amount in **paragraph (a)**.
- (3) An **administrative error** includes, without limitation, an employee providing incorrect information or the employer making an error in processing a payment of compensation. 20

## **13 Arrears for compensation**

Any amount owing under this schedule may be recovered under section 131 of the Employment Relations Act 2000 as if it were wages or other money payable under an employment agreement. 25

### *Retention of information*

## **14 Retention of information**

- (1) An employer who elects to follow the remediation process must keep all information for the period specified in **subclause (2) or (3)** (as applicable).
- (2) An employer who elects to follow the remediation process and who completes the process must keep all information for a period of 6 years after the date of the information. 30
- (3) An employer who elects to follow the remediation process but who ceases to follow the process (*see clause 4*) must keep all information for the total of—
  - (a) 6 years after the date of the information; and 35
  - (b) the period—

- (i) starting on the date on which the employer elected to follow the remediation process; and
  - (ii) ending on the date on which the employer ceased to follow the process.
- (4) For the purposes of this clause, **information** means— 5
  - (a) all information relating to the process; and
  - (b) all information in the employer's holidays and leave record kept under section 81 of the Holidays Act; and
  - (c) all information in the employer's wages and time record kept under section 130 of the Employment Relations Act 2000. 10



**Schedule 4**  
**New Part 6 of Schedule 1AA inserted into Parental Leave and**  
**Employment Protection Act 1987**

**s 188**

**Part 6**  
**Provision relating to amendments to this Act made by Employment**  
**Leave Act 2026**

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**6 Application of section 186 of Employment Leave Act 2026**

The amendments made by **section 186** of the Employment Leave Act **2026** apply only to an application received on or after 1 July 2027.

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**Legislative history**

9 March 2026  
12 March 2026

Introduction (Bill 259–1)  
First reading and referral to Education and Workforce  
Committee